



**DOUGLAS BRIGGS
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Planning Statement
And
Assessment of Evidence
In support of an
Application for a
Certificate of Lawfulness
For a
Commercial Storage Use
At
Unit 2 – Brooks, Cemetery Lane

Report by

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Application

The application is made under Section 191(1) of the Town and Country Planning Act 1990 (as amended) [THE ACT](#)¹ to ascertain whether the existing use of the building known as Unit 1 by a tenant of the applicant for storage is lawful on the basis that; the time for enforcement action (10 years) has expired.

Reference is made to information submitted in a [SUPPORTING STATEMENT](#) and [APPENDICES](#) submitted by the applicant in support of a previous application (ref: WE/23/01282/ELD) that is to be read in conjunction with this statement and included with this application submission.

A certificate of Lawfulness was granted for the Storage Use of Unit 1 on the 13th October 2023 (WE/23/01971/ELD).

For the avoidance of doubt, while the [SUPPORTING STATEMENT](#) and further evidence submitted in support of application WE/23/01282/ELD refers to use of Units 1, 2 and the exterior hard standings, this application relates solely to the use of the building known as Unit 2 only.

The Land

The building to which this application relates is the former agricultural building known as Unit 2 outlined in Red on Drawing 1B with the adjoining land in the applicant's ownership outlined in Blue. (see aerial photo below) and Land Registry Details of ownership of the site are included in [APPENDIX A](#) of the applicant's [SUPPORTING STATEMENT](#).



Brooks is located to the North East of Cemetery Lane at the Hamlet of Woodmancote within the Parish of Westbourne.

The applicant's ownership consists of a rectangular parcel of land almost entirely surrounded by residential housing with together with an access of Cemetery Lane and is occupied by two rectangular single storey buildings, Unit 1 (Approved under WE/23/01971/ELD) and Unit 2 (The Application Site), on the North side of a concrete

¹ The Town and Country Planning Act 1990 as amended.



surfaced hard-standing that occupies the East half of the parcel of land with an area of Grassland separated by a fence to the West half of the site.

Plans and elevations of the Unit 2 (The application site) are included on Drawing 3

The Application Building (Unit 2) is constructed in block work with a corrugated tin roof and appears to have been constructed for the retention of livestock with evidence of simple block openings and agricultural style doors.

The Use

This application seeks to establish the existing commercial storage use of Unit 2 formerly occupied by Mr David Storey-Apps and currently occupied by Mr John Hackett of Aldwick Fencing.

Mr Ingram (the applicant), Mr Hackett (the current occupant) and Mr Storey-Apps (a former occupant) have provided sworn affidavits relating to the use of the buildings on site and they are included in the application documents ([APPENDIX M, N AND O](#)).

In addition to interviewing Mr Hackett, Mr Ingram and Mr Storey-Apps and visiting the site, we have reviewed the applicant's [SUPPORTING STATEMENT](#) and appendices ([APPENDIX A TO K](#)) submitted with a previous application (WE/23/01282/ELD) and reviewed consultation responses from members of the public ([APPENDIX S](#)) and the certificate of Lawfulness granted for Unit 1 ([APPENDIX R](#)) that are included in this application.

Mr Storey-App's letter at [APPENDIX F](#) describes his use of Unit 2 from January 2012 to April 2018 for "the storage of goods" associated with his business at that time including "various items of catering equipment and furnishings.

Mr Hackett's letter at [APPENDIX D](#) describes his use of Units 1 from December 2011 and his use of both Unit 1 and Unit 2 from 2018 in connection with his fencing business (Aldwick Fencing).

Following the refusal of a previous application (ref: WE/23/01282/ELD), we sought clarification from Mr Hackett about the precise nature of his use and he provided a further letter ([APPENDIX L](#)), confirming that all areas of Units 1 and 2 have been used to store tools, equipment and stock relating to his fencing business throughout his occupation.

In application WE/23/01971/ELD it was established that Mr Hackett had occupied Unit 1 over the full 10 years with deliveries of fencing materials made to the site at various times over this period.

Mr Hackett's letter ([APPENDIX L](#)) describes his expansion into and use of Unit 2 that according to his sworn affidavit ([APPENDIX M](#)) Mr Hackett occupied from "Mid 2018" noting that he used the units to store materials ahead of and left over from jobs that he would sell or would be useful for future jobs with some rare finds that had been on site for nearly about as long as he had occupied the site and that Unit 2 suited the storage of bulkier items and enabled him to purchase materials in bulk both to fulfil his contractual obligations and serve as a store of spare stock for future work.

Following the approval of the certificate of lawfulness for Unit 1 ([APPENDIX R](#)), we sought clarification and received an e-mail from both Mr Storey-Apps ([APPENDIX P](#)) and a further letter from Mr Hackett ([APPENDIX Q](#)) about their use of Unit 2.

Mr Storey-Apps clarified in his e-mail ([APPENDIX P](#)) that items stored in Unit 2 consisted of items of catering equipment surplus to requirements (tables, chairs, chiller cabinets and various back-up equipment) related to his catering business and antique and second hand furniture awaiting restoration and refurbishment related to furniture restoration business.

Mr Storey-apps states in his e-mail ([APPENDIX P](#)) that his use tapered down between 2017 and 2018 as he obtained a lease on industrial premises in Glenmore Business Park and in on 3rd April 2018 he vacated Unit 2, leaving "a second hand office desk and couple of cabinets, that were deemed useful for Mr Hackett"

Mr Hackett clarified in his letter ([APPENDIX Q](#)) the timing of his occupation of Unit 2, starting on the 3rd April 2018 while the previous tenant vacated the premises, noting that "They did leave a few items of furniture for me, which are still there to this day".



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Mr Hackett goes on to clarify his specific use of Unit 2, reiterating the comments about bulk buying and storing larger fencing materials such as new fence panels and security fencing in Unit 2 as the larger internal spaces suited this application.

Mr Storey-Apps account has provided a Sworn Affidavit ([APPENDIX O](#)) confirming his use of Unit 2 from January 2012 to 3rd April 2018, his understanding that Mr Hackett would take possession of Unit 2 and referring to the items of furniture left in the premises.

Mr Hackett's Sworn Affidavit (Appendix M) confirms his use of Unit 2 from "*mid 2018 as soon as Unit 2 was clear of the last occupants' belongings*" and Mr Hackett's subsequent letter ([APPENDIX Q](#)) clarifies the date of occupation as the 3rd April 2018 and also refers to items of furniture left for him by the previous tenant.

From reviewing the letters and speaking to Mr Hackett and Mr Storey-Apps, it seems clear that while the materials changed from catering equipment and furniture to fencing materials between Mr Storey-Apps occupation and Mr Hackett's occupation, the use of Unit 2 did not change in any material way, as both were storage related to the occupant's commercial activities.

It is also clear from the letters and affidavits provided by Mr Hackett and Mr Storey-Apps that while the quantity of materials would vary a substantial quantity of materials remained in Unit 2 throughout each occupation and the time between Mr Storey-Apps vacating the building and Mr Hackett taking possession on the 3rd April 2018 was very short and there was no significant interruption of the storage use.

The fact that both tenants refer to items being left on site by Mr Storey-Apps for Mr Hackett's use corroborate the 'seamless' transfer and when visiting the site Mr Hackett showed me the items of furniture Mr Storey-Apps had left him.

It was clear from visiting the site that Mr Hackett is still the occupant of Units 1 and 2 and had a large amount of tools, equipment and some fencing materials stored in Unit 1 and a large amount of more bulky fencing materials in Unit 2.

The nature of the use of Unit 2 described by both Mr Storey-Apps and Mr Hackett is compatible with that of commercial storage, a use that falls squarely within class B8 of The [USE CLASSES ORDER](#)² and can be fairly and precisely be described as "*use for storage in connection with a commercial enterprise*" or simply '*commercial storage*', this would distinguish it from domestic or agricultural storage.

² The Town and Country Planning (Use Classes Order) 1987 as amended



The Evidence

The supporting statement and Appendices submitted by the applicant in support of application ref WE/23/01282/ELD have been submitted as part of the evidence base for this application.

The evidence includes:-

- The applicant's [SUPPORTING STATEMENT](#) including a description of uses on the site during his ownership, including reference to a previous certificate of lawfulness application made with regard to car storage on the site.
- Aerial photographs of the site available from [GOOGLE MAPS](#) showing the buildings and hard standing dating back to October 2011 (these have been corroborated through interrogation of Google Maps Historical Images).
- [PHOTOGRAPHS](#) of the inside and outside of Units 1 and 2 showing tools, equipment and fencing stock both within the buildings and on the hard-standing outside. It is understood that these photographs were taken in January 2022 and have been corroborated by recent visits we have made to the site where the continuing use by Aldwick Fencing is clear.
- Land Registry Details indicating the applicant's ownership of the site ([APPENDIX A](#))
- A letter from Mr John Hackett of Aldwick Fencing (the current occupant of Units 1 and 2) detailing his use of the site and occupation of Unit 1 from December 2011 to present and Unit 2 from April 2018 to present ([APPENDIX D](#))
- Some 20 Invoices from Acorn Fencing and 1 invoice from Goodrowes detailing deliveries of fencing materials to Aldwick Fencing at the site ([APPENDIX E](#))
- A letter from Mr David Storey-Apps of David Grant UK Limited (a former occupant of Unit 2) detailing his use of Unit 2 between January 2012 and April 2018 and corroborating Mr Hackett's occupation of Unit 1 ([APPENDIX F](#))
- A letter from Mr Dan Hughes (no relation) indicating that he has supplied concrete products to Aldwick Fencing at Brooks for the last 10 years ([APPENDIX G](#))
- A letter from Gary Palmer of Solent Skips detailing his supply of skips to Aldwick Fencing at Brooks since 2014 ([APPENDIX H](#))
- A letter from John Morley of John Morley & Son detailing work he undertook at Brooks including an occasion where he met Mr Hackett at Brooks in 2012 where he observed that Mr Hackett was storing his tools, equipment and fencing materials in one of the units. ([APPENDIX I](#))
- A receipt from Mr Bridger (who we understand is part of the local resident's committee) that makes reference to the 'business use at Brooks' ([APPENDIX J](#))
- Two letters and an invoice from a neighbour Ian Kemp (Lavender Cottage) immediately adjacent to the site, indicating their occasional use of the site for storage and awareness of Aldwick Fencing's use of the site, having employed Mr Hackett to undertake work to their own property ([APPENDIX K](#))

In response to the queries raised by the case officer in a delegated report attached to WE/23/01282/ELD we visited the site, interviewed Mr Hackett (the current occupant of Units 1 and 2) and sought clarifications from both Mr Hackett and Mr Ingram (the applicant) about the use of Unit 1 that led to a certificate of lawfulness being granted for the commercial storage use of Unit 1 ([APPENDIX R](#)).



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Following the approval of the use of Unit 1 (WE/23/01971/ELD), we sought further clarification from Mr Hackett and Mr Storey-Apps about their use of Unit 2 and the hand-over between them both and received and include the following additional evidence in support of this application to be read in conjunction with this statement, the applicant's [SUPPORTING STATEMENT](#) and evidence outlined above.

- A second letter from Mr Hackett of Aldwick Fencing offering clarifications and further details about the nature of his use of the site. ([APPENDIX L](#))
- An original Sworn Affidavit from Mr Hackett (the current occupant of Units 1 and 2) generally confirming what he said in his aforementioned letter was true and correct to the best of his knowledge ([APPENDIX M](#))
- An original Sworn Affidavit from Mr Ingram (the owner and applicant) confirming that he has let Unit 1 to Mr John Hackett since December 2011 and Unit 2 to Mr Storey-Apps from 2012 to mid 2018 and Mr Hackett from mid 2018 to present. ([APPENDIX N](#))
- An original Sworn Affidavit from Mr Storey-Apps of David Grant UK Ltd (a former occupant of Unit 2) confirming his dates of occupation of Unit 2 and nature of the items stored on site. ([APPENDIX O](#))
- An e-mail from Mr Storey-Apps clarifying the nature of his use of Unit 2. ([APPENDIX P](#))
- A third letter from Mr Hackett of Aldwick Fencing clarifying the date he took possession of Unit 2.
- A certificate of Lawfulness for the commercial storage use of Unit 1 ([APPENDIX R](#))
- Letters of representation received by the planning authority during public consultation on application WE/23/01282/ELD ([APPENDIX S](#)) and WE/23/01971/ELD ([APPENDIX T](#))



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Planning Assessment

Statutory Provisions

Application for a Certificate of Lawfulness

Section 191(1) of [THE ACT](#)³ provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may apply to the local planning authority specifying the land and describing the use.

Section 191(2) states that an operation or use is 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 permission or **because the time for enforcement action had expired** or for any other reason) and they do not constitute contravention of any of the requirements of any enforcement notice then in force.

Section 191(4) provides that if on an application under section 191, the local planning authority is **provided with information satisfying it of the lawfulness** at the time of the application of the use, operations, or other matters described in the application, or that description as modified by the local planning authority or a description substituted by it, **it must issue a certificate** to that effect.

Immunity from Enforcement

Section 171B(2) provides that for any change of use (not including change of use to a dwellinghouse) **no enforcement action may be taken at the end of a period of 10 years** beginning with the date of the breach.

Balance of Probabilities

As seen in the wording of section 191(4) of [THE ACT](#) the local planning authority is to be provided with information satisfying it of the lawfulness of the use and thus the onus of proof is on the applicant.

However, the courts have held in the [GABBITAS CASE](#)⁴ that the relevant test of the evidence on such matters is 'the balance of probability', moreover, the courts have held 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 has no evidence of its own, or from others to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application and the local planning authority has no discretion as to whether or not to issue a certificate.

Planning Tests

In the case of [PANTON AND FARMER](#)⁵, guidance was given by the High Court on the approach of a decision-maker should follow in considering an application in posing three questions:-

I. Material Change of Use

When did the material change of use specified in the application occur?

I.1 Last Known Lawful Use

The last known lawful use of the site is thought to have been agriculture and the Unit 1 building appears to have been constructed to house livestock of some kind. It is not known when this use ceased but as a use for Agriculture or forestry is expressly defined in Section 55(2) of [THE ACT](#) to not involve the development of land, the precise date of the abandonment of the agricultural use is not relevant and the test is merely that the character of the use described cannot be construed to be an agricultural use. (If it was it would be lawful in any event).

³ The Town and Country Planning Act 1990 as amended

⁴ Gabbitas v Secretary of State for the Environment [1985] JPL 630

⁵ Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC [1999] JPL 461



I.2 Change in Use

Irrespective of any previous use, the use described in the application is that of commercial storage use by both Mr Storey-Apps use in connection with his catering and furniture restoration businesses and Mr Hackett's use in connection with his fencing company Aldwick Fencing.

It is obvious from the materials stored in the building (see [PHOTOS](#) in the [SUPPORTING STATEMENT](#)), invoices of items delivered to Aldwick Fencing (see [APPENDIX E](#)) and letters from former customers of Aldwick Fencing ([APPENDIX K](#)) that Mr Hackett's business and use of Units 1 and 2 is not solely related to an agricultural use and Aldwick Fencing appears to be a commercial enterprise providing all types of fencing to domestic, commercial and agricultural clients.

On page 5 of the officer's delegated decision report for WE/23/01282/ELD that related to the commercial storage use of Units 1 and 2, the case officer (Calum Thomas) indicated that in assessing the evidence from Mr John Hackett that "storage of fencing is likely to have occurred at the site" and when considering the nature of this use that "Logic prevails that the delivered fencing materials were utilised by Aldwick Fencing as part of their contracted work obligations.....The site would purely have served to store materials for later use" and while Mr Thomas dismisses a 'distribution use' We concur that the primary use of Units 1 and 2 is a storage use related to a commercial enterprise, i.e. 'commercial storage'.

However also on page 5 of the officer's delegated decision report for WE/23/01282/ELD, the case officer indicated that in assessing the evidence from Mr David Storey-Apps that Mr Storey-Apps has "stored two vehicles in outside shelter between the two units....until 2018" that mis-represents Mr Storey-Apps letter ([APPENDIX F](#)) where the storage of cars in March 2007 that was the subject of an enforcement case and subsequent refused Certificate of Lawfulness for car storage in 2011 (WE/11/01584/ELD).

The second page of Mr Storey-Apps letter of 23/02/2023 ([APPENDIX F](#)) refers to a second agreement between Mr Storey-Apps and Mr Ingram (The applicant) in January 2012, describing Mr Storey-Apps use of Unit 2 for the "storage of various catering equipment and furnishings...from January 2012 until April 2018".

After our request for clarification of Mr Storey-Apps use of Unit 2, Mr Storey-Apps describes in an email of 18/10/2023 the precise nature of his use of Unit 2 to store spare and back-up equipment related to his catering business and furniture awaiting restoration from January 2012 to 3rd April 2018.

Mr Hackett's second and third letters ([APPENDIX L AND Q](#)) clarify his use of Units 1 and 2 and the date of his occupation of Unit 2 from the 3rd April 2018 to present.

It was clear from visiting the site that Mr Hackett is still the occupant of Units 1 and 2 and had a large amount of tools, equipment and some fencing materials stored in Unit 1 and a large amount of more bulky fencing materials in Unit 2.

The nature of the use of Unit 2 described by both Mr Storey-Apps and Mr Hackett is compatible with that of commercial storage, a use that falls squarely within class B8 of The [USE CLASSES ORDER](#)⁶ and can be fairly and precisely be described as "use for storage in connection with a commercial enterprise" or simply 'commercial storage', this would distinguish it from domestic or agricultural storage.

⁶ The Town and Country Planning (Use Classes Order) 1987 as amended



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1.3 Material Change? – Character of Use

In determining whether a particular change of use is 'a material change of use' when considering the [EAST BARNET CASE](#)⁷, Lord Parker CJ "It is the character of the use which has to be considered, not the particular purpose of a particular occupier" (i.e. the change of one storage tenant to another would not be a change of use)

Storage uses can vary significantly with varying frequencies of tenants / occupants visiting the site to deliver and collect materials, the type of materials stored and whether members of the public or other contractors regularly visit the site. However, the change from an agricultural to a commercial use is significant.

The nature of the 'commercial storage' use described in the application differs from either;

- A domestic storage use that would not be on a commercial basis and would need to be related to a primary residential use of some kind and involve very limited visits by members outside the domestic household or;
- An agricultural storage use, that would have the primary purpose of serving an agricultural use of an area of land and be restricted to the storage of items related to that agricultural use.

Therefore the storage use related to a commercial enterprise described in the application differs in character and is clearly a 'material change of use' from an Agricultural use and would have required planning permission.

1.4 Date of Change of Use

Mr Storey-App's evidence ([APPENDIX F, O AND P](#)) included in the application states that he occupied the application site (Unit 2) from January 2012 to 3rd April 2018 and Mr Hackett's evidence ([APPENDIX D, L, M AND Q](#)) included in the application states that he occupied the application site (Unit 2) from 3rd April 2018, these are supported by the applicant's own sworn affidavit ([APPENDIX N](#)) confirming the December 2011 date as the date when he let the premises to Mr Hackett and there is no conflict in the submission.

Mr Storey-App's use of the site dates from January 2012, is clearly described in his evidence and it is clear that the storage of materials in relation to his two commercial enterprises of the time is materially different to any Agricultural use of the site and has been corroborated by Mr Storey-App's and Mr Ingram's sworn affidavits ([APPENDIX N AND O](#)) and evidence from Mr Hackett while he was occupant of Unit 1 ([APPENDIX D AND Q](#)) when referring to the occupant of Unit 2 from January 2012 as David Grant Ltd (Mr Storey-App's company).

It has therefore been demonstrated that a material change of use took place at least 10 years before the date of this application.

2. Continuance of Use

If the material change of use took place prior to those dates [10 years], has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use?

2.1 Abandonment

The concept of abandonment has developed from the [FYSON CASE](#)⁸ where the use of land may survive physical interruption where that interruption was not significant with cases such as the [CLARKE CASE](#)⁹ and [WEBBER CASE](#)¹⁰ providing guidance as to what was significant culminating in the [HARTLEY CASE](#)¹¹ where Lord Denning MR rules that "when a man ceases to use a site for a particular purpose and lets it remain unused for a considerable time, then the proper inference may

⁷ East Barnet UDC v British Transport Commission [1962] 2 QB 484

⁸ Fyson v Buckinghamshire CC [1958] 1 WLR 634

⁹ Clarke v Minister of Housing and Local Government [1966] 18 P & CR 82 (Div Court)

¹⁰ Webber v Minister of Housing and Local Government [1967] 19 P & CR 1

¹¹ Hartley v Minister of Housing and Local Government [1970] 1 QB 413



be that he has abandoned the former use. Once abandoned, he cannot start to use the site again, unless he gets planning permission" the length of time being considered 'considerable' dependant on the circumstances.

However, the consideration of abandonment in this case is made easy by the fact that Unit 1 has had the same occupant for over 10 years and Mr Hackett in his third letter of clarification ([APPENDIX Q](#)) confirms that he took over Unit 2 from Mr Storey-Apps of David Grant Ltd on the 3rd April 2018 and Mr Storey-Apps confirms in his e-mail ([APPENDIX P](#)) and sworn affidavit ([APPENDIX O](#)) that he occupied Unit 2 from January 2012 to 3rd April 2018 with some of the items stored on site between both occupancies and that there are always some items within the building.

2.1a Thurrock Principle

The interpretation of Abandonment in [PANTON AND FARMER](#)¹² case was considered by the Court of Appeal in the [THURROCK CASE](#)¹³ where the principle of abandonment (as per the [HARTLEY CASE](#)) where only a 'considerable period of abandonment' could be considered was replaced with a more stringent requirement often referred to as the Thurrock Principle.

In essence, the Thurrock Principle to abandonment is that in cases of an unlawful use obtaining immunity from enforcement, it has to be exercised continually and without significant interruption for the whole of the 10-year period and in the [THURROCK CASE](#) the Court of appeal considered that a factory's weekend break or a closure for the summer holidays would not be considered sufficient to cause a break.

The test that the court of appeal in the [THURROCK CASE](#) suggested was to consider whether "had the local planning authority visited the site and seen the use, would the local planning authority have had the power to take enforcement action at any time throughout the 10 years but had failed to do so." i.e. was the use in contravention of planning evident at any time through the period.

In this application for Unit 2 the period between the occupancy of Mr Storey-Apps (January 2012 to 3rd April 2018) and Mr Hackett (3rd April 2018 to present) is less than a day with items stored between the occupancies and could not therefore be considered a 'considerable period of abandonment'.

The fact that the use established is a storage use and the items stored by the occupants were clearly not an agricultural use and would have been available to view within the building at any time, the local planning authority had the power to take enforcement action at any time throughout the 10 years but had failed to do so, therefore the Thurrock Test is satisfied.

¹² Panton and Farmer v Secretary of state for the Environment, Transport, an the Regions and Vale of White Horse DC [1999] JPL 461

¹³ Secretary of State for the Environment, Transport and the Regions v Thurrock DC [2002] EWCA Viv 226



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2.2 Planning Unit

In considering the extent of the Primary Use and the Planning Unit, the application is limited to the building known as Unit 2 for the purposes of simplicity as while areas outside the building may be used for access to the building with some outside storage of materials, it is the building that is the subject of the tenancy with use of the other areas considered as ancillary to this primary use.

The courts have given guidance on considering primary uses of sites when considering the 'planning unit' in the [BURDLE CASE](#)¹⁴ where Justice Bridge (as he was then) gave three criteria for determining the correct planning unit.

- a) *Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.*
- b) *Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered.*
- c) *Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.*

In Mr Hackett's evidence ([APPENDIX D, L, M AND Q](#)) and in Mr Storey-App's evidence ([APPENDIX F, O AND P](#)) they both describe the use of unit 2 for storage of items related to their commercial activities, that like any storage warehouse, items are stored and removed at differing times, not all of the building is used to store items all of the time as the amount of stock varies and items may be stored in different places but the primary purpose of the use is still as a facility to store items in relation to his commercial enterprise. i.e. commercial storage.

It is therefore clear that the main purpose of Mr Storey-App's and Mr Hackett's occupation of the application site is for the storage of items in relation to their commercial enterprises and that Unit 2 has remained a distinct and separate Planning Unit throughout with no interruption through the creation of another planning unit in the 10 year period.

2.3 Material Change Of Use

In considering the Planning Unit Above and the primary purpose of Mr Storey-App's use and the primary purpose of Mr Hackett's use of the application site (Unit 2), both equate to a use as a storage warehouse, it is clear from Mr Storey-App's evidence ([APPENDIX F, O AND P](#)) and the evidence of Mr Hackett ([APPENDIX D, L, M AND Q](#)) that David Grant Ltd occupied Unit 2 from January 2012 to 3rd April 2018 that Aldwick Fencing occupied Unit 2 from 3rd April 2018 to the date of the application.

When considering whether there was a material change of use between Mr Storey-App's use and Mr Hackett's use, it is necessary to refer to the [EAST BARNET CASE](#)¹⁵ when considering the use of a former coal storage site as a site to store crated automobiles 'what really had to be considered was the character of the use of the land, not the particular purpose of a particular occupier' and a change in occupancy was not sufficient to cause an interruption with Lord Parker CJ quoting Justice Glyn-Jones from the [MARSHALL CASE](#)¹⁶ "The mere fact that a dealer in the course of his business begins to deal in goods in which he had not dealt before does not necessarily involve a change, still less a material change, in his use of the land or premises where the business is carried on".

¹⁴ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 (Div Court)

¹⁵ *East Barnet UDC v British Transport Commission* [1962] 2 QB 484

¹⁶ *Marshall v Nottingham Corporation* [1960] 1 WLR 707 (Div Court)



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It was noted that the position about the nature of a use may be far less clear where a retail business carries on the site but a change takes place in the type of business, for example a Baker is substituted for a Butcher but fortunately for most practical purposes the problem is dissolved by the existence of the use classes order.

Mr Hackett's use and Mr Storey-Apps use for commercial storage both fall squarely within USE CLASS B8¹⁷ where and Section 55(2)(f) of THE ACT¹⁸ states that changes of use do not involve development of land where: "*in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part thereof for any other purpose of the same class.*" and changes of use within the same use class do not constitute a material change in use.

Therefore, it is reasonable to conclude that the change in occupancy of Unit 2 between Mr Hackett and Mr Storey-Apps did not affect the nature of the use much less constitute a material change of use.

As identified by the principles of the BURDLE CASE, ancillary uses described within Mr Hackett's and Mr Storey-App's evidence such repair of items that have been stored before use do not appear to dominate the site i.e. there does not appear to be a manufacturing process going on and repairs appear to be on an ad-hoc basis and may therefore be considered ancillary to the primary storage use.

The nature of the use described by Mr Storey-Apps and Mr Hackett both relate to a primary storage use in connection with their commercial activities and while the items being stored may vary, the nature of the use has not significantly changed between the two and can reasonably be described as a continuation of the "*use for storage in connection with a commercial enterprise*" or simply '*commercial storage*'

Therefore, Unit 2 has been occupied consecutively by two occupants for a period in excess of 10 years for uses of the same nature storing items in relation to commercial enterprises, conforming to a use within Class B8 and it is reasonable to conclude that no Change of Use occurred that would break the continuity of the 10 year period.

¹⁷ Use Class B8 (Storage and Distribution) of The Town and Country Planning (Use Classes) Order 1987 as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

¹⁸ Section 55(2)(f) of The Town and Country Planning Act 1990.



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3. Description of Use

“If satisfied that the description of the use specified in the application does not properly describe the nature of the use which resulted from the material change of use, the decision maker must modify/substitute each description so as properly to describe the nature of the material change of use.”

It is important to note that the 3rd Test of the PANTON AND FARMER APPROACH¹⁹ is not a pass or fail but a duty for the decision maker to properly describe the nature of the use from the accepted evidence.

It should also be noted that: it is rarely appropriate in planning terms to make the use of land personal to one occupant; changes between different uses within the same use class is expressly described as ‘not development’ in Section 55(2)(f) of THE ACT and the MARSHALL CASE²⁰ where Justice Glyn-Jones stated that *“the mere fact that a dealer in the course of his business begins to deal in goods in which he had not dealt with before does not necessarily involve a change of use”* and any agreed use that has been established would need to apply to the current and any future occupant.

The officer’s report for the previous application admits that **“storage of fencing is likely to have occurred at the site”** and Mr Hackett (the occupant) and Mr Storey-Apps both describe in their evidence (APPENDIX D, F, L, M, O, P AND Q) is consistent with the use of a building as a ‘warehouse’ (falling within the B8 storage class of the USE CLASSES ORDER²¹) to store items on a commercial basis and the case officer considers a “purely storage use”

The proposed application description of a ‘commercial storage use’ gives rise to various people visiting the site at differing occasions, be they the tenant, other members of the business, contractors or delivery persons, delivering and removing materials with a varying amount or ‘stock’ of materials being stored in the building over the entire period of the use and differs from either;

- A domestic storage use that would not be on a commercial basis and would need to be related to a primary residential use of some kind or;
- An agricultural storage use, that would need to be related to the agricultural use of a tract of land and be limited to items related to that agricultural use.

In Both Mr Storey-App’s evidence (APPENDIX F, O AND P) and Mr Hackett’s evidence (APPENDIX D, L, M AND Q) they describe their use of unit 2, that like any storage warehouse, items are stored and removed at differing times, not all of the building is used to store items all of the time as the amount of stock varies and items may be stored in different places but the primary purpose of the use is still as a facility to store items in relation to his commercial enterprise. i.e. commercial storage.

Ancillary uses described within Mr Hackett’s evidence such file keeping or repair of items that have been stored before use do not appear to dominate the site i.e. there does not appear to be a manufacturing process going on and repairs appear to be on an ad-hoc basis and may therefore be considered ancillary to the primary storage use.

The application description of a “commercial storage use” fairly describes the existing established use and is derived from the nature of the existing use, distinct from former lawful uses of the site but differs from the precise use by the current particular occupant (Mr Hackett) that also falls within a use defined by the B8 Class of the Use Classes Order and is therefore clearly and reasonably defined for planning purposes that would be equally applicable to further tenants wishing to use Unit 2 for a storage use on a commercial basis.

¹⁹ Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC [1999] JPL 461

²⁰ Marshall v Nottingham Corporation [1960] 1 WLR 707 (Div Court)

²¹ Town and Country Planning (Use Classes) Order 1987 As Amended



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Conclusion

To conclude, This application has been made on the basis that the existing storage use described in the application has been made lawful in accordance with Section 191(2) of THE ACT²² by becoming 'immune from prosecution' in accordance with Section 171B(2) of THE ACT and following the PANTON AND FARMER APPROACH²³ prescribed by the courts for considering an application under section 191 of THE ACT, the three questions outlined below have been satisfied and from the evidence submitted and on the balance of probabilities, there is no reason a certificate should not be granted in accordance with the local planning authorities duties under Section 191(4) of THE ACT.

1. Material Change of Use

When did the material change of use specified in the application occur?

The applicant's and occupants' evidence clearly defines a material change in the use of Unit 2 drafting from more than 10 years before the date of the application.

2. Continuity of use

If the material change of use took place prior to those dates [10 years], has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use?

Information to corroborate applicant's version of events and demonstrate the two tenants' occupation of the application site (Unit 2) for the period of 10 years or more before the application date has been provided.

In the absence of any conflict in the evidence submitted or other evidence to suggest; an abandonment of the use; interruption by formation of a new planning unit; or a further material change of use, the use described in the application has been clearly and consistently established and evidenced in the application and is not lost by any operation of law.

2a. Ability to Enforce

The TURROCK TEST²⁴ of continuity/abandonment is satisfied, noting that the storage of the current and previous occupants tools equipment and materials are clearly not related to an agricultural use, would have been available to view within the building at any time and the local planning authority had the power to take enforcement action at any time throughout the 10 years but had failed to do so.

Balance of Probabilities

In view of the sworn statements made by the applicant (APPENDIX N) and occupants (APPENDIX M AND O) corroborating evidence from independent verifiable sources (APPENDIX D TO K) (APPENDIX L, Q AND S) and the GABBITAS APPROACH²⁵ to the **balance of probabilities**, there has been no substantial evidence presented by either the Local Planning Authority or any neighbour or other source from the consultations (APPENDIX O) that contradicts or otherwise makes the applicant's version of events any less probable.

Therefore, the evidence provided must be accepted and as the tests have been passed, there is no good reason to refuse the application.

²² The Town and Country Planning Act 1990 as amended

²³ Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC [1999] JPL 461

²⁴ Secretary of State for the Environment, Transport, and the Regions v Thurrock BC [2002] EWCA Civ 226

²⁵ Gabbitas v Secretary of State for the Environment [1985] JLR 630



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3. Description of Use

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It is important to note that the 3rd Test of the PANTON AND FARMER APPROACH is not a pass or fail but a duty for the decision maker to properly describe the nature of the use from the accepted evidence.

The description of the use by the tenant is clear, precise and unambiguous and the character of the use is fairly and precisely defined in the application as ‘commercial storage’, a use that falls within use class B8 of the USE CLASS ORDER²⁶, which accurately reflects the character of the use and is distinct from either storage for agricultural purposes (that would not have required consent) or domestic storage (which would be different in nature).

If the authority considers the applicant’s description of the use is not sufficiently precise or fairly related to the nature of the use of the application site, under section 191(4) of THE ACT²⁷ the Local Planning Authority has the power to change the description.

However if the authority does wish to change or substitute the description of the certificate of lawfulness it would be reasonable to expect the authority to detail how the use described in the application and evidence submitted materially differs in character from a storage use that would fall within use class B8 having due regard to Lord Parker CJ’s comments on the EAST BARNET CASE²⁸ about the ‘nature of the use of land, not a particular purpose of a particular occupier’ and the application of the USE CLASS ORDER in accordance with Section 55(2)(f) of THE ACT.

²⁶ The Town and Country Planning (Use Classes) Order 1987 as amended

²⁷ The Town and Country Planning Act 1990 as amended

²⁸ East Barnet UDC v British Transport Commission [1962] 2 QB 484