

EASTLEIGH BOROUGH COUNCIL

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE
PLANNING AND COMPENSATION ACT 1991), SECTION 195**

**TOWN AND COUNTRY PLANNING APPEALS (DETERMINATION BY
INSPECTORS) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

**PROOF OF EVIDENCE
OF
GARY OSMOND BA Arch. MA LRTPI**

Appeal by Maurice Doe, CCW Services Ltd

Appeal Site: Broadway Farm, Broad Oak, Botley, Southampton, SO30 2EU

Planning Inspectorate Reference: APP/W175/X/23/3331326

Local Authority Reference: LDC/23/95111

Eastleigh Borough Council
Civic Offices
Upper Market Street
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February 2024

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1.0 SUMMARY

1.1 This appeal relates to the refusal of a Certificate of Lawfulness of Existing Use or Development for a “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,”.

1.2 The three main issues of the appeal to be considered are:

- a. 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 undertaken and substantially completed on or before 25th April 2019;
- b. Whether the appellant has proved on the balance of probability that the planning use of the land in question changed from agricultural/horticultural to use for the parking of motorised vehicles, including heavy goods vehicles and trailers on or before 25th April 2013 and that the use then continued without significant interruption for ten years after the date of the change; and
- c. 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.

1.3 It is the opinion of the Local Planning Authority (LPA) that insufficient evidence was provided in support of the Certificate of Lawfulness of

Existing Use or Development to demonstrate that a certificate should have been issued in relation to the first two issues relating to the laying of grasscrete and use of the land for the parking/storage of vehicles, and this remains the case. On the third issue, it is the LPA's view that the laying of Tarmacadam and associated engineering works does constitute a new planning chapter for which planning approval is required and has not been granted.

- 1.4 For the above reasons, the Inspector is respectfully requested to dismiss this Section 195 appeal.

2.0 INTRODUCTION

- 2.1 I am a Principal Planning Officer at Eastleigh Borough Council. I have an Undergraduate Bachelor's Degree in Architecture and a Postgraduate Master's Degree in Planning Policy and Practice, specialising in Urban Design.
- 2.2 I am a Licentiate Member of the Royal Town Planning Institute. I have 20 years' planning experience, all with Eastleigh Borough Council, and have experience of dealing with a wide range of planning applications, both as case officer and as a specialist consultee. I have also been involved with the Winchester and Eastleigh Design Review Panel since 2005.
- 2.3 The evidence which I have prepared and provide in this Proof of Evidence is true and has been prepared and given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
- 2.4 I am familiar with the appeal site and its planning history subsequent to this appeal. I have visited the site at least three times in preparation for the appeal inquiry and as part of previous planning applications, the first being in November 2018, with further visits in November 2021 and most recently in January 2024.
- 2.5 This Proof of Evidence will cover the site and its surroundings together with the planning background to the appeal. It will also set out my recollections of having visited Broadway Farm and what activities I witnessed.

2.6 This Proof should be read in conjunction with the Proofs of Evidence of:

- John Saunders – Planning Enforcement Officer
- Ross Blakemore – Horton Heath Technical Manager

3.0 DESCRIPTION OF APPEAL

- 3.1 The Certificate of Lawfulness application was submitted to the Council and registered as valid on 25th April 2023. It was assigned reference number LDC/23/95111. The description of the existing use, building works or activity on the application form was as follows:

“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 remain ongoing and evidenced in Affidavits.”

- 3.2 The application was refused on 29th August 2023, the reasons for which are stipulated below:

“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.”

“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.”

3.3 The decision notice was issued on 29th August 2023.

4.0 APPEAL SITE

- 4.1 Broadway Farm lies to the west of the village of Botley to the north of 'Broad Oak' (A334) which is the main route into the village from the west. Whilst still called Broadway Farm, the site is no longer used for any agricultural or horticultural purposes but has for the past 25 – 30 years been used by a haulage firm for storage and distribution purposes, albeit has seen rapid expansion in recent years.
- 4.2 The wider 'farm' is split into three parcels: western, central and eastern. The two outer parcels are open grassed 'paddock' land bound by hedgerows and trees on their outer edges. The central parcel consists of a number of storage/warehouse buildings of varying sizes, as well as open areas used for lorry parking, loading and unloading. To the south of the main warehouse structures, which are positioned in the middle of the site, is an area of hardstanding used for staff parking and vehicle storage, together with ancillary office accommodation and a large bungalow which is the Appellant's place of residence.
- 4.3 The appeal site consists of the northern third of the eastern parcel of land which has been covered in tarmacadam and is being used for the parking/storage of vehicles and trailers, as well as open storage of pallets and containers.
- 4.4 The appeal site slopes gently away to the north and east towards woodland which lies immediately to the north and east of the site and forms part of a Site of Importance for Nature Conservation (SINC). The southern edge is marked by an earth bund, with a central gap, presumably to allow access to

the remainder of the field beyond. The western edge is marked by a substantial hedge, which formed the western edge of the built-up central portion of the wider Broadway Farm site. A portion of this hedge has been removed to allow vehicular access to the appeal site.

- 4.5 In terms of the wider context, the site lies outside the urban edge and within the designated Botley/Hedge End Settlement Gap on a short stretch of road between the settlements of Hedge End to the west and Botley to the east. Immediately surrounding the site is agricultural land used for grazing and arable purposes, together with residential properties fronting the main road.

5.0 PLANNING HISTORY

5.1 Broadway Farm has had a number of planning applications over recent years, as set out in the table below. These demonstrate a clear expansion and intensification of activities on site from approximately 2017 onwards, which would appear to align with growth of the business demonstrated by the number of vehicles and trailers directly associated with the business set out in the Goods Vehicle Operator's Licences provided in support of the certificate application.

The planning history is set out below:

Application Ref:	Description:	Decision:
F/22/94108	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.	Refused Feb 2023
F/22/93195	Construction of a Warehouse for storage and distribution (Class B8) together with a parking apron for first response vehicles and ancillary works.	Withdrawn Jul 2022
F/21/91859	Construction of a warehouse for storage and distribution (Class B8) with ancillary works including parking area, together	Withdrawn Jan 2021

	with retention of tarmac hardstanding for open vehicle storage.	
F/17/81201	Retention of 2No. 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 Mar 2019
LDC/17/80680	Lawful Development Certificate for proposed construction of a new material handling/storage building (Use Class B8).	Certificate Issued Feb 2018
Z/17963/001/00	Use of rear yard for pallet repair and storage with retention of relocated portable office and shed.	Refused Jul 1997 – granted temporary approval at appeal Sep 1998

5.2 My involvement with Broadway Farm began in 2017 as the planning case officer for application F/17/81201, which was being considered concurrently with LDC/17/80680. This application sought approval for the retention of two warehouse buildings which had been constructed to replace previous sheds which were no longer fit for purpose, together with the proposed extension and refurbishment of other existing buildings.

Whilst no formal planning approval for the industrial/commercial use of the site had ever been granted, the LPA took the view that a ten-year continuous industrial use of the site could be demonstrated, albeit no formal application for a certificate of existing use has ever been submitted.

As such, the principle of improvements to the existing site could be considered acceptable. In addition to this, the buildings were of a similar size and scale to that which could have been undertaken via permitted development, as was confirmed by the issuing of the certificate for LDC/17/80680. Therefore, planning consent was granted on 13th March 2019.

- 5.3 The approval of F/17/81201 effectively established a legitimate industrial/commercial use of the site in planning terms. However, as is clearly visible from the location plan submitted with this application (Appendix 01), this consent only applied to the central parcel of the wider Broadway Farm site, and not the current appeal site, which was not included within the application redline.

Indeed, part of the rationale for granting planning approval was to 'tidy up' land to the west, which was at that time being used for ad hoc storage of containers and pallets. At no point during the course of this application was the appeal site discussed or highlighted as an area used or required for further storage.

- 5.4 I personally visited Broadway Farm in November 2018 as part of my assessment of the planning application and to gain a better understanding of what activities took place. I was shown around the site, including inside a number of the buildings by Mr Doe and others. Again, at no point during

this visit was the appeal site mentioned. Neither can I recall seeing any vehicles or trailers parked on the appeal site. However, I do acknowledge that the appeal site was not easily visible from the main central site due to a substantial boundary hedge and the placement of stacked containers and pallets in the same position as the current site access.

- 5.5 Following the 2019 planning approval, I dealt with three further planning applications relating to Broadway Farm. The first two, F/21/91859 and F/22/93195 both sought approval for the retention of the Tarmacadam hardstanding which had been laid in 2020, together with further expansion of the site through the construction of another large warehouse. These were followed by F/22/94108, which again proposed an additional warehouse and other works but also included the removal of the appeal site hardstanding. At no point during any of these three applications was it mentioned verbally or in writing that the appeal site had previously been used for parking or storage purposes.

6.0 ASSESSMENT

- 6.1 With regard to the three main elements of the appeal: a) was grasscrete laid prior to 25th April 2019; b) has the land been used for parking and storage continuously for more than ten years; and c) whether the laying of tarmacadam constitutes a new planning chapter, I would make the following comments.

Issue 1: 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.

- 6.2 I note the affidavits provided in support of the lawful development certificate application, but the physical evidence provided did not in the LPA's view clearly confirm that grasscrete had been laid on site in 2006 when stated.

Firstly, the aerial photographs which are publically available via sources such as Google Earth did not clearly show grasscrete being present across the appeal site. Whilst it is acknowledged that these photographs are taken from a considerable distance above the site and are not of the highest resolution, some differentiation in colour and texture between the northern and southern halves of the field/paddock would have very likely been discernible. This would have been especially so during the dryer summer months when underground features can be clearly identified from aerial photographs.

- 6.3 Secondly, the photographs of the dug trial holes provided did not clearly demonstrate the presence of any grasscrete layer, neither was it clear where each photograph had been taken from as there was no additional context

included within the photographs to demonstrate that these photographs were indeed from the appeal site. It is only now as a result of this appeal and visiting the site again in January of this year that it could be confirmed that the photographs provided in support of the certificate application were indeed of the four dug trial holes.

6.4 To that end, I draw upon the evidence of Mr Blakemore and his proof of evidence which confirms that all four trial holes gave no indication that grasscrete was currently present. Whilst it is acknowledged that the appeal site has now been covered in tarmacadam, evidence of grasscrete would still be expected to be visible, as removal of any grasscrete would not have been necessary to lay the tarmacadam. In fact, it would have provided an appropriate sub-base for the tarmacadam, particularly when the appeal site was to be used for the parking of vehicles, some of which would be of considerable weight. As such, I agree that it would have expected to see a top layer of tarmacadam over a based of medium aggregate, then evidence of solid concrete which would have made up the grasscrete, together with soil or gravel in the voids of the grasscrete grid, with a further layer of crushed aggregate below that.

6.5 As is set out in Mr Blakemore's Proof of Evidence, there was nothing in any of the four trial holes to indicate the presence of grasscrete or any other similar paving system having been installed on the appeal site prior to the laying of the current tarmacadam. This leave three possible scenarios: either all four trial holes were dug outside of the area where the grasscrete was laid, which given their purpose was to demonstrate its presence seems unlikely; that the grasscrete was pulled up prior to the laying of the current tarmacadam, which as set out above would have been unnecessary and

involved a considerable amount of work and disposal of the resulting materials; or that it was never present in the first place. Whichever of the above scenarios is correct, it has still not been demonstrated to the LPA's satisfaction that grasscrete was laid/installed on the appeal site prior to 25th April 2019. As such, it was correct not to issue a certificate of lawful use.

Issue 2: 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

- 6.6 The submitted lawful development certificate application included affidavits stating that the appeal site has been used for the parking and storage of vehicles associated with the Appellant's business in excess of ten years, and these were supported by photographs of vehicles on the site. However, whilst the content of these affidavits were noted, the aerial photographs reviewed by the LPA did not appear to confirm the statements made.
- 6.7 The submitted photographs showing what were presumed to be new tractor units are considered to carry little weight in determining whether the site had been used regularly for parking and storage. However, the aerial photographs are considered to provide a clearer picture of how the appeal site has been used over the years in question. Whilst one of the photographs did show articulated trailers on site in August 2016, none of the others from December 2005 through to May 2020 showed any trailers or vehicles on site prior to the current tarmacadam being laid. Whilst it is acknowledged that

these aerial photographs only show a very brief snapshot of time, they are nonetheless considered to be a very useful indication of how the site has been used over the years.

- 6.8 The nature of the Appellant's business is such that vehicles will likely spend most of their time away from their base at Broadway Farm and on the road. As such, it could be argued that this is the reason they are not present in the photographs. However, if the appeal site was in regular use, evidence of heavy vehicle movements would still very likely be seen through track marks across the field.

Indeed, a number of the affidavits stated that lorries and trailers had to be pulled off site by tractors and forklifts because the ground was too wet to take the weight of the vehicles. Such disturbance to the ground would likely be visible in an aerial photograph. Whilst track marks are present in the photographs from September 2014 (Core Document F2), April 2015 (Core Document F3) and August 2016 (Core Document F4), it is only the 2016 photograph which appears to indicate a more regular use with a clearly more worn section of field along its western boundary. Had the appeal site been in regular use, a similar level of ground disturbance would very likely have shown up in the other aerial photographs. However, it was not present.

- 6.9 Even with the supposed presence of grasscrete, track marks would still be visible, particularly within the southern half of the field, which had to be used to access the appeal site until the current tarmacadam was laid due to the presence of the western boundary hedge. It would have been sensible, given the problems of vehicles getting stuck, to extend the grasscrete

southwards down to the field access, otherwise the appeal site would have been inaccessible in poor weather, making the installation of the grasscrete somewhat pointless. However, no such access route has been indicated either on plan or within the submitted affidavits and is a further reason to question the accuracy of that provided.

- 6.10 Whilst the LPA acknowledges that the appeal site has been used for the parking and storage of vehicles and trailers in the past, this has likely only been on an occasional basis as and when required and when ground conditions allowed.

In the LPA's view such occasional and sporadic use does not constitute a continuous use of the site for ten years or more for the purposes specified, and without clear evidence to the contrary, a certificate of lawful use cannot be issued.

Issue 3: 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.

- 6.11 It is understood that the Appellant's argument is that the laying of tarmacadam does not constitute development, as it was laid on top of an existing layer of grasscrete and on land which has been used for the purposes of parking and storage for over ten years.

Given the LPA's conclusions in relation to the presence of grasscrete and use of the appeal site set out above, the LPA had no other option but to consider the laying of the tarmacadam as new physical development, which in turn

facilitated the year-round use of the site for parking and storage. As such, a clear change of use of the land from agricultural/horticultural use to a B8 storage and distribution use has taken place.

6.12 Even if the grasscrete is present underneath the tarmacadam, and the Appellant could clearly demonstrate a continuous use of the site for the purposes of parking and storage over the past ten years, the laying of the tarmacadam does still constitute development as set out in Section 55 of the Town and Country Planning Act 1990. The laying of the tarmacadam would have required a considerable degree of site preparation, even on top of grasscrete, as well as the importation of new material. This alone would constitute an engineering operation, as would the construction of the earth bunds surrounding the site and drainage channels

6.13 It is acknowledged that in some circumstances such works may be undertaken via permitted development, although this in itself does not mean it is not an engineering operation. Notwithstanding, it is the opinion of the LPA that permitted development rights for such works cannot be applied in this instance. The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 7, Class J allows for the “the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned”. However, it is the LPA’s view that the appeal site does not form part of the curtilage of any of the neighbouring buildings to the west and never has. This is evident from the appeal site never having been included within any of the various submitted planning application redlines prior to 2020, together with the physical separation of the appeal site from the main commercial site by a mature boundary hedge of one form

or another, which is clearly visible in all aerial photographs from 2005 to 2020 (Core Document C6) prior to the laying of the current tarmacadam. As such, permitted development rights do not come into effect

- 6.14 It is the LPA's view that the laying of the tarmacadam is an engineering operation which falls outside of any potential permitted development. As such, this alone requires planning approval. In addition, the laying of the tarmacadam now allows the appeal site to be used for the parking and storage of vehicles all year around, resulting in a material change of use of the land from agricultural/horticultural to an ancillary B8 use associated with the established storage and distribution business on the neighbouring developed part of the wider Broadway Farm site. This too requires planning approval. As such, the LPA could not reasonably consider issuing a certificate of lawful use.

7.0 CONCLUSION

- 7.1 It remains the view of the LPA that the Appellant has failed to demonstrate that grasscrete was installed on the appeal site prior to 25th April 2019, or indeed that it is still present underneath the current tarmacadam. Neither has it been clearly evidenced that the appeal site has been used for the parking and storage of vehicles and trailers for a continuous period beginning on or before 25th April 2013. Finally, the Appellant has not demonstrated that the laying of the tarmacadam and subsequent year-round use of the appeal site for the parking and storage of vehicles and trailers does not constitute a new chapter in the planning history of the site.
- 7.2 For the reasons set out in this Proof of Evidence, the appeal should be dismissed.