

# Planning Statement

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TOWN AND COUNTRY PLANNING ACT 1990

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT (S191) FOR  
USE OF LAND AS PART OF CIVIL ENGINEERING YARD

COURT VALE, COURT HILL, DAMERHAM, FORDINGBRIDGE SP6 3HL

December 2022

Prepared by Jerry Davies



# 1.0 Introduction and Background

- 1.1 This statement is submitted in support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) in respect of the use of land at Court Vale, Court Hill, Damerham.
- 1.2 The LPA is well aware of the background to the current situation, but it can nonetheless be usefully summarised. The LPA issued an Enforcement Notice dated 6<sup>th</sup> September 2022, requiring the use of some land that adjoins the original civil engineering site to cease. An appeal was lodged against this Notice prior to the Notice coming into effect, thereby suspending the effect of the Notice until the appeal has been determined. The appeal is proceeding by way of public inquiry and a date for that Inquiry has yet to be arranged.
- 1.3 The appeal is proceeding under two 'legal' grounds, namely c) and d). The basis of the appeal under ground d) is that part of the land enforced against has become lawful and immune from enforcement action due to the passage of time. This area is referred to, in the appeal (and in this application also), as 'Area B'.
- 1.4 In addition, a small part of the land enforced against lies within the area granted planning permission by the LPA in 1992 under reference 92/50671. This small area is not in active use as part of the operational civil engineering yard, but its use as such would nonetheless be lawful because it benefits from the 1993 grant of planning permission. This is the basis of the appeal under ground c).
- 1.5 Enforcement appeals typically take a long time to arrange and determine, particularly those that are subject to the public inquiry process. As part of the appeal submissions the applicant has highlighted the issues detailed above and made the offer that if the LPA withdraws the current Enforcement Notice and re-issues it with the relevant areas omitted then the applicant will undertake to accept such a revised Notice and not appeal. To date the LPA has not commented on this offer.
- 1.6 In order to move things forward, then, this application for a CLEUD is being made as a way of usefully determining the relevant issues ahead of any public inquiry. If granted then the LPA should be bound to withdraw the Notice and re-issue it in the terms set out above. If refused then the current appeal can continue its course to Inquiry.
- 1.7 This application is accompanied by the same information that has been submitted pursuant to the appeal against the Notice. This comprises a series of aerial photographs; two dimensioned plans; and a statutory declaration made by the former owner of the site in question. Collectively this information confirms, on the balance of probability (this being the relevant test), that the two areas of land identified are lawful for use as part and parcel of the civil engineering yard either because they have been so used continuously for at least 10 years or because they form part of the site area granted planning permission in 1993 (under reference 92/50671).
- 1.8 In terms of acquiring immunity for a use of land, the relevant test is the 10 year period from when the breach of planning control first began (s171B(3) of the 1990 Act).

## 2.0 The Evidence and Relevant Tests

- 2.1 'Area B' is identified on the submitted plans. This area of land appears to have formed part of the operational site since at least 2002. This is evidenced in two ways. The first of these is the historical aerial photographs that accompany the application (and which accompanied the appeal). These demonstrate clearly that Area B has existed since at least 2002. It has, more recently, been extended further but no claim is being made in respect of the lawfulness of the more recent extension nor indeed in respect of any of the other encroachments into the woodland.
- 2.2 Whilst there is some partially obscuring tree canopy coverage in some of the photographs it is considered to be beyond reasonable or objective dispute that Area B has existed as part of the operational yard for at least 20 years and that its use as such became lawful by the end of 2012 at the latest. This is because it acquired immunity ten years after the breach first occurred or after it can be demonstrated to have first occurred. The aerial photographs are supported by the statutory declaration provided by the previous owner of the site. This confirms the information provided by the aerial images and corroborates the claim that Area B has existed since at least 2002 and that it has been continuously used for access to the rear of the workshop building, for the parking of vehicles and for storing materials and equipment.
- 2.3 In this case, the evidence from the former owner of the site is actually that Area B has always formed part of the operational site, that is, since 1993. Whilst there are no aerial photographs available for that earlier period this evidence alone ought to be sufficient to establish that Area B became lawful at the end of 2003, but the matter is somewhat academic because even taking 2012 as the relevant date (i.e. 10 years after the first aerial photograph of 2000/2002 showing Area B in place) the required 10 year period is comfortably exceeded.
- 2.4 Taken together the aerial images and the statutory declaration provide compelling evidence that the land in question has been used in the manner claimed. The relevant law on this point is clear and was confirmed in *Panton and Farmer v Secretary of State for the Environment, Transport and the regions and Vale of White Horse DC [1999] JPL 461*. In *Panton and Farmer*, it was held that an accrued planning use right can only be lost in one of three ways by operation of law. Firstly, by abandonment, secondly by the formation of a new planning unit and thirdly, by way of a further material change of use.
- 2.5 In the present case, none of these situations apply. The use of Area B has been continuous and has not been abandoned; there has been no separate planning unit formed; and there has been no material change of use of the area of land in question – it continues to be used as part and parcel of the lawful civil engineering yard.
- 2.6 As the LPA is aware, and in terms of the relevant tests for this type of application, it is well established that the onus is on the applicant to demonstrate the case being made 'on the balance of probabilities'. The relevant test for determining an application for Certificates of Lawfulness is now contained in Planning Practice Guidance at *Paragraph: 006 Reference ID: 17c-006-20140306*.

- 2.7 The relevant authority remains *F.W. Gabbittas v. SSE and Newham LBC [1985] J.P.L. 630* wherein it was held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. The PPG confirms this and 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.*
- 2.8 In terms of the small part of land identified in the Enforcement Notice as being in unlawful use, the dimensioned plans submitted with this application demonstrate that this area lies within the boundary approved under 92/50671. As this piece of land is not in active use the matter is largely academic, but it is important to identify the relevant boundaries of the 1993 planning permission because that establishes the area within which the lawful activity can take place.
- 2.9 It is likely that the inclusion of Area C within the Enforcement Notice was a simple drafting error by the LPA. However it should be corrected, given that the opportunity to do so has now arisen, and because lawful use rights granted by a planning permission cannot be removed by an enforcement notice because there is no breach of planning control involved.

### 3.0 Conclusion

- 3.1 The evidence submitted establishes, on the balance of probabilities, that the land in question had been continuously used in the manner described for a period that is more than sufficient to have acquired immunity from enforcement action and that consequently its use has become lawful in planning terms.
- 3.2 To date the LPA has not indicated that it has any evidence to refute or make less than probable the evidence provided in this application or indeed in the appeal against the Enforcement Notice. In the absence of any such clear and contradictory evidence a CLEUD should be issued in the terms sought, namely: *Use of land as part of civil engineering yard.*

Appendix 1 – series of historical aerial images



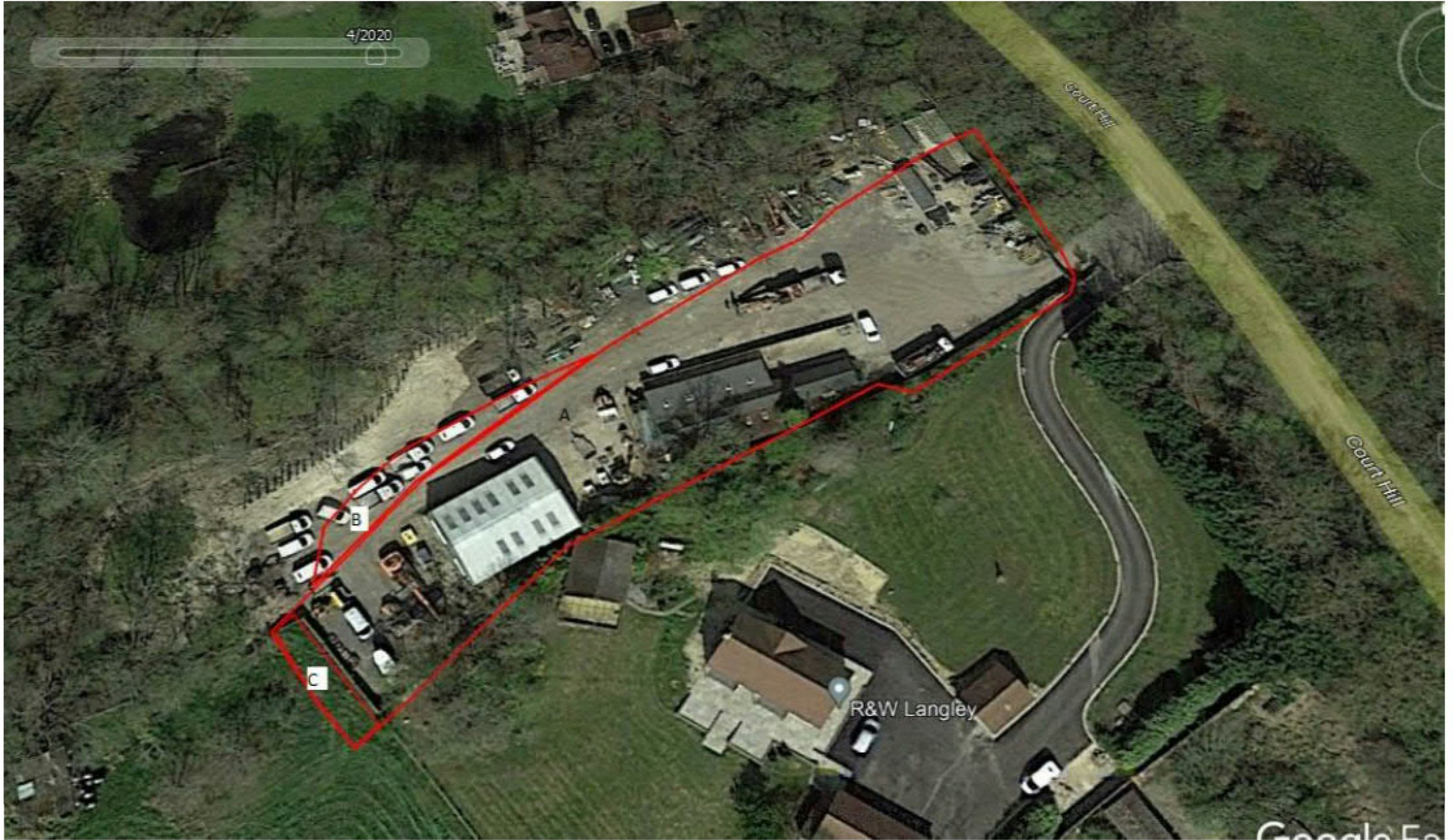














Appendix 2 – statutory declaration from previous owner of the site

**STATUTORY DECLARATION**

I, Howard Thomas Lee, of Ye Olde Well Cottage, Ludwell, Shaftesbury, Dorset SP7 9ND, do solemnly and sincerely declare as follows:

1. I was formerly a director of the company C J Lee and Sons, which previously used to own Court Vale House and the adjoining land that is a civil engineering yard.
2. In 1992 the company applied for planning permission to continue using the yard as a civil engineering site under planning application 92/50671. At that time the company was still using the land to the front of Court Vale House as a civil engineering yard as well – these two areas were connected so that vehicles could go from one to the other without having to go out onto the main road.
3. We used to store materials and equipment under the canopy of the trees along the northern part of the yard. This was because there was no wall or fence along the tree boundary and there were large gaps between some of the trees where things could be stored quite conveniently and out of the way.
4. There is now produced to me a plan marked HTL1 and an aerial image marked HTL2. On this plan and image is an area shaded in red. This is an area of land that, to the best of my recollection, has always been part of the yard since we first started using it. I understand that it apparently lies outside of the area granted planning permission in 1993, but if this area did not exist it would have been difficult to get plant and vehicles, some of which are very large, past the workshop because the gap would be too small.
5. We did enlarge the yard in other areas along the tree line over time, but this area was always part of it. We used it on a daily basis for access to the rear of the workshop, for storing items and materials, and for parking. I believe that the aerial image, which I understand is from 2002, accurately reflects the situation at that time and I confirm that we used it as part of the yard until we sold it several years ago.
6. I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by

 of the Statutory Declarations Act 1835

Declared at Solkhens Solicitors, 24 Market Place, Rywood, BH24 1BS

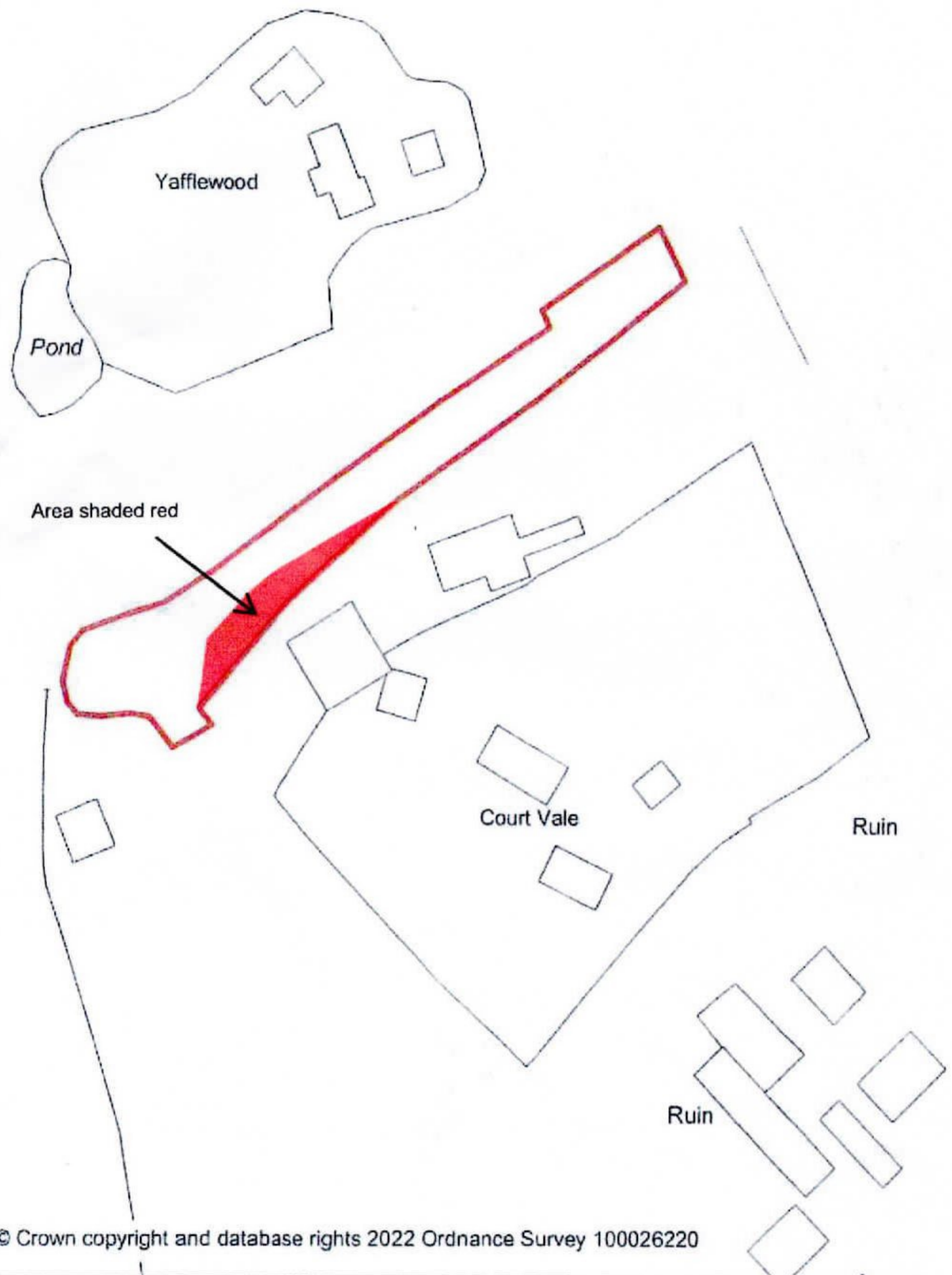
In the County of Hampshire.....

The 14th day of November....2022

Before me...  ..  ..

~~Solicitor/Commissioner for Oaths~~

HTL1 - plan



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www.newforest.gov.uk  
tel: 023 8028 5000

Title

Enforcement Notice

Land north west of Court Vale House, Court Hill

Damerham, Fordingbridge, SP6 3HL

Date: 15/08/22

Ref

Scale: 1:1250

EN/20/0030

HTL2 - image



Area shaded red

A

R&W Langley

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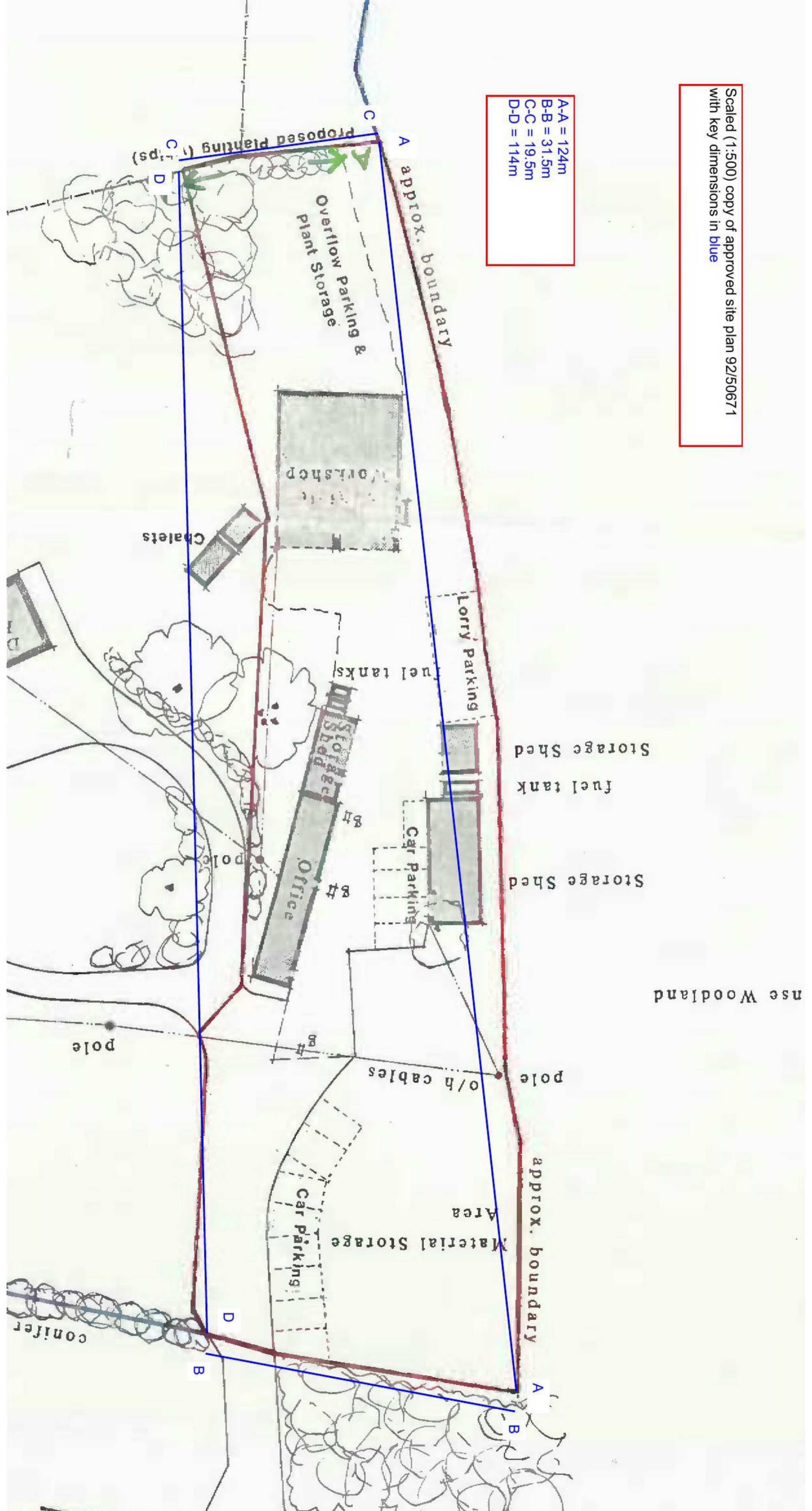
Google Earth



Appendix 3 –approved site plan for 92/50671 and Enforcement Notice plan – both annotated with key dimensions

Scaled (1:500) copy of approved site plan 92/50671  
 with key dimensions in blue

- A-A = 124m
- B-B = 31.5m
- C-C = 19.5m
- D-D = 114m

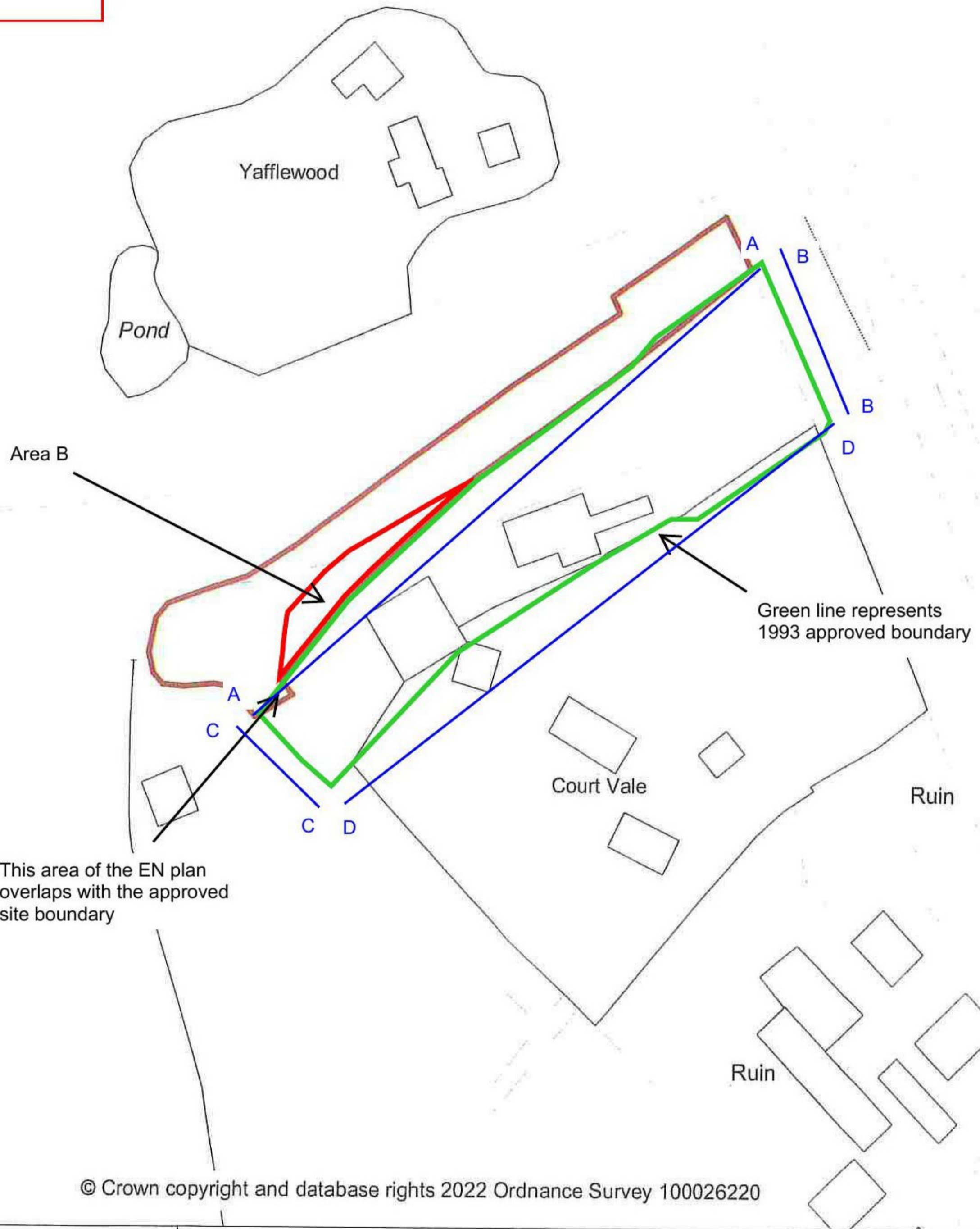


use Woodland

conifer

Scaled copy (1:1250) of EN plan with key dimensions in blue.

A-A = 124m  
B-B = 31.5m  
C-C = 19.5m  
D-D = 114m



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