

TOWN AND COUNTRY PLANNING ACT 1990 – S174 APPEAL

PLANNING APPEAL SUBMITTED IN RESPECT OF THE DECISION OF EASTLEIGH BOROUGH COUNCIL TO SERVE AN ENFORCEMENT NOTICE FOR THE ALLEGED UNAUTHORISED CHANGE OF USE OF LAND AT BROADWAY FARM, BROAD OAK, BOTLEY, SO23 2EU TO PARKING AND STORAGE B8 WITH ASSOCIATED UNAUTHORISED TARMAC HARDSURFACING, UNAUTHORISED DRAINAGE AND UNAUTHORISED LIGHTING

APPEAL REFERENCES

APP/W1715/C/25/3361911

APP/W1715/C/25/3361912

PROOF OF EVIDENCE OF MARK SENNITT IN RESPECT OF PLANNING MATTERS

May 2025

Section 1; Qualifications and Experience

Section 2: Scope of Evidence

Section 3: Appeal Site and Surrounding Area

Section 4: Relevant Planning Policy Context

Section 5: Relevant Planning History

Section 6: The Appellant's case

Section 7: Conclusions

1. QUALIFICATIONS AND EXPERIENCE

- 1.1. My name is Mark Sennitt and I am a Chartered Town Planner (MRTPI) I have over 35 years' experience across a range of roles within both the public and private sectors. I have previously worked as a Senior Planning Officer for Southampton City Council and with Hampshire County Council with extensive professional experience of dealing with large-scale and major projects and enforcement appeals.
- 1.2. I have previously held the position of Planning Director on behalf of Orchard Homes.
- 1.3. I am familiar with the Appeal Site and Eastleigh's relevant planning policy position. I have undertaken numerous site visits to the Appeal Site since July 2024.
- 1.4. I have been instructed by the Appellants to act on their behalf for this Appeal and can confirm that the evidence provided is true, and in accordance with the guidance expressed by the Royal Town Planning Institute. Any opinions expressed are my own true and professional opinions.

2. SCOPE OF EVIDENCE

- 2.1. The following proof of evidence is submitted on behalf of CCW Services Ltd in respect of the appeal in relation to an enforcement notice served by Eastleigh Borough Council dated 5th February 2025 in respect of the *alleged unauthorised change of use of land to parking and storage (B8)*.

2.2. The Enforcement Notice specifically raises concerns with regard to the following policy advice:

- DM1 – General criteria for new development
- S5 – New development in the countryside
- S6 – Protection of settlement gaps
- EBC SPD – *Quality Places*

2.3. The grounds of appeal are as follows;

- Ground (b) – *that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control has not occurred.*
- Ground (c) – *the matters alleged in the notice do not constitute a breach of planning control.*
- Ground (a) – *planning permission should be granted for what it alleged in the notice.*
- Ground (f) – *the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control.*
- Ground (g) – *that any period specified in the notice falls short of what should reasonably be allowed.*

2.4. The scope of evidence provided relates to planning matters and should be read in conjunction with the evidence submitted by the following:

- Mr Stephen Wadsworth – in respect of landscape matters
- Mr Matthew Johns – in respect of ecological matters
- Mr Philip Brophy – in respect of arboricultural matters
- Mr Adam Place – in respect of economic matters
- Mrs Meaghan Weedon – in respect of the proposed drainage strategy
- Mr Daniel Spreadborough – in respect of the proposed lighting strategy
- Mr James Kneller – in respect of operational details
- Mr Jame Duncan – in respect of noise

3. APPEAL SITE AND SURROUNDING AREA

3.1. The Appeal Site and surrounding area are described in section 2 of the Appellant's Statement of Case.

3.2. It should additionally be noted that the site is located adjacent to a SINC and Ancient Woodland (with the Ancient Woodland being located the east of the site). There are overhead cables that bisect both the appeal site and the adjacent SINC. The cables run a north-south direction and are clearly identified in the following aerial photograph (image courtesy of Pro-map):



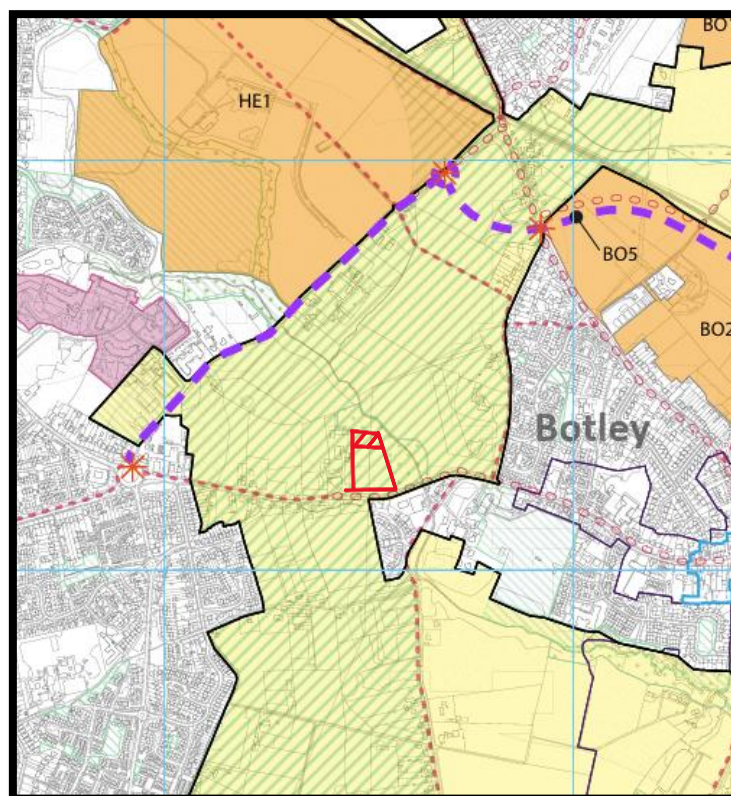
3.3. The implication of the presence of the overhead cables is that, in order to facilitate their installation and presumably their maintenance, the statutory authority has felled a significant proportion of trees through the SINC. This has created a 10m wide gap in the SINC where there are no trees and thus provide an area that can facilitate an effective drainage strategy by minimising impact on retained trees.

4. PLANNING POLICY CONTEXT

Local Planning Policy

4.1. The adopted Local Plan (LP) is the Eastleigh Borough Local Plan 2016-2036.

4.2. The area subject to the Enforcement Notice (edged in red – with the hardsurfaced area hatched in red - in the following extract) is identified as being located in the countryside and the Settlement Gap;



4.3. Policy S1 looks to deliver sustainable development:

Strategic policy S1, Delivering sustainable development

1. *To be sustainable, new development in the Borough should:*

c. maintain and help to grow a high-performing local economy that benefits the Borough, south Hampshire and the wider economy, without adverse impact on south Hampshire's city, town and other centres, the quality of the local environment or local transport networks;...

4.4. Policy S5 refers to new development in the countryside:

Strategic policy S5, New development in the countryside

1. *Planning permission will be granted for new development in the countryside provided it is related to:*

a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18) and the re-use of existing buildings (policy DM19);...

2. *In permitting new development in the countryside the Borough Council will seek to:*

a. avoid adverse impacts on the rural, woodland, riparian or coastal character, the intrinsic character of the landscape including the avoidance of adverse landscape impacts on areas adjoining national parks and their settings, the significance of heritage assets and on the biodiversity of the area;

b. secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside and coast;

c. avoid sterilisation of mineral resources, in accordance with the Hampshire Minerals and Waste Plan;

d. safeguard the best and most versatile agricultural land unless the benefit of the development clearly outweighs the loss; and

e. protect soils during construction wherever possible in line with the 'Defra code of practice for the sustainable use of soils on construction sites'.

4.5. Policy S6 refers to Settlement Gaps:

Strategic policy S6, Protection of settlement gaps

1. *Development within a Settlement Gap as set out in the policies map will be permitted provided that:*

a. it would not undermine the physical extent and/or visual separation of settlements; and

b. it would not have an urbanising effect detrimental to:

i. The character of the countryside; or

ii. The separate identity of the adjoining settlements

4.6. Policy DM1 seeks to set out general criteria for new development:

Policy DM1, General criteria for new development

1. All new development should (as relevant):

a. not have an unacceptable impact on, and where possible should enhance:

i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast;

ii. biodiversity (avoiding significant adverse impacts); and

iii. the significance of heritage assets;

b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land;

c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings, spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;

d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);

e. include a landscape scheme covering the design and layout of external space;...

g. provide satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;

4.7. Policy DM6 refers to Sustainable surface water management

1. New development (excluding extensions to dwellings and changes of use), will only be permitted if it incorporates Sustainable Drainage Systems (SuDS). Wherever feasible, naturalised filtration should be included within the treatment train as follows:

- a. On sites of 1 hectare or more, or within 100m of the River Itchen SAC or Solent Maritime SAC, SuDS schemes should include at least three forms of naturalised filtration. On sites within 100m of headwaters and tributaries draining into a SAC, SuDS schemes should include at least three forms of naturalised filtration unless hydrological studies and project-level Habitats Regulations Assessment demonstrate this to be unnecessary to protect the integrity of the SAC and its qualifying features;*
- a. On other sites of between 0.5 hectares and 1 hectare, SuDS schemes should include at least two forms of naturalised filtration; and*
- b. On other sites of less than 0.5 hectares non-naturalised SuDS e.g. permeable paving will be considered where justified.*

2. In order to reduce flooding and maintain water quality (in accordance with DM8) SuDS schemes should:

- a. be designed and monitored in accordance with the CIRIA C753 SuDs Manual or equivalent national or local guidance, noting that all receiving waters in the Borough should be classified as protected waters;*
- b. manage surface water runoff as close to its source as possible;*
- c. ensure that discharge rates are reduced as far as possible and that on greenfield sites these should at least mirror greenfield rates before development;*
- d. be provided as part of any application for outline or full planning permission;*
- e. where discharge is to a wetland or wet woodland habitat, flows off site must mirror the natural hydrological pathways;*
- f. include clear arrangements for their whole life management and maintenance.*

3. *Where a watercourse is present on a development site, it should be retained or restored into a natural state and enhanced where possible. The culverting of any watercourse will not generally be permitted, and development should wherever possible remove any existing culverts and increase onsite flood storage. Development should be laid out to enable maintenance of the watercourse.*

4. *Where development drains into a waterway connected to the Natura 2000 or Ramsar network a site specific Construction Environment Management Plan must be prepared before permission.*

4.8. In the supporting text to policy DM6 paragraph 5.33 notes that *naturalised filtration requires much less maintenance than mechanised filtration*. Paragraph 5.34 goes on to say that *other more mechanised forms can be used to drain the urban area on the larger sites provided the three naturalised forms are present at the end of the treatment train*. In sites where sites are draining to natural wetland habitats or wet woodland before entering the river, the flows off site will need to mirror the natural hydrological pathways.

4.9. Policy DM8 refers to the impact of pollution in respect of new development:

Policy DM8, Pollution

1. *Development will not be permitted if it is likely to cause loss of amenity or impact on public health or other unacceptable environmental impacts through:*

- a. air pollution (including odours or particulate emissions);*
- b. pollution of surface, underground, coastal waters or other watercourses;*
- c. noise or vibration;*
- d. light intrusion, both generally and with respect to the South Downs National Park's status as an International Dark Night Skies reserve; or*
- e. or land contamination.*

2. *Development susceptible to particular forms of pollution will not be permitted:*

- a. where it will be adversely affected by such pollution, unless measures can be taken that adequately mitigate the polluting effects; or*

b. where it would inhibit existing economic or other activities giving rise to acceptable polluting effects.

3. Where a development site is known or suspected to be contaminated, before the site is developed the Borough Council will require the contamination to be remediated to a standard where as a minimum it cannot be defined as 'contaminated land' under Part IIA of the Environmental Protection Act 1990.

4.10. Policy DM11 refers to Nature Conservation, with particular reference to Priority Habitats and Irreplaceable Habitats.

Priority habitats, protected and priority species and the local ecological network

5. Development will not be permitted if it is likely (either individually or in combination with other developments) to have a direct or indirect adverse effect on priority habitats, protected or priority species, or on the local ecological network unless it can be demonstrated that:

- a. there are no alternative solutions;*
- b. the adverse effects are unavoidable;*
- c. measures are taken to mitigate or, as a last resort, compensate for the adverse effects;*
- d. there is an overall biodiversity net gain; and*
- e. if there are any residual adverse effects, the benefits of the development clearly outweigh the adverse effects on priority habitats, priority and protected species, and the local ecological network.*

Irreplaceable habitats

6. Development will not be permitted if it results in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees), unless there are wholly exceptional reasons and a suitable compensation strategy exists.

4.11. Policy DM18 refers to non-residential buildings in the countryside:

Policy DM18, Extension and replacement of non-residential buildings in the countryside

- 1. The extension or replacement of non-residential buildings in the countryside will be permitted, subject to the general development criteria and transport policies of this Local Plan and provided that:*

- a. *the existing building is in lawful use and is not subject to a temporary permission;*
- b. *the extension or replacement building is for a non-residential use;*
- c. *the extension or replacement building would not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height;*
- d. *access, car parking, landscaping and services can be provided without having a detrimental impact on the character of the countryside;*
- e. *so far as possible the property is sustainably located in terms of accessibility by means of transport other than the private car;*
- f. *the extended building or its replacement would be located within the existing curtilage unless its relocation or extension would contribute to improving the character and quality of the local area;*
- g. *in the case of a replacement building, the proposal also includes the demolition of the building to be replaced; and*
- h. *the development would not by itself or cumulatively with other recently permitted schemes undermine the Council's strategy for the development of employment-related floorspace (see strategic policy S4).*

National Planning Policy

- 4.12. Paragraph 2 of the NPPF states the following:

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions.

- 4.13. Paragraphs 7 and 8 refer to the requirement to achieve sustainable development:

7. The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development and supporting infrastructure in a sustainable manner. At a very high level, the objective

of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
- c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

4.14. Paragraph 48 reinforces the requirement to determine planning applications in accordance with the development plan unless material considerations indicate otherwise:

48. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

4.15. Paragraph 56 refers to the use of planning conditions to make an otherwise unacceptable scheme acceptable:

56. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

- 4.16. Paragraph 60 specifically refers to enforcement, stating that it should be proportionate to the breach:

60. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

- 4.17. Section 6 of the NPPF refers to Building a strong, competitive economy:

85. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

87. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for:

b) storage and distribution operations at a variety of scales and in suitably accessible locations that allow for the efficient and reliable handling of goods, especially where this is needed to support the supply chain, transport innovation and decarbonisation; and

c) the expansion or modernisation of other industries of local, regional or national importance to support economic growth and resilience.

- 4.18. Paragraph 88 seeks to support a prosperous rural economy:

88. Planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;

b) the development and diversification of agricultural and other land-based rural businesses;

4.19. Paragraph 89 seeks to support businesses in rural areas:

Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

5. RELEVANT PLANNING HISTORY

5.1. There have been a number of applications on site, including the following:

- LDC/23/95111 - *Lawful Development Certificate for an existing use or operation: 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 in accordance with an Operator's Licence.*

This application related to part of the Appeal Site and was refused on appeal by decision letter dated 7th May 2024.

- 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 1st February 2024

Concerns were raised over the urbanising effect and visual harm the proposals would have on the settlement gap.

- 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 July 2022

- F/21/91859 - *Construction of a warehouse for storage and distribution (Class B8) with ancillary works including parking area, together with retention of tarmac hardstanding for open vehicle storage.*

Withdrawn January 2021

- 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).*

Permitted March 2019

- LDC/17/80680 - *Lawful Development Certificate for proposed construction of a new material handling/storage building (Use Class B8).*

Certificate Issued February 2018

- Z/17963/001/00 - *Use of rear yard for pallet repair and storage with retention of relocated portable office and shed.*

Refused July 1997 – granted temporary approval at appeal September 1998

- Z/17963/00A/00 - *Erection of detached bungalow and integral garage.*

Permitted March 1978

6. THE APPELLANTS' CASE

The Appellants' grounds of appeal are as follows:

6.1. Ground (b) Appeal: *that those matters have not occurred*

6.2. The appeal site is known as Broadway Farm and has traditionally been used to grow strawberries and therefore the wider use has an agricultural use. Over time part of the site has been used for a B8 Warehousing use and as a residential dwelling. The B8 warehousing use has been established by reason of consent no. F/17/81201 which established the planning unit in respect of this use.

6.3. This is illustrated in the following extract (courtesy of Pro-map):



6.4. The area edged in blue is the operational and residential core of the site, whereas the two areas edged red comprise the agricultural fields associated with the farm.

6.5. Reference has been drawn to *Burdle v SSE* [1972] 3 All E.R. 240 which sets out three possible means of establishing the planning unit, as follows:

- The single main purpose of the site to which other uses are ancillary
- A variety of uses – a composite use
- Separate or distinct uses which are unrelated – in which instance separate planning units are created.

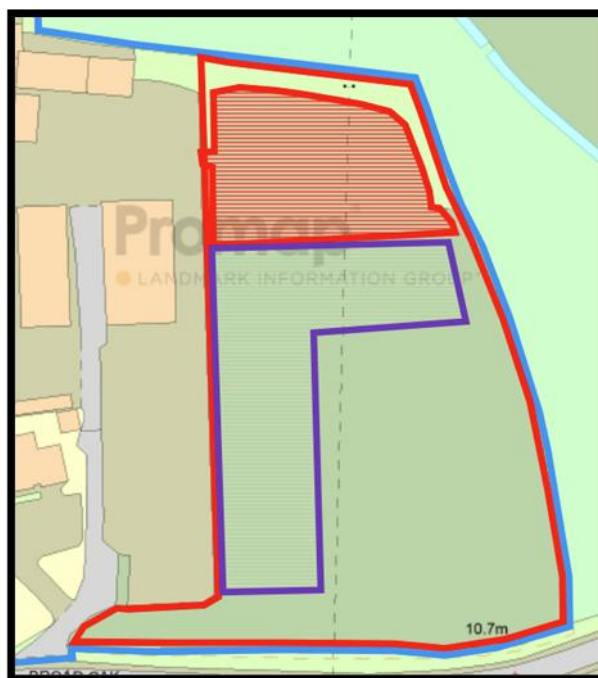
6.6. The general rule derived from *Burdle* is that *the unit of occupation is the appropriate planning unit to consider, until or unless a smaller unit is identified, which is a separate use, both physically and functionally.*

6.7. Applying these principles to the appeal site it is argued that there are three distinct planning units on site, as follows:

- The dwelling, with garden and parking spaces – at the front of the site in the area edged blue in the preceding plan
- The B8 warehousing use – on the remainder of land edge blue
- The agricultural use – the areas edged red.

6.8. The red line of the Enforcement Notice includes both the tarmac area and the open field to its immediate south. Part of the open field has been used as a corridor access to what is now the hardsurfaced area, but the majority of the site has been left as open field. This is evidenced by the fact that only part of the field has been laid with matting.

6.9. Matting has been laid as per the following extract:

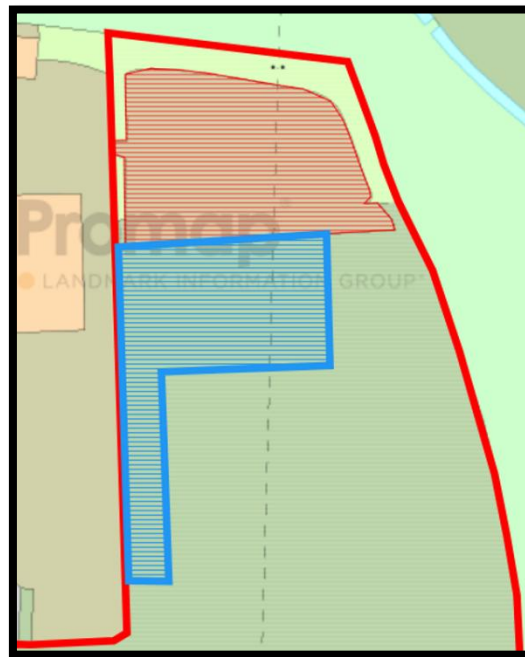


6.10. Matting is specifically required in order to facilitate the movement of HGV's, by providing stability. Failure to do so will result in HGV's getting stuck. As only part of the open field was used to provide access there was no need for the majority of the site to have matting.

6.11. Therefore, the majority of the open field has not been used to accommodate HGV's. This part of the site remains for agricultural use.

6.12. The tarmac was laid in 2020, although this area was used for the storage and loading/unloading of HGVs for a number of years prior to that date. When the tarmac was put down a vehicular access to this area was provided direct from the operational part of the site. Prior to 2020 the vehicular access to this area was via the open field. The open field has not been used for these purposes since that date.

6.13. Rubber matting has been installed on part of the open field. This was provided so as to facilitate access by HGVs to the northern portion of the site and it is estimated that the matting covers some 20% of the site, as identified in the following extract (courtesy of Pro-map):



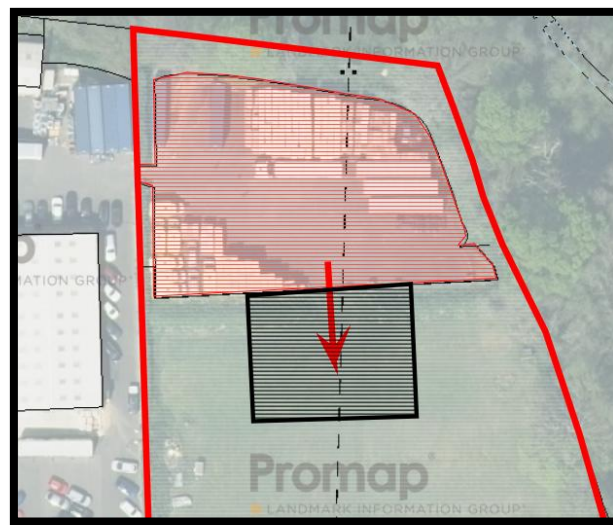
6.14. The enforcement notice is wrong to allege that there has been a material change of use of the entire Appeal Site to use for parking and B8 storage. As at the date the enforcement notice was served the open field, which comprises the large majority of the Appeal Site, was not in used for parking or storage.

6.15. The enforcement notice therefore fails properly to identify the mixed use of the Appeal Site as a whole. As such it is argued that the Ground (b) appeal should succeed.

6.16. **Ground (c) that those matters (if they occurred) do not constitute a breach of planning control**

6.17. A small part of the Appeal Site, immediately to the south of the hardstanding area, has been used on rare occasions as an overflow car park.

6.18. Access to the hardsurfaced area is direct from the operational element of the site and whilst an earth bund forms the southern boundary of this area there is a gap in the bund which is wide enough to allow vehicles to enter the open field. The access to the open field from the hardsurfaced area is illustrated in the following extract by an arrow (image courtesy of Pro-map);



6.19. In September 2024 refurbishment works, comprising the reroofing of one of the warehouses on-site. As a result, there was displacement of on-site vehicular parking which was accommodated in the area hatched black. This area was used for 3 days during this time.

6.20. In using the land for the parking of vehicles the Appellants relied on Schedule 2, Part 4, Class B of the General Permitted Development Order (2015) as amended, which allows for the temporary use of land for any purpose for up to 28 days per calendar year in this regard.

6.21. In other regards the site has been left as an open field since 2020.

6.22. The use of the open field for the parking of cars was a very limited event in response to operational needs on the site for which permitted development rights were used.

6.23. Ground (a) Appeal: Permit As Built, subject to appropriate conditions

6.24. Ground (a) *that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged*

6.25. The Inspector, in the *Post-Case Management Conference Note*, with respect to the ground (a) appeal has identified the main considerations, as per the following;

- i. Whether or not the location of the development is acceptable, having regard to the relevant policies and guidance on the matter of its location, with particular regard to the settlement gap;*
- ii. The effect of the development (including site lighting) on the character and appearance of the surrounding area;*
- iii. The effect of the development on the living conditions of nearby residents;*
- iv. The effect of the development on ecology, with particular regard to lighting and the drainage of the site; and*

- v. *The effect of the development on the adjoining ancient woodland and SINC.*

6.26. Dealing with these issues in turn.

- (i) *Whether or not the location of the development is acceptable, having regard to the relevant policies and guidance on the matter of its location, with particular regard to the settlement gap;*

6.27. Policy S5 allows the extension of existing employment uses in the countryside subject to factors such as impact on the landscape character of the area and protection of woodland.

6.28. The proposals will support the existing business and so is compliant, in principle, with Policy S5.

6.29. Policy S6 confirms that development in the Settlement Gap is acceptable where it would not undermine the physical extent and/or visual separation of settlements does not have an urbanising effect that would harm the character of the countryside or, in this case the separate identity of Botley and Hedge End.

6.30. Mr Wadsworth, in paragraphs 3.27-3.40 the impact of the proposed development on the function of the Settlement Gap. He notes that the site is visually well-contained – as such *there will be little change to the perceived sense of openness within the locality and this particular part of the Settlement Gap.* As such, it has not brought about any perceived visual coalescence between the settlements of Botley to the east and Hedge End to the west.

6.31. Whilst Mr Wadsworth notes that the *development has encroached into the countryside to a limited degree (though not appreciably) and might be argued to be urban in character...* he notes that the LPA Statement of Case puts *Policy S6 in the context of 'unacceptable harm' and not in the context of harm...the development...brings about little perceived change to the character of the local area.*

6.32. Mr Wadsworth concludes that the appeal site does not detract from the function of the Settlement Gap.

6.33. It is clear, on the basis of Mr Wadsworth's advice and with reference to the submitted Landscape Visual Impact Assessment that, the location of the proposed development is acceptable and consistent with both policies S5 and S6.

(ii) *The effect of the development (including site lighting) on the character and appearance of the surrounding area;*

6.34. Mr Wadsworth, confirms that the proposed development is not visually prominent. In turn the LPA can only point to two potential views of the site, namely from Cobbett Way and a neighbouring bridal way. The LPA also states that the development is *visually prominent*. However, it is clear that the appeal site is *not visually prominent from most publicly accessible viewpoints* and most views are *obstructed by existing vegetation and built form*.

6.35. The proposal development is supported by a lighting strategy specifically designed to minimise light spill to the wider area, as set out by Mr Spreadborough in his evidence. The strategy will comprise the provision of 2m high close boarded fences on the northern, eastern and southern boundaries of the site with a number of lights mounted within a recess. The lights will be fixed and face downwards so as to contain light spill within the hardsurfaced area.

6.36. Mr Wadsworth has analysed the Lighting Strategy in his proof of evidence. He notes that that there is light spill in the wider area, such as for example from the local road network, and that the appeal site is not regarded as a *dark sky*.

6.37. Mr Wadsworth also notes the presence of the 2m high close-boarded fence that are part of the proposals and that these fences will make no discernible change to the restricted visibility of the site.

6.38. Appendix 1 to this proof comprises a plan showing the proposed location of the close board fence. The erection and retention of this fence can be secured by condition.

6.39. Appendix 2 to this proof comprises a landscape scheme showing how the bund on the southern boundary of the hardsurfaced area can be added to and how additional planting can be provided thus providing additional planting.

iii. *The effect of the development on the living conditions of nearby residents;*

6.40. The hardsurfaced area is located in the north-eastern corner of the site. It is located 120m to the north of the Brook Cottage, which is the nearest residential neighbour. The majority of neighbouring properties are located to the south of the site and the site is well-contained to the north, east and west by the existing built form and adjacent woodland.

6.41. Mr Duncan, in his proof of evidence, references the potential impact of the use of the existing area on the wider area in terms of noise. This assessment was made subsequent to undertaking a noise survey with regard to the current use of the hardsurfaced area. Mr Duncan notes that during the more sensitive nighttime period it is *considered unlikely that the [local] residents would experience the noise externally*

6.42. Mr Spreadborough has also confirmed that the lighting strategy will not impact on local residential amenities in terms of light pollution.

6.43. Policy DM8 of the Local Plan seeks to ensure that development does not result in pollution in terms of light and noise on the wider area. As has been set out by Mr Duncan and Mr Spreadborough this issue will not create a nuisance to neighbouring residential amenities. The proposed development is therefore compliant with Policy DM8 of the Local Plan.

(iv) *The effect of the development on ecology, with particular regard to lighting and the drainage of the site;*

- 6.44. The proposals are supported by both a lighting and drainage strategy that demonstrate that the impact of the proposed development is acceptable in terms of ecology. Relevant strategies have been set out by Mr Spreadborough, with regard to lighting, and Mrs Weedon with regard to drainage. Mr Johns has then assessed the impact of lighting and drainage with regard to the adjacent SINC.
- 6.45. With regard to lighting Mr Spreadborough has set out in his lighting strategy how a number of individual lights can be fixed to 2m high close boarded fences that will contain light spill to within the hardsurfaced area.
- 6.46. The effectiveness of the lighting strategy is fully supported by the evidence of Mr Johns which confirms that there will no harm to local ecology as a result of its implementation.
- 6.47. With regard to drainage Ms Weedon directly deals with the concern regarding harm created by potential surface water run-off from the use of the hardsurfaced area. In doing so local level changes are noted and, prior to the construction of the hardsurfaced area, that run off water would naturally flow to the on-site ditch to its north.
- 6.48. The drainage strategy comprises a *private gravity drainage network designed to collect runoff from the yard and parking area, whereafter it is attenuated before it is discharged to a ditch north of the site at a restricted rate via a flow control device*. This will ensure that run-off water is collected and treated within the hardsurfaced area. Treated water will then be discharged into an existing ditch to the immediate north of the hardsurfaced area. There will be naturalised SuDS treatment in this ditch.
- 6.49. The strategy therefore comprises a non-naturalised SuDS with a naturalised treatment in the ditch at the end of the treatment train.

6.50. Policy DM6 of the Local Plan sets out policy advice in respect of sustainable surface water management. It sets out different criteria dependant on site size. DM6 1(c) confirms that for site of less than 0.5 hectares (i.e. 0.2 hectares) a non-naturalised SuDS system is acceptable if justified.

6.51. Policy DM6 defines scheme requirements to include the following:

- designed in compliance with relevant guidance
- manage surface water runoff as close to its source as possible
- ensure that discharge rates are reduced
- where discharge is to a wetland or wet woodland habitat, flows off site must mirror the natural hydrological pathways
- clear maintenance arrangements.

6.52. Supporting text to Policy DM6 confirms that a Sustainable Drainage System be provided that *contains forms of naturalised filtration* (paragraph 5.33); *in sites where sites are draining to natural wetland habitats or wet woodland before entering the river, the flows off site will need to mirror the natural hydrological pathways* (5.34); *on greenfield sites the aim should be to ensure that there is no increase in the rate and volume of surface water runoff* (5.35) and; *the strategy should be proportionate to the site and the proposed development.*

6.53. As Mrs Weedon confirms the submitted drainage strategy is proportionate to the site. The site is relatively small at 0.2 hectare and thus policy allows for non-naturalised forms of treatment. The proposed drainage strategy will effectively treat surface run off and include a naturalised form at the end of the treatment train.

6.54. The proposed drainage strategy is designed in accordance with relevant guidance; it manages surface water run off as close to the source as possible and; discharges will follow the natural hydrological pathways (i.e. to the ditch to the immediate north).

6.55. Mr Johns, in his proof with regard to ecological matters, has assessed the impact of the drainage strategy. Mr Johns notes that there is no deterioration

or harm has been created to the SINC and that this is highly unlikely to occur as a result of the proposed development.

6.56. It is clear, therefore, that the incorporation of the proposed drainage strategy and its subsequent maintenance will ensure that it is in compliance with Policy DM6 of the Local Plan.

v. The effect of the development on the adjoining ancient woodland and SINC.

6.57. With regard to the impact of the proposed development on the adjacent SINC and Ancient Woodland evidence has been provided by Mr Brophy (arboricultural matters) and Mr Johns (ecology).

6.58. It is noted that the hardsurfaced area is immediately adjacent to a SINC, part of which has very recently been identified as Ancient Woodland. The Ancient Woodland is located on part of its eastern boundary. It is not on its northern boundary or the northern part of its eastern boundary. The following extract shows the presence of Ancient Woodland (in dark green) which clearly shows its proximity to the hardsurfaced area;



- 6.59. The area marked light green comprises a SINC. It is noted that clearance works have been undertaken, within the SINC, by a statutory undertaker removing a belt of trees some 10m wide in a north-south direction through the SINC.
- 6.60. As Mr Johns points out local level changes mean that run off water will naturally flow to the north i.e. not towards the Ancient Woodland to the east.
– *both pre and post development, the part of the adjacent woodland classified as Ancient Woodland would not have received direct run off from the site.*
- 6.61. Mr Johns also confirms that the development has not extended into the Ancient Woodland.
- 6.62. Mr Brophy confirms that he has visited the site and undertaken an Arboricultural Impact Assessment in respect of relevant trees. With regard to the existing hardsurfaced area this was formed in 2020 and Mr Brophy confirms that its presence and use has *appeared not to be having an adverse impact on the trees bordering the perimeter of the adjacent woodland.*
- 6.63. A drainage strategy has been submitted and Mrs Weedon has confirmed that this will be effective ensuring that there will be no pollution created to the SINC as a result of the release of contaminants.
- 6.64. The location of the engineering works is within the wayleave of the overhead cables and within an area where a number of trees have been removed. Mr Brophy in his evidence confirms that to provide the submitted drainage works within this area will mean that there will be no damage to neighbouring trees, as per the following;
- There are no above ground works and so there is no risk to tree canopies
 - All works within root protection areas will be within the existing area of hardsurfacing (i.e. there will be a no dig zone within these areas.
 - Where excavation is required this will be restricted to areas outside root protection areas.

6.65. Policy DM11 of the Local Plan seeks to ensure the protection of priority habitats and irreplaceable habitats. Mr Brophy confirms that there is no evidence of harm to neighbouring trees as a result of the actual construction of the hardsurfaced area. Similarly, Mr Brophy confirms that the implementation of the drainage strategy will similarly create no harm. The proposals are therefore in compliance with Policy DM11.

BENEFITS OF THE PROPOSED DEVELOPMENT

6.66. The area of hardsurfacing is used by the Appellants to service the warehousing use on-site. It is an integral part of the operation. Without this hardsurfaced area the existing business will not be able to function. The loss of this area will result in the loss of vital contracts, with the resultant loss of local jobs and associated harm to the local economy.

6.67. The hardsurfaced area, at 0.2 hectares in size is of sufficient size to service the wider site. There are no other elements of the operational site that can accommodate the required number of HGVs and trailers.

6.68. Mr Duncan has provided evidence that whilst the use of the current hardsurfaced area does not create a nuisance to local residential amenities there is clearly significant potential for harm should the HGVs operate on a 24-hour basis in the southern portion of the site. It is likely that this will be unacceptable on grounds of noise nuisance.

6.69. Failure to provide an effective overnight service for clients will be fatal in terms of loss of contract. Mr Kneller has provided evidence with regard to the value of clients' business and contracts and that should the Appellants be unable to maintain an effective service, either here or elsewhere, then contracts will be lost and retained in Europe.

6.70. The submitted Employment Land and Economic Impact Assessment (ELEIA) clearly sets out that there are no alternative local sites that can be used by the Appellants in order meet the needs of their clients. Furthermore, and crucially, the existing operation as a result of the unique services that the Appellants provide has a very intensive employment levels and far more than reasonably expected from a typical storage and distribution use. The existing

use makes a significantly greater contribution – by a factor of two-three times - to the local economy than comparable uses.

- 6.71. Mr Kneller, in his evidence made it clear as to the economic benefits of the existing operation to the local community and the harm that will entail should the hardsurfaced area have to be removed. The removal of the existing hardsurfaced area will compromise the existing business on site and therefore significantly harm the local economy.

PLANNING BALANCE IN RESPECT OF GROUND (A)

- 6.72. Evidence has been provided confirming that the proposed development will not harm the Settlement Gap, or create visual harm, or other harm, to the wider area.
- 6.73. Policy DM1 of the Local Plan sets out criteria for new development. It specifically refers to concerns over potential harm to local residential amenities and harm to woodland and priority habitats, but also making efficient use of land.
- 6.74. Evidence has been provided in terms potential impact to residential amenities in terms of noise and lighting. A lighting strategy is proposed and can be subject to a condition ensuring that impact on the wider area is mitigated.
- 6.75. It has been shown, with regard to noise that impact of the proposed development is acceptable – and which again can be controlled by condition.
- 6.76. Policy S5 will permit new development in the countryside for the extension of employment uses (subject to policy DM18) where it avoids adverse impact on the local and woodland character. Policy DM18 (d) specifically refers to ensuring that there is *no detrimental impact on the character of the countryside*.

6.77. Policy S6 seeks to protect settlement gaps, in this instance Botley and Hedge End ensuring that new development does not undermine the physical or visual separation of settlements or character of the countryside.

6.78. In addressing both policies S5 and S6 it is clear that the isolated and well-screened nature of the site mean that there is very little impact on the wider area. As such they are policy compliant.

6.79. Furthermore, it is clear that there is no demonstrable harm to the adjacent SINC or Ancient Woodland. The provision of lighting and drainage strategies will also ensure that impact on these areas can be effectively mitigated.

6.80. Overall, the proposed development creates no harm and is therefore compliant with Policies S5 and S6 of the Local Plan.

6.81. The NPPF puts great weight on the benefits that businesses provide to the local economy and as particularly set out in Section 6, to include the following:

- The need to support economic growth taking into account local business needs (paragraph 85);
- Decisions should recognise specific locational requirements to include the expansion of industries of local, regional or national importance (87);
- Recognition should be given to the need to provide for rural businesses outside established settlement boundaries (89); and
- In such circumstances it will be necessary to ensure that impact is sensitive to its surroundings (89).

6.82. The economic benefits of the proposed development are clear and weigh significantly in its favour. Failure to provide the hardsurfaced area will inevitably result in the loss of a significant number of jobs and create harm to the local economy

6.83. The proposals are compliant with both national and local policy and consistent with S38(6) of the Planning and Compensation Act 2004

Ground (f) Appeal: the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by the breach.

6.84. The Appellants contend that the requirement to remove the rubber matting is excessive.

6.85. In particular, it causes no landscape or ecological harm. In contrast, its removal would be damaging and unsightly.

6.86. Within this context the steps required to comply with the Enforcement Notice exceed what is necessary to remedy the breach of planning control. Similarly, they are not required remedy any injury to amenity. The Enforcement Notice should therefore be amended so as to exclude the removal of the rubber matting from the open field.

Ground (g) Appeal: that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

6.87. The evidence provided by Mr Kneller sets out the contractual obligations in respect of the site and the implications that will entail should the hardsurfaced area have to be removed.

6.88. Mr Kneller also has explained that there are no viable alternative hardsurfaced areas. The pallet site is only 47% of the size of the hardsurfaced area and crucially is located over an oil pipeline where there is an easement in favour of Esso where there is a restriction on placing vehicles in excess of 7.5tonnes. This clearly precludes the use of this area as a loading or unloading area for HGV's.

6.89. With regard to the option for the southern car parking area whilst Mr Duncan has confirmed that there is no noise nuisance from the existing hardsurfaced area there are significant concerns with regard to this area. There

is therefore no confidence that the use of the southern car park for the loading and unloading of HGVs during the overnight period is sustainable.

6.90. Mr Place has provided evidence that there are no alternative locations to which to relocate the business. Furthermore, if there were any such locations were to be found there would be inevitable delays in respect of securing a lease and undertaking appropriate modifications to the site.

6.91. The fact that there no alternative options to relocate the existing loading and unloading area on site and there are no alternative sites will mean that existing contracts will be lost or not renewed. The current contract with Estee Lauder is by far the most important contract that the Appellants currently have. This places a contractual obligation on the Appellants until November 2026. It is therefore suggested that in respect of the ground (g) appeal that the period for compliance with the Enforcement Notice be extended to a two-year period. This will allow for the compliance with ongoing contractual obligations and a period of time to remove the hardsurfaced area and restore it to grassland.

7. SUMMARY AND CONCLUSIONS

7.1. I conclude that the Appeal should be allowed.

Ground (b) – the Enforcement Notice incorporates land that comprises open fields and has not been used for B8 purposes or accessing the northern portion of the site.

Ground (c) – part of the site has been used for parking of cars, but only for a very short period of time and in compliance with permitted development rights.

Ground (a) - the appeal proposals directly address a variety of policy requirements, which have mean met. The appeal demonstrates that there is no harm to the adjacent SINC/Ancient Woodland or to the wider area.

Ground (f) – whilst there is matting on site it has been on-site for in excess of ten years and clearly creates no harm to the wider area

Ground (g) – the Appellants contractual obligations are such that failure to comply with them will have significant consequences for the existing business and local economy.