



IN ASSOCIATION WITH



SUPPORTING PLANNING STATEMENT

Oakleigh Farm, Buckland Road, Highham, Kent, ME3 7HY

February 2024

SUPPORTING PLANNING STATEMENT

In support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) under the provisions of Section 191 of the Town and Country Planning Act (1990) (as amended)

for the continuous use of land for commercial storage purposes consisting of the storage of caravans and other motor vehicles and the stationing of containers in breach of condition 1 of planning permission 20080858 (Continued use of the land for a parking area for a caravan, motor home and horse boxes for a temporary period)

At

Oakleigh Farm, Buckland Road, Higham, Kent, ME3 7HY

On behalf of

Mr James Worley

ISSUE DATE / REVISION	COPY REVIEWED BY	DATE COPY HAS BEEN REVIEWED
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CONTENTS

1. Introduction 4

2. Site Context 5

3. Relevant Planning History 6

4. Planning Policy10

5. Justification13

6. Policy and Legal background18

7. Conclusion22

1. Introduction

- 1.1. This statement has been prepared on behalf of Mr James Worley in support of a Certificate of Lawful Existing Use application for the continued use of land for commercial storage purposes in breach of condition 1 of planning permission 20080858 (Continued use of the land for a parking area for a caravan, motor home and horse boxes for a temporary period) granted on 30th October 2008 by Gravesham Borough Council at Oakleigh Farm, Buckland Road, Higham, Kent, ME3 7HY.
- 1.2. This application is being submitted to regularise the use of land which has been used continuously for the commercial storage purposes under Class B8 of The Town and Country Planning (Use Classes) Order 1987 (as amended) consisting of the storage of touring caravans and other motor vehicles and the stationing of containers in breach of condition 1 of planning permission 20080858.
- 1.3. Condition 1 of planning permission 20080858 states that 'the retrospective permission granted shall be for a temporary period of 3 years only and the use shall cease on or before 31 October 2011 and the land restored to its former agricultural use unless and extension of the period now granted is approved by the Local Planning Authority'.
- 1.4. The Council stipulated that the reason for the imposition of this condition was as permission was granted in exceptional circumstances and in order for the council to review the situation at the end of the period granted.



Google Earth extract illustrating site subject of LDC application

- 1.5. This application has been submitted following communications with Gravesham Borough Council Planning Enforcement Officers in which there is an active enforcement investigation in relation to the commercial storage use.
- 1.6. This application seeks to confirm that the continued use of the land is now lawful due to the passage of time, as per Section 171B (3) of the Town and Country Planning Act 1990 (as amended).

2. Site Context

- 2.1. As defined on the Gravesham Borough Council Local Plan Policy Map this site is within the open countryside and outside any defined settlement boundaries. The application site is within the Green Belt and located approximately 0.5 miles to the east of Higham Church Street and 0.6 miles to north-west of Cliffe Woods.
- 2.2. The application site is situated within the wider Oakleigh Farm holding and lies adjacent to Oakleigh Farm Nursery which is a small family-run business established in 1997 specialising in horticulture.
- 2.3. The commercial storage use subject of this application is carried out to the west of the polytunnels used in connection with the Oakleigh Farm Nursery business and covers an area of approximately just under 64 square meters.

3. Relevant Planning History

Following a review of the planning history of the site, it is noted that there have been various planning applications submitted at Oakleigh Farm with the applications relevant to this part of the site detailed below;

- 3.1. Planning permission was granted subject to conditions in October 2008 under reference 20080858 for the continued use of land for a parking area for a caravan, motor home and horse boxes for a temporary period.
- 3.2. The parking area was occupying an area of land allocated for proposed polytunnels which were granted planning permission under 19980583 (Erection of 4 no. multi span polytunnels) in September 1998 and whilst this permission was implemented within the requisite time period, not all the polytunnels were erected therefore a temporary planning permission was sought so as not to mitigate the potential for completing the polytunnel development in the future.
- 3.3. As referenced above, a condition was imposed upon planning permission 20080858 restricting the parking use for a temporary period of 3 years up to and including the 31st October 2011 and to restore the land to its former agricultural use unless an extension to the temporary period granted was approved in writing by the council.
- 3.4. A review of the councils online planning records show that planning permission was not sought to extend the temporary period and the use has effectively continued in breach of the aforementioned condition until this present time. Given the use has continued for more than 10 years in breach of this condition, the use is therefore now considered to be lawful and immune from planning enforcement action, hence the submission of this existing lawful development certificate application.
- 3.5. A full record of planning applications submitted at Oakleigh Farm are listed below to illustrate that no permission as a matter of fact has been granted by the council to extend the temporary parking period or to vary/remove condition 1 of planning permission 20080858.

Oakleigh Farm Planning History

Application for a Lawful Development Certificate in respect of the existing area A & B as outlined on the submitted site location plan have been used as a B8 Storage and Distribution Areas. Ref. No: 20230681 | Received: Wed 28 Jun 2023 | Validated: Mon 10 Jul 2023 | Status: Certificate Refused

Erection of a detached building to provide office facilities and self contained temporary overnight accommodation. Ref. No: 20110413 | Received: Thu 12 May 2011 | Validated: Thu 01 Sep 2011 | Status: Application Withdrawn

Application for approval of conditions 4 and 5 of planning permission reference number 20090529 relating to the external facing materials and hardstanding and the storage and disposal of stable waste. Ref. No: 20090865 | Received: Tue 27 Oct 2009 | Validated: Fri 30 Oct 2009 | Status: Approval of details

Erection of two stable buildings comprising a total of nine loose boxes. Ref. No: 20090529 | Received: Fri 26 Jun 2009 | Validated: Fri 21 Aug 2009 | Status: Application Permitted

Continued stationing of eight seasonal workers' caravans on a permanent basis. Ref. No: 20081028 | Received: Mon 24 Nov 2008 | Validated: Tue 03 Feb 2009 | Status: Application Permitted

Application for Lawful Development Certificate for the existing fenced storage compound with secure storage bins for the storage of construction equipment. Ref. No: 20080983 | Received: Mon 10 Nov 2008 | Validated: Fri 14 Nov 2008 | Status: Certificate Granted

Retention of the replacement building providing four stables with ancillary temporary storage and mobile tearoom. Ref. No: 20080859 | Received: Mon 22 Sep 2008 | Validated: Mon 22 Sep 2008 | Status: Application Permitted

Continued use of the land for a parking area for a caravan, motor home and horse boxes for a temporary period. Ref. No: 20080858 | Received: Mon 22 Sep 2008 | Validated: Mon 22 Sep 2008 | Status: Application Permitted

Application for Lawful Development Certificate for the existing use of mobile home and lean-to attachment as a permanent residential dwelling. Ref. No: 20080373 | Received: Mon 21 Apr 2008 | Validated: Wed 30 Apr 2008 | Status: Certificate Granted

Retention of two buildings each providing 4 stables with five ancillary buildings comprising tackroom, tea room, two haystores and storage building; continued use of building as stables, together with ancillary buildings and continued use of horse exercise area and non-agricultural area as sandschools. Ref. No: 20080366 | Received: Fri 18 Apr 2008 | Validated: Tue 29 Apr 2008 | Status: Application Permitted

Erection of an extensions on east and west elevations of barn 'A' to store hay & straw. 'Barn A' Ref. No: 20020532 | Received: Tue 25 Jun 2002 | Validated: Tue 25 Jun 2002 | Status: Application Permitted

Application for the approval of the siting, design and external appearance of extension on the west elevation of barn 'B'. Ref. No: 20020533 | Received: Tue 25 Jun 2002 | Validated: Tue 25 Jun 2002 | Status: Application Permitted

Application for determination as to whether prior approval is required for the erection of extensions to the east and west elevations of an existing agricultural building in the 'end of the road field' and an extension to the west elevation of barn in the 'stable field' to provide additional storage accommodation for hay. Ref. No: 20020219 | Received: Wed 20 Mar 2002 | Validated: Wed 20 Mar 2002 | Status: Unknown

Outline application for erection of farm manager's dwelling with farm office and detached garage Ref. No: 19990847 | Received: Thu 02 Dec 1999 | Validated: Mon 06 Dec 1999 | Status: Application Refused

Erection of 4 no. multi span polytunnels Ref. No: 19980583 | Received: Thu 10 Sep 1998 | Validated: Thu 10 Sep 1998 | Status: Application Permitted

4. Planning Policy

4.1. Section 171B of The Town and Country Planning Act (as amended) defines the various time limits where breaches of planning control are immune from planning enforcement. In this instance Section 171B (3) is relevant in respect of the change of use of the land and advises that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

4.2. Section 191 (1) of The Town and Country Planning Act (as amended) defines Certificate of lawfulness of existing use or development and the qualifying criteria. Section 191 states:

“If any person wishes to ascertain whether

(a) any existing use of buildings or other land is lawful or

(b) any operations which have been carried out in, on, over or under land are lawful,

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

4.3. Further Section 191 (2) of The Town and Country Planning Act states *“For the purposes of this Act uses and operations are lawful at any time if –*

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).”

4.4. Similarly, it is advised in Section 191 (4) of the Act that if the Local Planning Authority is provided with enough information to satisfy them that of the lawfulness at the time of the application of the use, operation or other matter is lawful, they shall issue a certificate to that effect.

- 4.5. Annex 8 of Circular 10/97 previously provided guidance in relation to the issue of lawfulness and Lawful Development Certificates (LDC). Paragraph 8.15 related to the relevant tests for the submitted evidence. It advised that, whilst the burden of proof is on the applicant, the relevant test is *'the balance of probability'*. As such, a Local Planning Authority should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'.
- 4.6. Circular 10/97 was superseded by the National Planning Policy Guidance in March 2014. Paragraph 005 of the 'Lawful Development Certificate' section of this new guidance reaffirms that sufficient factual information/evidence for a Local Planning Authority to decide the application should be included.
- 4.7. Government guidance on the issuing of Certificates of Lawfulness is set out in the National Planning Practice Guidance (NPPG).
- 4.8. Paragraph 005 of the 'Lawful Development Certificate' section of National Planning Practice Guidance, reference ID: 17c-005-20140306, affirms that sufficient factual information/evidence should be included within an application for a Lawful Development Certificate application for a Local Planning Authority to decide the application.
- 4.9. Paragraph 006 notes further that

*"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. **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**"* Paragraph: 006 Reference ID: 17c-006-20140306.

- 4.10. Within the determination of a Certificate of Lawfulness application, the burden of proof in planning law is *‘on the balance of probabilities’*. This balance only requires *‘a more probable than not’* conclusion, rather than criminal law which requires *‘beyond reasonable doubt’*.
- 4.11. Paragraph 008, reference ID: 17c-008-20140306 refers to consultations on an application for a Lawful Development Certificate and states that:
- “There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application”.*
- 4.12. Paragraph 9, Reference ID: 17C-009-20140306 adds further that *“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”*

5. Justification

- 5.1. As previously detailed, whilst the burden of proof in respect of a Certificate of Lawfulness application is on the applicant, the relevant test is '*the balance of probability*'. As such, a Local Planning Authority should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*".
- 5.2. In this case, it is considered that the continued use of the area is clear, as set out in the accompanying evidence, detailed below:

Aerial Photographs

- 5.3. The Google Earth images outlined below and overleaf demonstrate the areas continual use for a period in excess of 10 years.



Aerial image of site dated November 2011, Courtesy of Google Earth



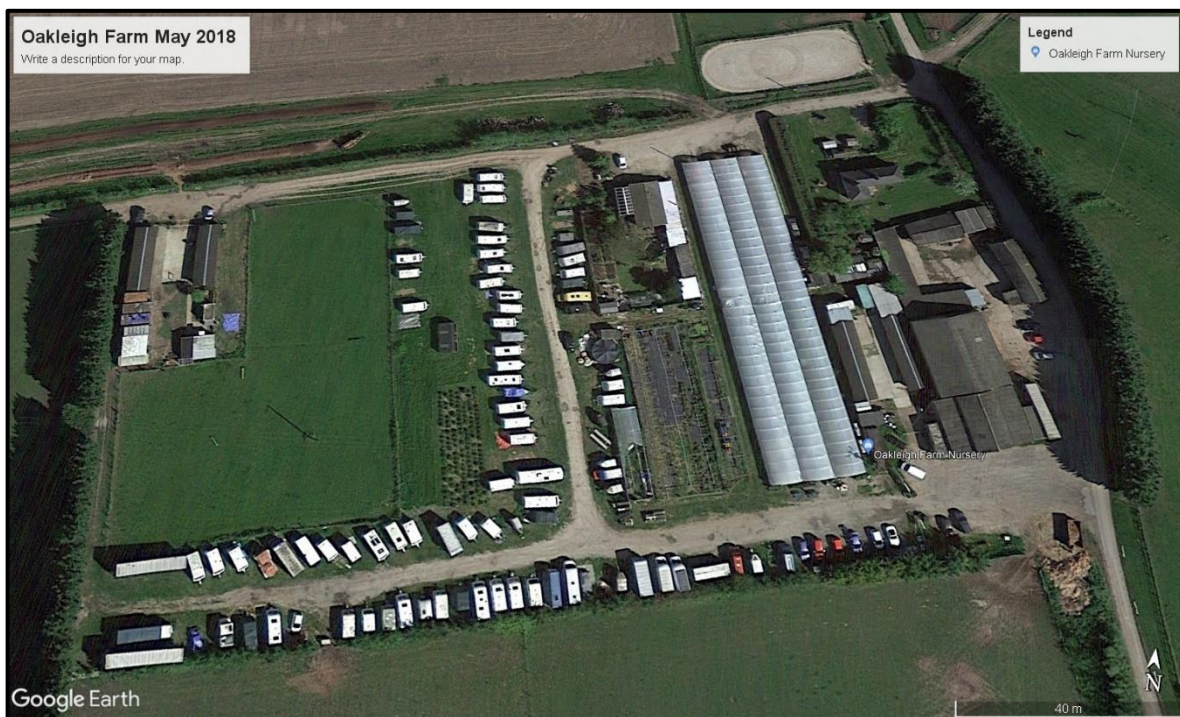
Aerial image of site dated July 2013, Courtesy of Google Earth



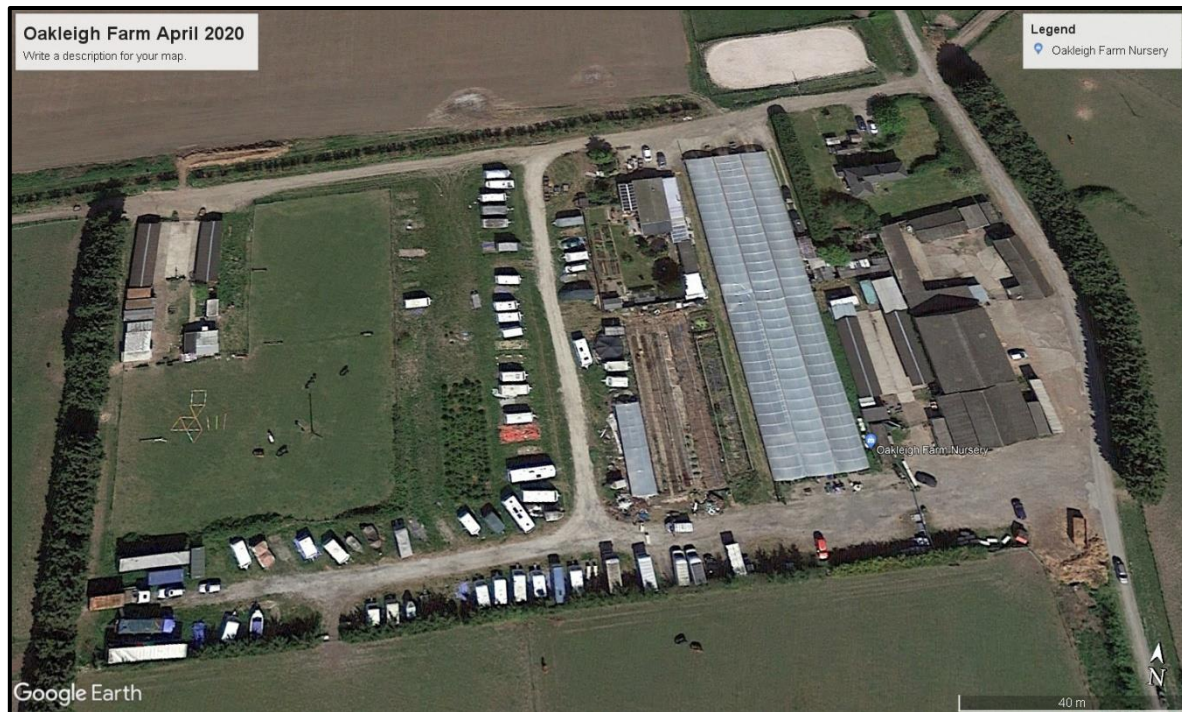
Aerial image of site dated July 2014, Courtesy of Google Earth



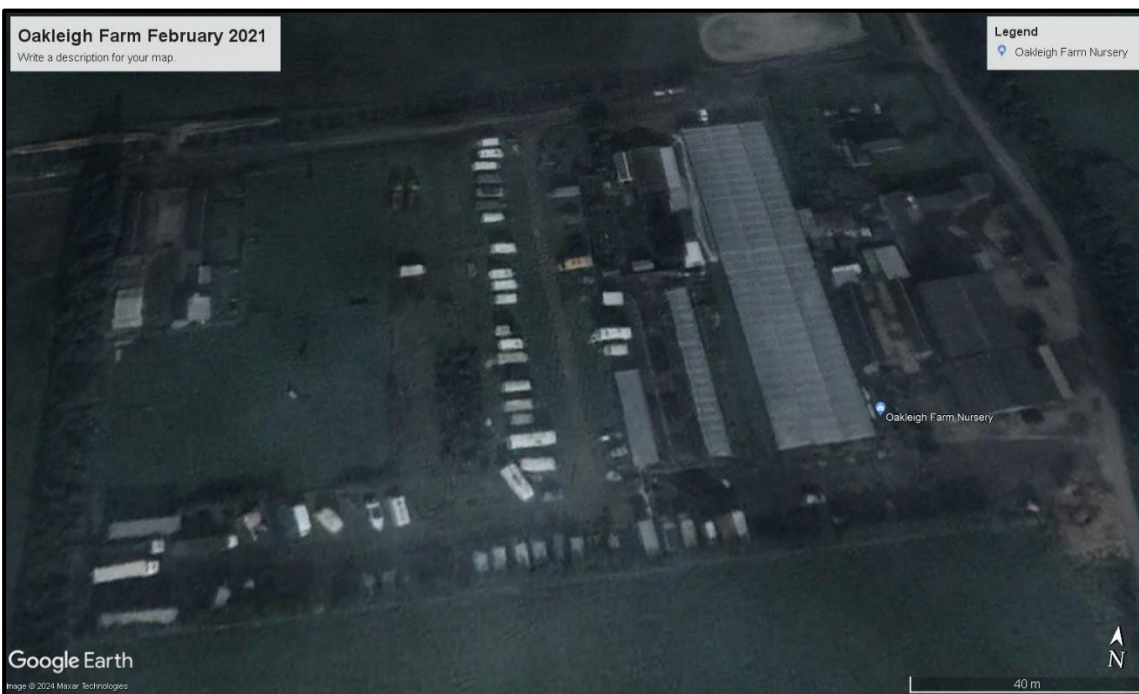
Aerial image of site dated November April 2015, Courtesy of Google Earth



Aerial image of site dated May 2018, Courtesy of Google Earth



Aerial image of site dated April 2020, Courtesy of Google Earth



Aerial image of site dated February 2021, Courtesy of Google Earth



Aerial image of site dated August 2022, Courtesy of Google Earth

- 5.4. The above Google earth imagery demonstrates a continuous use from November 2011 – August 2022. While aerial photography is not available from 2023 and the current year (2024), the site continues to be in use as commercial storage. Further evidence of this use was obtained during a site visit carried out with our client in February 2024. As a result, the evidence substantiates that the site has been in use for a period in excess of 10 years.

6. Policy and Legal background

- 6.1. A Certificate of Lawfulness for an Existing Use or Development (CLUED) should be granted if the time limits for taking enforcement action have expired (Section 191 of the Town and Country Planning Act (as amended by the Planning and Compensation Act), whilst time limits are set out at Section 171B).
- 6.2. Section 171(B) (3) of the Town and Country Planning Act 1990 (as amended) says where there has been a breach of planning control that is not covered by Section 171(B) (1) and (2), then no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 6.3. As laid out within the evidence submitted, the site subject of this application has been used for commercial storage purposes under Class B8 of The Town and Country Planning (Use Classes) Order 1987 (as amended), which includes but not limited to, the storage of touring caravans, motor vehicles and storage containers for a period in excess of the previous 10 years following the expiration of temporary planning permission 20080858.
- 6.4. It is put forward that the evidence provided by the submitted Aerial imagery is clear and precise, and so should be considered sufficient to demonstrate that the area subject of this application has been in operation for a continuous and uninterrupted period of time in excess of the previous 10 years.
- 6.5. There is not known to have been the servicing of a breach of condition notice in respect of any breach of planning control, and so not considered to be any enforcement notice in respect of the breach in effect, with reference to Paragraph (4)(a) of Section 171(B) (3) of the Town and Country Planning Act 1990 (as amended). There is also not known to be any other material factors which might otherwise have affected the relevant time limits (as laid out at Section 171(B) (3) of the Town and Country Planning Act 1990 (as amended) for the lawfulness of the use of these areas.

- 6.6. Section 191 (2) of the Town and Country Planning Act (1990) (as amended) clarifies that uses and operations are lawful at any time if 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). It is therefore submitted that the existing use of the land within areas A & B is entirely lawful.

National Planning Guidance

- 6.7. The guidance from Annex 8 Circular 10/97 “*Enforcing Planning Control: Legislative Provisions and Procedural Requirements*” has now been replaced by National Planning Practice Guidance (NPPG), from which the following references are relevant:
- 6.8. Paragraph 005 of the ‘Lawful Development Certificate’ section of this new guidance, with reference ID: 17c-005-20140306 affirms that sufficient factual information/evidence for a Local Planning Authority to decide the application should be included with an application for a Lawful Development Certificate.
- 6.9. Paragraph: 006 Reference ID: 17c-006-20140306 considers ‘Who is responsible for providing sufficient information to support an application?’ and states “*The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. 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.*”

- 6.10. Within (NPPG) Paragraph: 008 Reference ID: 17c-008-20140306 asks ‘Does a local planning authority need to consult on an application for a lawful development certificate? This states that *“There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”*
- 6.11. Paragraph 006 of the Guidance (see above) states that a Certificate should be granted unless contrary evidence makes the applicant’s assertions *“less than probable”*. This is in line with historic court decisions, as referred to in paragraph 8.15 of the aforementioned circular 10/97.
- 6.12. Moreover, the above accords with the Court’s historic view in *F W Gabbittas v SSE* that the applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted. If the Local Planning Authority have no evidence of their 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 that the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate. The burden of proof in planning law is *‘on the balance of probabilities’*.
- 6.13. ‘On the balance of probabilities’ only requires a ‘more probable than not’ conclusion. The evidence provided only needs to be probable without contradiction as per *Re H (Minors)* [1996] AC 563 at 586: *“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not”*. Consequently, it is considered that the evidence set out before the Local Planning Authority, demonstrates that it is more probable than not that the Scaffolders Yard has been operating for a continuous and uninterrupted period of time in excess of 10 years.

- 6.14. In light of this, the applicant's evidence is not required to be corroborated by any additional independent evidence and, if the Local Planning Authority has no evidence of its own (or from others) which makes the applicant's evidence less than probable, then it would not be appropriate to refuse to issue the Certification of Lawfulness, provided the applicant's evidence alone is precise and unambiguous.
- 6.15. It is put forward that the evidence provided should be considered sufficient to demonstrate that the use of the land for commercial storage is considered to be lawful.
- 6.16. It is therefore considered that the use of the land identified is immune from any enforcement action and lawful, in accordance with Sections 171 B (3) and 191 (2) of The Town and Country Planning Act 1990.
- 6.17. It is understood that there has not been any attempt to disguise the use of the land or deceive the Local Planning Authority in any way. It is therefore submitted that there has not been any deliberate deception, which might otherwise have prevented immunity from enforcement being claimed (with reference to the decision of the Supreme Court in *Welwyn Hatfield v. SSCLG*).

7. Conclusion

- 7.1. It is concluded that the evidence submitted is sufficiently precise and unambiguous to demonstrate that on the balance of probability that the area outlined to which this application relates has been used continuously for a period in excess of ten years for commercial storage purposes in breach of condition 1 of planning permission 20080858.
- 7.2. The change of use of the land to B8 storage and distribution use constitutes a material change of use as per Section 55 of the Town and Country Planning Act.
- 7.3. The evidence provided by the applicant is sufficiently precise and unambiguous to establish that the use of the land satisfies the requirement of the test of '*more probable than not*'.
- 7.4. Analysis of case law *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630, which highlights that the applicant's evidence does not need to be corroborated by separate independent evidence in order to be accepted, supports this case.
- 7.5. All of the above factors combined, together with the information provided within sections above should be efficient in demonstrating the continuous use of the garden land.
- 7.6. It is therefore submitted that the use of the land is entirely lawful and it is respectfully requested that a Certificate should be granted to that effect in accordance with Section 191(4) of The Town and Country Planning Act 1990 (as amended).
- 7.7. Notwithstanding the above, the LPA is invited to inform the Agent for this Application should any further information be required to assist with the consideration of this matter.