

Planning Statement:

**Lawful Development Certificate for Existing Use:
Land for the storage, preparation and sale of
motor vehicles on land adjacent to Holly Rise,
Burnetts Lane, Horton Heath**

Applicant: Mr & Mrs Bendy

Local Planning Authority: Eastleigh Borough Council

June 2024

Content Page

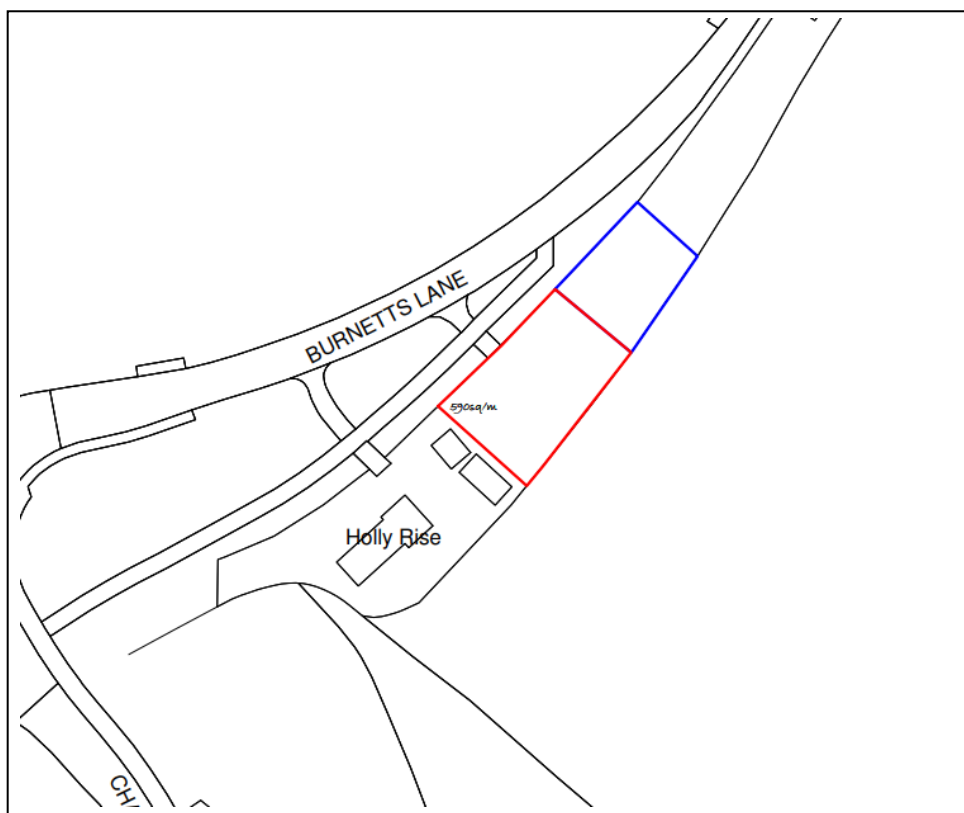
1.0	Introduction.....	3
2.0	Site context.....	3
3.0	Planning Law and Practice.....	3
4.0	Evidence.....	6
5.0	Conclusion.....	6

Appendices **[As separate attachments]**

- Appendix 1 – Google Earth Images – 2012-2024
- Appendix 2 – Statutory declarations/witness statements (Confidential)
- Appendix 3 – Invoices to Eclipse Car Sales Ltd (Confidential)
- Appendix 4 – Personal photographs taken from/within the site

1.0 Introduction

- 1.1 This planning statement has been prepared on behalf of the applicants Mr and Mrs Bendy.
- 1.2 The application seeks a Lawful Development Certificate on land adjacent to Holly Rise, Burnetts Lane, West End, SO30 2HH (identified below) that has been used for the storage, preparation and sale of motor vehicles for in excess of 10 years.



2.0 Site context

- 2.1 The site is located between Holly Rise and Hillcrest on Burnetts Lane, Horton Heath, SO30 2HH.
- 2.2 The site measures 925sqm and is served by its own independent access off of Burnetts Lane via a gate flagged by brick piers either side.
- 2.3 The site is fronted to the northwest by mature trees, shrubs and timber fencing that create a dense 2.5m+ boundary, screening it largely from view. The same boundary treatment continues to the north adjacent to Hillcrest. To the rear is dense hedging and to the south adjacent to Holly Rise is 2m fencing.

- 2.4 Within the site itself there are areas of hardstanding and areas of grass. A marquee has also been erected on site over many years under which vehicles are prepared.
- 2.5 The applicants lived in Holly Rise from 2009 and purchased the adjacent site (subject to this Lawful Development Certificate) in 2009 under a separate deed. The site has been used since its purchase for the storage, preparation and sale of vehicles, initially by the applicants and then under the guise of the applicant's business Eclipse Car Sales Ltd.
- 2.6 Although the applicants no longer live at Holly Rise, the site (subject to this Lawful Development Certificate) has been retained by the applicants and continues to be used to this day for the storage, preparation and sale of motor vehicles.

3.0 Planning Law and Practice

The Town and Country Planning Act 1990

- 3.1 Section 191 of the Town and Country Planning Act deals with Certificates of Lawfulness of existing use or development. It provides a mechanism to regularise unauthorised development and prevent enforcement action being taken against any breach of planning policy or conditions.
- 3.2 Section 191 (2) states that:
 - (2) *"For the purposes of this Act uses and 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.*
- 3.3 The section goes on to clarify that:
 - (4) *If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a*

certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

- a) specify the land to which it relates;*
- b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*
- c) give the reasons for determining the use, operations or other matter to be lawful; and*
- d) specify the date of the application for the certificate.*

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

Planning Practice Guidance

3.4 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".

3.5 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"

3.6 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 Judgement and Standards of Proof

3.7 *F W Gabbittas 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.

- 3.8 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'.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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 (Thrasylvoulou v SSE 1984).
- 3.14 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.

4.0 Evidence

4.1 This application for a Lawful Development Certificate is supported by a variety of supporting evidence, contained in separate appendices. These include:

- Appendix 1 which contains publicly available Google Earth images from 2012-2024 that show without any doubt that the site has been used for the identified use in excess of 10 years.
- Appendix 2 containing 3x Statutory declarations/witness statements from:
 - Sarah Fry a resident of Burnetts Lane;
 - Richard Ware, a former employee of Eclipse Car Sales Ltd
 - ENCY, Eclipse Car Sales Ltd's accountant for in excess of 10 years

Further statements can be provided by other users and service providers should they be required.

- Appendix 3 provides a variety of invoices addressed to Eclipse Car Sales Ltd at Burnetts Lane. These invoices corroborate the statement made by ENCY accountant (see appendix 2) that Eclipse Car Sales Ltd have operated from the site since 2009.
- Appendix 4 provides a sample of personal photographs taken by the applicant from within the site the site. The photographs are digitally dated, span a 10-year period and shows the storage, preparation and sale of motor vehicles.

5.0 Conclusions

5.1 Eclipse Car Sales Ltd commenced use of the land at Holly Rise, Burnetts Lane for the storage, preparation and sale of motor vehicles in 2009 and it continues to be used for the same purpose to this present day.

5.2 The appropriate time period within which enforcement action could have been taken is 10 years. No such action has however ever been taken by the Council and as such the land should now be granted a certificate of lawfulness for the use which has existed for almost 15 years.