

# Land North of Chobham Adventure Farm

Application under Section 191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Existing Use or Development at Land North of Chobham Adventure Farm, Hillings Nursery, Bagshot Road, Chobham, GU24 8DB

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Client: Easigrass; Andy Thorne Groundworks; T. Hilling and Co; and Landform.

The logo for Laister, featuring the word "laister" in a red, serif font. The letter 'i' is stylized with a small red silhouette of a horse's head above it.

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# 1. Introduction

- 1.1. Laister Planning Limited has been instructed by our clients to prepare an application under Section 191 of the Town and Country Planning Act 1990 (the TCPA, as amended), for a an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) for *'Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses, and retention of hardstanding and a flat roof structure, and retention of shipping containers'*, at Land north of Chobham Adventure Farm, Hillings Nursery, Bagshot Road, Chobham, GU24 8DB.
- 1.2. In accordance with national and local validation requirements, the application is supported by the following information:
  - Application Form;
  - Site Location Plan Reference: Figure 1 at **Appendix 1**
  - This Supporting Statement and its Appendices; and,
  - Planning Application Fee Paid Under a separate Cover.

## Site and Surroundings

- 1.3. The site is located to the west of the village of Chobham and to the south of the A319 (Bagshot Road), which provides access. The access is shared by Chobham Adventure Farm which borders the site to the south, separated by the public footpath No. 17, which is a Public Right of Way (PROW). To the east of the site is the Chobham Cemetery and allotments, and residential development. To the west is agricultural land. The entire site is located within the Green Belt.
- 1.4. The site occupies clusters of buildings and structures including storage containers, brick-and-mortar buildings, glasshouse, storage buildings, lean-to and sheds. The site is almost entirely hardstanding.
- 1.5. The site functions as a mixed use, used by 5no businesses who are providing different services and products to varieties of customers, and each sharing the land. The site is used by lorries for loading/unloading a variety of items for the businesses, including but not limited to plant (mechanical), plants (biological/artificial), tools, equipment, products, and heavy machinery.
- 1.6. At present, it might appear that: Andy Thorne Groundworks mostly operates at the north east; Easigrass operate at the centre south, and share the south east with Landform; Landform operate at the south west and share the south east with Easigrass; T. Hilling utilise some parking space; and, Richard Wernham Tree Surgeon operates from the centre. On this, some businesses might appear as though they are occupying a specific space however we will demonstrate in due course that, notwithstanding there may be a business-specific compound in one location, their use of the site extends beyond that compound and into the other mixed uses on the site. In other words, the site is a mixed use, and each business has its own secure

compound within that mixed use, with the remainder of the site being used on a shared basis (and indeed some of the compounds are themselves shared between businesses) This shall all be made clear during the case for the applicant at Section 5.

## 2. Planning History

### Key Planning History

- 2.1. The site contained within the red line of the Enforcement Notice does not benefit from any planning permission or LDCs.

### Enforcement

- 2.2. The site has been included within the red line of 5no. planning enforcement cases since July 2022. An appeal was submitted against all of these enforcement notices before they came into effect. The Council withdrew each notice. These were:
- 20/0019/ENF – Issued July 2022 and withdrawn in November 2022 (**Appendix 2**)
  - 20/0019/ENF – Issued in November 2022 and withdrawn in June 2023 (**Appendix 3**)
  - 19/0095/ENF (A) – Issued in February 2023 and withdrawn in June 2023 (**Appendix 4**)
  - 19/0095/ENF (B) – Issued in February 2023 and withdrawn in June 2023 (**Appendix 5**)
  - 19/0095/ENF (C) – Issued in February 2023 and withdrawn in June 2023 (**Appendix 6**)
- 2.3. On that, there are no live enforcement notices at the site which bear relevance to this submission. There is an opportunity to resolve the lack of a formal planning history and to identify the complex nature and use of the site. The purpose of this application is to resolve those ambiguities and regularise the site, thereby avoiding future enforcement issues.

### 3. Statutory and Legal Context

- 3.1. The purpose of a CLEUD application is to establish that *"...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990"* (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306). For a use to be considered lawful, the use must have been in continuous use for a period of ten years. For the avoidance of doubt, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required (PPG, 001 Reference ID: 17c-003-20140306).
- 3.2. In order to demonstrate this, Planning Practice Guidance (PPG) states that it is the Applicant who 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"* (PPG, 006 Reference ID: 17c-006- 20140306).
- 3.3. As with any application for a Lawful Development Certificate (LDC), the onus is on the Applicant to provide sufficient information to support the application. The PPG sets out that *'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).
- 3.4. The guidance quoted above provides the basis on which any LDC application under Section 191 should be assessed. This approach has been followed by the Applicant, demonstrated by the presentation of the evidence below to support the case and demonstrate, on the balance of probability, that the use undertaken at the land in question is lawful.

## 4. The Planning Unit

- 4.1. At least part of the red-line subject to this application was included within the red-line of each of the 5no. enforcement notices identified above. In examining each of these notices, and in the preparation and submission of the submitted appeal documents (including Statement of Case and Planning Proof of Evidence) the planning unit was identified. Because the Council did not have the benefit of knowledge of the site's operation and history it incorrectly disaggregated parts of the site and separated elements of the planning unit.
- 4.2. In identifying the planning unit now, we have the benefit of statutory declarations and their exhibits made by (in order of earliest knowledge of the site):
- Bean Chapman, T. Hilling & Co Ltd (**Appendix 7**)
  - Richard Wernham, RSR Tree Surgeon (**Appendix 8**)
  - Bradley Smith, Johnsons and Landform (**Appendix 9**)
  - Andrew Thorne, Andy Thorne Groundworks (**Appendix 10**)
  - Mark Gregory, Landform (**Appendix 11**)
  - Anthony Gallagher, Easigrass (**Appendix 12**)
  - Mark Blackburn, Easigrass and Landform (**Appendix 13**)
- 4.3. The applicant's planning agent company also provides Nick Laister's personal photographs taken from:
- 2012 March (**Appendix 14**)
  - 2022 October (**Appendix 15**)
- 4.4. Please note that the Statutory Declarations were prepared during the appeals process to enforcement notice reference 20/0019/ENF and as such they refer to the 'mixed use', the 'retail use', 'hardstanding', 'flat roof structure', and 'shipping containers', all of which are described on the notice. At this time, it is important only to focus on the 'mixed use' as this exercise is to identify the planning unit.
- 4.5. With this in mind, we must now define the planning unit.
- 4.6. Commonly referred to, and standard practice, is that the starting point in deriving a planning unit, and therefore a lawful use should normally be assessed with respect to the whole site ownership area, or the area of occupation. The Development Control Practice Encyclopaedia provides some useful information with regard to defining a planning unit. It acknowledges that the concept of the planning unit is one that continues to cause considerable practice difficulty, because the courts are insistent that each case is to be considered on its merits as matters of fact and degree. As section 4.324 states:

*"The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned, normally the whole of the area in the same ownership or the same occupation. But the*

*consequence of applying that as a universal rule is that the larger the unit of ownership or occupation, the less likely is a change in the use of part of it liable to constitute a material change in the whole.*

*It is only normally possible to select a smaller unit in the same occupation where there is a functional and physical separation of activity. Both functional and physical separation are required before a smaller unit can be identified, since without functional separation the ancillary link remains and without physical separation there is no smaller physical area which can be identified as a separate unit.*

*With regard to the subdivision of the planning unit a material change of use does not occur automatically. The primary use of the new units may remain the same as the former primary use of the whole. But the subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change has occurred. In summary a planning unit is the area of land which is to be looked at in order to assess what planning rights apply to all or part of that area."*

- 4.7. The relevant guidance is provided by *Burdle v Secretary for the Environment and another* [1972] 1 WLR 1207. It was held:

*"What, then are to be considered the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out broad categories of distinction.*

*First, whenever it is possible to recognise a single main purpose of the occupiers use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from *G. Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 WLR 506, where Diplock LJ said at p.513:*

*"What is the unit which the local authority are entitled to look at and deal within an enforcement notice for the purposes of determining whether or not there has been a 'material change in the use of any buildings or land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."*

*But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is ancillary to another. This is well settled in the case of as composite use where the component activities fluctuate in their intensity from time to time, but different activities are not confined within separate and physically distinct areas of land.*

*Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its ancillary activities) ought to be considered as a separate planning unit.*

*To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisable separate area that they produce a new planning unit of which is material changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller scale unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally."*

- 4.8. Using the Burdle tests and its 'useful working rule' the starting point is therefore whether the whole Application Site has a single main purpose, and if so, the correct planning unit is the unit of occupation. The starting point is the ownership area and/or area of occupation.

## **Statutory Declarations (and their Exhibits)**

- 4.9. Within the Statutory Declarations there are references to the following: Ownership/Lease Site (OLS), which is the area of land owned/leased by T. Hilling and this land includes the whole application site as well as other land, and other land; the Planning Unit Site (PUS), which is the land subject to this application; and, the Enforcement Notice Site (ENS) which was land identified in the enforcement notice reference: 20/0019/ENF.

### **Bean Chapman, T. Hilling & Co Ltd (Pre-1999 to Present Day) (Appendix 7)**

- 4.10. Bean Chapman confirms that he is owner and managing director at T Hilling & Co Ltd and has been since 2012. He confirms that T Hilling and Co Ltd owns or has a long term lease on the whole OLS enclosed at his Exhibit 1, an extract of which is shown below.



- 4.16. With regard to who was using the land there was little change until June 2010 (Figure 8) whereby Landform arrived onto the site. They came in 2009, and Johnsons continued to operate most of the PUS at this time. Landform used the site for storage and to operate their landscape design business. Mr Chapman declares that at 2009, the PUS and ENS are being used entirely for the mixed use of horticulture, storage and landscape business. He confirms that he allowed unrelated vehicles to these businesses to park on the land from 2010.
- 4.17. Johnson's lease was to end in 2012 and they began vacating in summer 2011, which is observable on Figure 10 (July 2011). By Figure 11 (April 2013) it is observable that Landform have expanded their operation over a much larger part of the site for their mix of storage and landscaping business, while the eastern part of the site appears to remain vacant.
- 4.18. Mr Chapman declares that Figure 15 (June 2015) shows Morris Leslie on site, who were a plant hire/machinery company for the agricultural sector. They arrived on site in spring 2014. At this time, Landform were using the south west section of the PUS and also the northern part of the ENS, and the south eastern section of the ENS. These uses were for a mix of storage, growing and landscaping. Easigrass arrived on the site in May 2015.
- 4.19. Morris Leslie vacated the site by the 7<sup>th</sup> April 2017. Figure 16 (March 2017) shows Easigrass on site. The whole PUS was being used by Landform and Easigrass for horticulture, storage and landscaping, for growing, and parking and ancillary activities such as manoeuvring and deliveries. The land was all being shared by both businesses.
- 4.20. By May 2018 (Figure 17) Andy Thorne Groundworks has arrived onto the site, which stores items for the business in the north east corner of the PUS. Parking of vehicles that have no connection to any of the businesses on site continues, which has been the case since January 2010.

**Richard Wernham, RSR Tree Surgeon (2002 to 2007; 2011 to Present Day)  
(Appendix 8)**

- 4.21. Mr Richard Wernham declares that he worked for Johnsons of Whixley from 2002, shortly after they arrived at the site. He worked as their Transport Manager/driver, and delivered plants to garden designers around London. These plants, he declares, were often grown in Johnsons' northern nursery, and had been brought down to this site, which was a wholesale business for London and the South East. Plants would be brought to the site, maintained, and nurtured, and then be taken to customers. The storage of equipment and materials would also take place. Mr Wernham left Johnsons in 2007 to retrain as a tree surgeon. He then worked for other people for around three years before setting up his own business in 2011 when he returned to the site. Mr Wernham confirms that he has seen a brochure of Johnsons products (enclosed in his exhibits of his statutory declaration) and that items such as these represent some of the variety of different types of products and materials that would be on the land.

- 4.22. Since 2011 Mr Wernham has been working as a sole trader and storing his tools and equipment on the site. In 2011, he originally stored his equipment in a shipping container in the southern part of the OLS. There he was broken into, and so he moved the shipping container into the PUS in 2013. After he got broken into again, he then moved out of the shipping container and moved into the long building (north-south building in the centre of the site) in 2015. He has stayed there since, and has always parked his van on site, in different places, wherever it was convenient.
- 4.23. Mr Wernham has access to the same aerial photographs as Mr Chapman, enclosed at his Exhibit 4. By Figure 3 (January 2005), he declares that the PUS is being operated by Johnsons of Whixley, of which he was an employee, and that the PUS was operating as the southern depot for the Johnsons business. That meant for storage, holding of plants, and growing plants. These would then be distributed around London and the south east.
- 4.24. At the Figure 11 (April 2013) he declares that he can see his shipping container in the north western part of the site.
- 4.25. At Figure 15 (June 2015), Mr Wernham declares the image shows Morris Leslie on the site, particularly around the hardstanding area in the north west section of the site. They were a company that hired commercial machinery and plant.
- 4.26. He describes that the remaining figures all carry the same theme. Mr Wernham was in the long building, and there were a variety of users in the rest of the PUS, which he describes as being a mix of storage, growing, parking, etc.

**Bradley Smith, Johnsons of Whixley Ltd and Landform (2006 to present day)  
(Appendix 9)**

- 4.27. Mr Bradley Smith confirms that he was first employed at the PUS by Johnsons of Whixley Ltd in 2006. His role at the company was to fill the role of a Yard Manager. When Johnsons left the site in 2011, he was immediately employed by Landform Consultants, and has remained on site to the present day.
- 4.28. Johnsons' plants were often grown in Johnsons' nursery in Yorkshire, and then they would be brought down to this site, which was a wholesale business for London and the South East Plants. The plants would be brought to the site, maintained, and nurtured, and then be taken to customers. The storage of equipment and materials would also take place, such as machinery for managing and moving the plants, and equipment for maintaining them. That included pots, water irrigation systems, growing mediums and nutrients. He has attached an amenity catalogue sheet as an Exhibit (4) to his Statutory Declaration, which is from Johnsons in 2011 showing what sorts of items they worked with. He confirms that he worked with, maintained, grew-on, used or assisted in the loading/unloading of everything on that catalogue.
- 4.29. During all of his time at the site he has seen vehicles use the land shown in yellow on the Notice. During his time with Johnsons, those vehicles have included articulated lorries which have been arriving at the site for the loading and unloading of plants, some of which have been large and some which have been

smaller. The lorries would park up on the site to be unloaded in the morning when staff arrived for work, so they could be there all night. All the land shown yellow on the Notice, and the land to the east and west would have been used intensely for forklift truck activity due to the movement of customer orders into various holding areas, for their subsequent loading. Where the lorries were not turning and loading/unloading, people would park their cars. That might be customers or staff.

- 4.30. When Landform arrived in 2009 they immediately had a good relationship with Johnsons and they both shared the PUS. Landform were mostly in a compound, but they shared the PUS with Johnsons for vehicle parking, loading and unloading, forklifting, and storing mixed aggregates and sleepers, stakes, dressing stones as well as holding plants of various sizes.
- 4.31. When he was working for Landform in 2011, they were growing the business. The whole PUS site was continued to be used by companies, these include (as well as my current employers Landform) Morris Leslie, Easigrass, RSR tree surgery, Andy Thorne Groundworks, and the landlord owner T Hilling and Co. They used the land for varied activities, such as for car park, dispatching, temporary generator location, and a general storage area for many different types of agricultural, commercial, and privately owned vehicles. These include cars, vans, lorries, motorhomes, forklifts, 360 excavators, dumper trucks, telehandlers, tractors etc. to name a few. People not associated with these businesses had been parking, largely wherever they could, all over the PUS site since around 2009 – 2010.

**Mark Gregory, Landform (2009 to present day) (Appendix 11)**

- 4.32. Mark Gregory declares that he is the Managing Director of Landform Consultants Ltd and Landform Maintenance Ltd. Landform are a firm of landscape gardeners and horticulturalists who do garden maintenance, garden design and garden construction. He declares that a lot of the contracting is done off site. The site is used for the office and administrative centre (in the office building), and to store horticultural equipment and vehicles. They have a nursery where they hold plants for client sites. Plants are bought in, quarantined, and grown-on and tended. Any waste material is brought back to the site. At present, Landform use the south east corner of the ENS as a green waste transfer station – the green waste goes to a commercial composting site. He declares that the outdoor yards around the site are used for storing materials, holding materials, transferring materials from one project to another. All of that is horticultural, that being composts, growing mediums, plant containers and the like.
- 4.33. Mr Gregory describes his use of the site (other than the ancillary administration element in the building) as a mix of horticulture, storage of equipment and materials, as well as holding in transit. In addition there is ancillary parking of vehicles, deliveries, loading/unloading etc.
- 4.34. The business first moved onto the site in 2009.
- 4.35. Mr Gregory's Exhibit 4 is the aerial images noted by the businesses above. By Figure 8 (June 2010) he sets out that Landform arrived at the site when Johnsons were still there. As a client of Johnsons at the time, the two businesses shared the site initially.

In that year Landform were only operating in the small compound adjacent to the office building – which is why that area is fenced off from the rest of the site. It is a historical separation from the Johnsons area, and now that Landform operate across most of the PUS they have left the area intact as it allows Landform to secure valuable items.

- 4.36. In that time, Johnsons were trading at the north of Landform’s yard. The area at the north of Landform was a loading area where things were moved over to the main site, that being the ENS. That whole site (that being the PUS) was a single operation. There was the storing of mixed aggregates and sleepers, stakes, dressing stone as well as holding plants and wholesale commercial nursery. Like the Easigrass business, Landform were ‘growing things on’ rather than planting seeds. Johnsons at the time were also a horticultural business using the site for storage and ‘growing on’, and in Mr Gregory’s view, Landform are no different to Johnsons in terms of how they use the site.
- 4.37. Figure 10 (July 2011) shows Johnsons moving out and clearing the balance of their materials. Landform, Mr Gregory declares, were still only located in the small compound. The figure shows a static caravan which is where they housed an onsite maintenance person to maintain all of the plants and trees – his responsibility was to water and maintain all the living stock and he can be seen on subsequent photos.
- 4.38. In April 2013 (Figure 11) it is observable that Landform has expanded their operation across the whole western part of the site, along with RSR Tree Surgeon. The land was being used to store materials coming in for jobs, such as goods in transit, hard and soft landscape materials, soil, plants and trees. The eastern area is temporarily empty. Mr Gregory believes it would have been empty for around 2 years.
- 4.39. Mr Gregory declares that the June 2013 image (Figure 12) shows Landform occupying the western part of the site with storage, plants and landscaping. Lots more plants are visible on the photo and that is partly due to the season and general increase in business activity. There was no significant change until 2015.
- 4.40. Figure 15 (June 2015) shows the development of the Adventure Farm to the south. Landform moved two of the greenhouses from that area, and created one new greenhouse in the eastern part of the PUS. That was to nurture plants and protect plants from frost. At this time, Landform were operating all the area to the east of the long barn, as well as their own compound.
- 4.41. At that point, Mr Gregory declares that Easigrass approached Landform asking if they could use the PUS and share it jointly. Agreement was reached as the businesses were complementary to each other. A new compound for Easigrass, with all the rest of the site continuing to be used by Landform and Easigrass. At this time Morris Leslie also occupied the site, who worked closely with Landform as they were a supplier. Morris Leslie had a lot of horticultural and agricultural equipment as well as standard plant hire equipment.
- 4.42. At Figure 16 (March 2017), Mr Gregory sets out that the private compound at the south west has continued through all the other photographs. The Easigrass

compound is also visible east of the long barn. The whole eastern part of the site is where Landform and Easigrass stored their hard and soft landscaping materials, and Easigrass also put plants in there as well as some materials. The area at the north of the Easigrass compound was, Mr Gregory declares, the shared area for marshalling, loading and unloading. An open area to the north west was a cleared area that Andy Thorne Groundworks was going to level and tidy up, and so it was temporarily cleared. Andy Thorne took the small compound at that north eastern area which is visible on the Figure 17 (May 2018).

- 4.43. Mr Gregory declares that no real change between Figure 18 (June 2018) and Figure 25 (March 2022) occurs. Landform operate exactly the same business model. In the aerial photographs, Mr Gregory can see a large proportion of the site as a whole being used by Landform for a compound, parking cars north of the compound, parking in the area north of Easigrass, as well as loading/unloading and using large parts of the eastern section of the site for storage and growing. He declares that large sections of this is shared with other businesses on site, including the parking areas, storage and growing areas.
- 4.44. Mr Gregory concludes his declaration with a summary, setting out it is a very vibrant location. All the businesses are similar relating to horticulture and support and work with each other regularly. He sets out there is a really good community feel on the site of similar horticultural businesses, all working together. In his personal view, he declares the overall use of the PUS has remained broadly the same since he has been on the site (2009). Activities are noted to shift around the site and different companies use different areas, but it operates as one single shared site.

**Mark Blackburn, Easigrass and formerly Landform (14<sup>th</sup> June 2021 to 4<sup>th</sup> April 2023) (Appendix 13)**

- 4.45. Mr Blackburn was first employed by Easigrass to manage the yard. He left Easigrass in April 2023 to work for Landform. He declares that it is and has been very normal for him to help out both companies, even though he'd only be employed by one company at a time.
- 4.46. His job included loading and unloading of vehicles bringing landscaping materials, plants, machinery and equipment to the site for either company, particularly if there was nobody else who could do it.
- 4.47. Mr Blackburn reiterates this is normal, and comments that an employee named Eugene, who is an Easigrass employee now, will unload for Landform if people are not around to unload, or are unavailable. All this unloading would take place across the whole northern area of the PUS. Vehicles would arrive (usually articulated lorries and large vans) would park up on the site to be unloaded. Sometimes they would stay overnight until the morning when staff arrived for work.
- 4.48. He declares that he would run the forklifts all around the north, and to the east and west to unload/load and place goods. This was due to the movement of customer orders into various holding areas, for their subsequent loading. Where the lorries were not turning and loading/unloading, he has seen people parking their cars.

That might be customers or staff but he also often see's people who he believes are not associated with the businesses on the site.

**Andrew Thorne, Andy Thorne Groundworks (2015 to present day) (Appendix 10)**

- 4.49. Mr Andrew Thorne declares that he has operated A Thorne Groundworks for around 30 years. The business is not a traditional groundwork company working for housebuilders and developers, rather it works mainly on landscaping projects, sports fields and agricultural contracting. He declares that he worked on the Chobham Adventure Farm site in 2015, and stayed on site from 2017. He stored his items initially on the southern part of the OLS, however in 2017 moved the equipment to the small parcel of land in the north east corner of the OLS, outside the ENS. He has stored his equipment there ever since.
- 4.50. With reference to his Exhibit 4, that is the aerial images referred to by the other businesses above, his declaration comments on Figure 15 (June 2015). The image, he declares, shows Morris Leslie on part of the PUS storing second-hand plant and machinery for hire. Landform are seen using a large part of the PUS and Easigrass are certainly on site as well. Richard Wernham of RSR was also on the PUS at the time, and the PUS was being used for a mix of storage and growing of plants along with some parking.
- 4.51. For Figure 16 (March 2017), Mr Thorne declares that he was still based in the southern part of the ONS. Morris Leslie has now gone, and the PUS has been tidied up, but Landform and Easigrass were present with small compounds and the main part of the PUS was being shared by these two businesses. He declares that he tidied up the hardstanding to the north west of the site and also put new fencing up.
- 4.52. Mr Thorne declares that the May 2018 image shows him taking over a small compound in the north east corner of the PUS which fall outside the ENS. In this area he used it for storing tractors and machinery for landscaping. He declares that he uses the area to the west of the compound for loading and unloading machinery. He declares that everybody (meaning all the businesses) uses this area, and that it is a shared area for parking, loading/unloading, moving machinery etc. The rest of the PUS is used by Landform and Easigrass for growing, storage, parking and loading/unloading of machinery, and Landform use it for loading and unloading plants.
- 4.53. With reference to Figure 20, Mr Thorne comments that he continues to share all the unloading/loading areas with Landform and Easigrass, and that he knows Landform and Easigrass are also using the planting/growing and storage areas to the south jointly for their business. In his view, the whole of the PUS is being used for a mix of storage, growing, landscaping business, loading and unloading, and parking.
- 4.54. Within his compound, Mr Thorne declares that he has a few shipping containers that are used to store small landscaping machinery, seeders and agricultural equipment including, for example, strings for bailers and hand tools.

**Anthony Gallagher, Easigrass (2015 to present day) (Appendix 12)**

- 4.55. Mr Anthony Gallagher declares that he has been in the artificial grass industry for 19 years. His younger brother founded the Easigrass Company and Mr Anthony Gallagher's role was to expand and grow the domestic horticultural side of the business. To segregate themselves from other players in the market, they started attending the Chelsea Flower Show, to move into domestic landscape and horticulture. They became a national franchise business, and they now have 35 franchises operating around the UK, as far north as Aberdeen and as far south as Cornwall. They supply and fit artificial grass, and part of that involves the introduction of real flora and fauna. Mr Gallagher declares that they see themselves as a horticultural business and they are in all the main horticultural associations, including BALI, HTA, Guild of Master Craftsmen, ISO 14001 and 9001, and are a fully accredited organisation and are independently audited.
- 4.56. In confirming what Easigrass do at the site, Mr Gallagher declares they run two elements of the business from this site which are an artificial wall business and a sculptured animal business. They cut and prepare artificial grass ready for distribution. They undertake the full supply and install of gardens from here which is removed by grab truck. It requires aggregate and other materials, which are stored on this site. They have an element of growing on the site, that is offered as part of the overall landscaping service. They also end up with removed vegetation on the site and put these in the green waste bins. Mr Gallagher describes the operation that is taking place as the supply and fit of artificial grass and horticultural products to individual gardens around the UK and to the various outlets, with a significant storage element. They also distribute EasiAnimals around the world from this depot. So it would be primarily a storage/distribution depot as well as growing plants and a landscaping business, including storage of landscape supplies. They work closely with all leading garden designers, including Landform on the same site, and also work with national developers, St George, Keegans, etc.
- 4.57. Inside the containers Easigrass store plywood, wood edging, agricultural machinery, maintenance equipment, aggregate, grit, sand, tubes, small hand held machinery, ride on mowers, maintenance equipment. They also keep a stock of artificial flowers (these are put together off site).
- 4.58. At his Exhibit 5, Mr Gallagher refers to the aerial photographs described by the businesses noted previously.
- 4.59. On Figure 15 (June 2015) Mr Gallagher declares that he remembers coming onto site and seeing the Morris Leslie operation. He notes that they used shipping containers to create a perimeter to secure the plant and machinery and these can be seen on the north west part of the site. There was agricultural machinery and plant machinery on the site. From what he can see, the remainder of the site was used for storage of landscape materials and also growing in the area to the south east, where there was a growing house, with plants indoors and outdoors. He can see his machinery resurfacing the central section to tidy up the 'hotchpotch' surfacing.
- 4.60. With reference to Figure 16 (March 2017) he declares that Morris Leslie had left the site. Easigrass's storage shipping containers are clearly on site at this time. That

work was carried out in 2015/2016. These were used as a natural barrier to secure that part of the site. At the east of the shipping containers is a general storage and growing area used by both themselves and Landform. He declares this is all mixed and there is no way of separating this between the two businesses. The parking area was used by operators, visitors and by Landform and the whole of this area was a shared area between Landform, Easigrass and T Hilling.

- 4.61. In the Figures 18 to 25 there is no real change, but at some point in this period, Andy Thorne (ground worker) started also sharing this area, mainly using the north eastern corner (outside the ENS).

#### **Nick Laister Photographs**

- 4.62. In addition to the statutory declarations, ground level photographs taken at various times over the last 11 years are provided from when Nick Laister visited the site.
- 4.63. Enclosed at **Appendix 14** are Nick's personal photographs from 2012. This coincides with the period when Johnsons had left the site, Landform and RSR were occupying part of the site and it was being tidied up for replacement tenants. These images show RSR parked in the north south building; the land east of the Easigrass compound, the site access with tyre track markings going to every direction; a vehicle parking at the north of the site adjacent to a Landform storage container; hard surfacing at the north south building and hard surfacing to the east of the Easigrass compound and at the mast, and hard surfacing (with Landform vehicles parked on it) at the land shaded orange on the notice.
- 4.64. Enclosed at **Appendix 15** are Nick's personal photographs from October 2022 at a site visit with the Surrey Heath Borough Council. In these photographs the Council could clearly see the Landform Maintenance persons van, shared parking from the various businesses and unrelated persons across the planning unit site, loading and unloading, shared storage use, shared horticulture and growing-on areas, and the continued position of hardstanding.
- 4.65. These photographs assist in this case by providing additional understanding of the use of the site.

#### **Summary of Statutory Declaration Evidence**

- 4.66. This section is primarily to assist in defining the planning unit. We provide a summary of this evidence, noting a chronology of the uses of the site, at the Ground (d) appeal in Section 6.

## **How the Statutory Declarations Assist in Defining the Planning Unit**

- 4.67. The statutory declaration by Mr Bean Chapman confirms that the land he describes as the PUS was used as a growing and storage depot by Wyevale between 1991 to 2001. Johnsons of Whixley Ltd then operate the PUS in 2002, for growing and storing items that were moved to other locations (confirmed by Mr Bean Chapman, and Mr Richard Wernham). The uses are similar and cover a period of 10 years. On this,

it would appear that a mixed horticulture and storage use was therefore lawful by around 2001/2002. The introduction of Landform (Mark Gregory's statutory declaration) in 2009, who used the PUS for similar purposes likely did not disrupt the overall mix, but it would be appropriate to set out that a 'landscaping business' became part of the use from 2009 because it could be argued that an element of the Landform business was a design business, as well as the use of this site for storage of landscaping/horticultural materials and plants. From 2009, therefore, it appears the use would be a mixed use involving horticulture, storage and a landscaping business, along with of course the ancillary uses associated with these uses. T. Hilling and Co Ltd also began allowing unrelated vehicles to park on the land from 2010. It is therefore clear that by 2010, the shared mixed use occurring on the PUS would have been: *"Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses"*, which represents only a minor change whereby parking was formally established. The introduction of RSR Tree Surgeon in 2011, Easigrass in 2015 and Andy Thorne Groundworks in 2015, reinforce the existing activities and do not create a new use.

- 4.68. From the statutory declarations and their reference to the aerial images, and from analysis of these photographs and in combination with Laister's knowledge of the site, it is clear overall that a mixed use was taking place from 2001/2002 with a parking element introduced in 2010 at the PUS site. The complexity in identifying the planning unit lies in identifying the boundaries of this mixed use, and whether the mixed use covers the whole PUS, or whether there are separate uses taking place which are largely limited to one business (such as the compounds).
- 4.69. Reviewing the statutory declarations and the information appended to them, the whole of the PUS would appear to be covered by this mixed use. This is because a large proportion of the PUS is used by all of the businesses, despite the fact that they all have their own 'secure areas'.
- 4.70. When giving some thought as to whether the 'secure areas' for Landform, Easigrass and A Thorne Groundworks has the effect of creating separate planning units and could therefore divide the site up into multiple smaller units, we are guided by law.
- 4.71. In law, it is set out that a mixed use may have different activities in different parts, or be intermingled. Mr Justice Widgery said in *Wipperman v Barking London Borough Council* (1966) 17 P&CR 225 at 229 (**Appendix 16**):

*"it really matters not whether anyone visiting the land at that time could have pointed to one corner which was used for car-breaking and another which was used for storage, or whether in fact the two activities were so mingled together that they occupied the entirety of the site"*

- 4.72. Following that approach, the Court of Appeal said in *Westminster City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 482, [2015] JPL 1276 at paras 8, 27 per Richards LJ (**Appendix 17**):

*"a mixed use can subsist where the different elements are not associated with particular parts of the premises."*

- 4.73. In respect of material changes of use Widgery J said in *Wipperman v Barking London Borough Council*:

*“Merely to cease one of the component activities in a composite use of the land would not by itself, in my judgment, ever amount to a material change of use. But what has happened here, according to the evidence, is not merely a cessation of the car-breaking activity but the use of the land as a whole for storage, in other words, as the Minister has pointed out in his letter, one now has the entirety of the land used for one of the two component uses to which the land was formerly subjected.*

*In my judgment, as a matter of law, there can be a material change of use if one component is allowed to absorb the entire site to the exclusion of the other, but whether or not there is a material change of use is a matter of fact and degree.”*

- 4.74. It was legitimate for the Minister in that case to consider that:

*“where there are two dissimilar uses in the former composite use, the fact that one is discontinued and the other is followed exclusively does produce a change of character of the use of the land as a whole.”*

- 4.75. *Wipperman* was approved in respect of the mere cessation of a use by the Court of Appeal in *Philglow Ltd v Secretary of State for the Environment* (1986) 51 P. & C.R. 1 at 8 per Sir Roger Ormrod:

*“The phrase, a “material change of use” is a term of art in planning law and means a change of use which would be in breach of planning control if planning permission were not obtained. This would mean that an occupier of land would have to obtain planning permission to discontinue an activity on his own land—which is absurd.”*

- 4.76. A mixed use of *“horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses”* has been taking place since at least 2010. The proportions of the different components of the uses have always fluctuated over time and the locations for certain activities within each use has changed over time. The mixed use can involve separate areas in each use. Whilst some cases such as *Burdle* have anticipated mixed use in the sense of intermingled uses or uses without their own areas, a mixed use may have identifiable areas for particular uses provided that the overall use of the site remains mixed.

- 4.77. Mixed uses have to be considered in context. It is not necessary for all of the land being put to all the mixed uses either at the same time or in sequence. It would not be that a storage area is used for horticulture, or a parking area for storage, or a horticulture area for loading/unloading. There is no planning permission on the land, and so there is no condition controlling the arrangement of the activities on the site. So whereas areas may be dedicated to each occupier (i.e. a compound that is lockable for security reasons), this has no effect on the use of the site overall, as long as these areas are broadly in the same mixed use and/or they use other land within the planning unit for that use, or for ancillary purposes. There is also clearly a sharing of entrances, which further supports the mixed use.

- 4.78. The statutory declarations confirm that the businesses share multiple areas in the PUS, and all fall within one or more of the uses that is alleged to be taking place. Each business is clearly capable of operating on its own. No one business is responsible for full scope of the use of the land. That is clear as businesses have evidently left the site (Johnsons 2011), come to site (Andy Thorne Groundworks (2015), Easigrass (2015), RSR Tree Surgeon (2011) yet the overall mixed use has remained the same.
- 4.79. It is notable that when Johnson’s lease was to end in 2012 and they began vacating in summer 2011 (which is observable on Figure 10 (July 2011) and by Figure 11 (April 2013)), the eastern part of the site appears vacant. This is not considered to have an impact on the overall use of the site as the mixed use would have been well established by that time. In its vacancy, and without there being any material change of use, it remains part of the mixed use that existed at the time: the well-established horticultural and, storage uses, including the (at the time) recent additions to the mix (landscaping business, car parking), as well as activities ancillary to these uses. It is notable that Council has never alleged through any of the enforcement notices that at this time the mixed use was abandoned in any way. This does not appear to be a matter of abandonment, as replacement occupiers have always been found reasonably quickly when one or more occupiers leave the site.

## Identifying the Planning Unit

- 4.80. In following Burdle’s process and its ‘useful working rule’ the starting point is whether the whole Planning Unit Site has a single main purpose. If so, the correct planning unit is the unit of occupation. The starting point is the ownership area/area of occupation.
- 4.81. The ownership area/area of occupation is shown in **Appendix 18** within the blue line. This includes land owned by T. Hilling and Co Ltd and also land that T. Hilling leases from the Diocese. This is land that comprises the land subject to this application and other land.
- 4.82. Of this ‘other land (i.e. the OLS)’, some is in use as Chobham Adventure Farm (the southern part of the former T. Hilling Nursery), which is operating under a series of separate express planning permissions. This means that this is now a completely separate planning unit and is cannot be considered to be part of the planning unit in which the ENS is located. Other land within the occupation of T. Hilling (and others) is the remainder of the PUS shown in the red line at **Appendix 1**.
- 4.83. It would seem clear from the evidence that the PUS is not in a single use as described by Burdle’s first category. Instead, there are several primary uses taking place.
- 4.84. From the evidence considered above, it would seem that storage, horticulture, landscaping business and parking primary uses have taken place on this area since at least 2010, and these are accompanied by some ancillary uses including

ancillary parking, loading/unloading, and office, and ad hoc retail. The horticulture and storage element of the mixed use has continued on the PUS since at least 2001.

- 4.85. The third category of Burdle, is that, within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In examining the above, it is evidence that whilst some of the users have their own secure areas/compounds within the mixed use site, these are not “substantially different and unrelated” because the activities spill out over the whole site and intertwine with other occupiers, and all the occupiers are operating businesses that fall within that range of mixed uses.
- 4.86. For this reason, this cannot be the case at the PUS (Application Site) because it is not possible to identify and extract specific areas and place them into their own distinct and separate uses, because these uses are intertwined and this has been the case since for at least the last 10 years.
- 4.87. Where previously the enforcement notices seemed to target the land which the Easigrass business presently has the most perceptible presence, it is apparent that such an area is not exclusively occupied by Easigrass or Landform, and the former notice area even bisected through a parcel of land where Landform has a perceptible use of the land.
- 4.88. In preparing to submit this application, we have undertaken our own exercise of attempting to ‘carve up’ the site, in the same way the Council did with the former notices. It simply is not possible because of all the interrelationships.
- 4.89. If a line is draw around the Easigrass compound, or the Landform compound, it is then necessary to look at how these occupiers are using the remainder of the site and they all clearly use, and share, other land around the site. Even trying to restrict the site to the area shown in the November 2022 notice (20/0019/ENF), which took in a larger area of the application site than its predecessor, it still does not result in a workable planning unit because other parts of the PUS are also being used by the other businesses. Landform, for example operate within the ENS, but also elsewhere in the PUS. They park vehicles both inside and outside the ENS. They store items both inside and outside the ENS. They load and unload items both inside and outside the ENS. It simply is not possible to divide the site into either the individual secure areas or the area used by the Council in the Easigrass 2 Notice.
- 4.90. The whole Planning Unit Site is used by multiple organisations, overlapping, and for related activities. It follows then that treating the whole PUS area as a single planning unit with a mixed use resolves all the issues of attempting to single out other various uses, and results in an area where businesses overlap but fall within this broad mix of uses.
- 4.91. It is clear therefore, in this case Burdle’s second category must apply, that is, a composite use where the component activities fluctuate in their intensity from time to time, but different activities are not confined within separate and physically distinct areas of land as part of a wider Planning Unit Site.

4.92. It is clear, therefore, what the planning unit is and what the mix of uses taking place in that unit is in the present day. We can now come onto whether that use has continued for more than 10 years in the next section.

## 5. The Case for the Applicant

- 5.1. Planning Practice Guidance (March, 2014) contains guidance on who is responsible for providing sufficient information to support an application (Paragraph 006, Reference ID: 17c-006-20140306). It states that the Applicant is responsible for providing sufficient information to support an application. It also 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."*

- 5.2. The burden of proof is on the Applicant, but the courts have held that the relevant test of the evidence on such matters is *'the balance of probability'*. And as this test will accordingly be applied by the Secretary of State in any appeal against their decision, a Local Planning Authority (LPA) should not refuse a certificate because the Applicant has failed to discharge the stricter, criminal burden of proof, namely *'beyond reasonable doubt'*.
- 5.3. Moreover, the Court has held (see *F.W. Gabbitas v SSE and Newham LBC [1985] JPL 630*) that the Applicant's own evidence does not need to be corroborated by *'independent'* evidence in order to be accepted. If the LPA has no evidence of its own, or from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate *'on the balance of probability'*.
- 5.4. This Section sets out the Applicant's full case with respect to why the CLEUD should be issued. For the avoidance of doubt, the applicant seeks to confirm that the following description of development is lawful *"Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses, and retention of hardstanding and a flat roof structure, and retention of shipping containers"*.
- 5.5. It is therefore necessary to establish the use is lawful before moving on to establish the operational developments are lawful.

### The Use

- 5.6. With specific reference to interpreting the evidence and arriving conclusively at what use has been taking place on the land, and for how long, it is now possible to provide a chronology of evidence with reference to the statutory declarations, aerial photographs, ground level photographs and documentary evidence.
- 5.7. 1999: Mr Chapman's statutory declaration confirms the whole PUS is being used by predominantly by Wyevale, the national garden centre business. As they were

receiving items for growing and storage to their garden centres, they were using the land for a mix of horticulture and storage and ancillary activities to that use.

- 5.8. 2001: This was the last year that Wyevale continued operate on the site. Mr Chapman sets out that Wyevale operated from 1991 – 2001, and there is no indication that Wyevale used the site any differently during this time.
- 5.9. 2002: Johnsons of Whixley arrived on site and were operating across the entire PUS for horticulture and storage of plants and materials, which is confirmed by Mr Chapman. From the statutory declarations, this business appeared to be a very similar operation to Wyevale in terms of how it presented itself on the site, with a mixed use of horticulture with a significant storage element. Mr Wernham notes that Johnsons were continuing to operate at this time. Mr Chapman explains that Johnsons used this PUS for growing items and storing items, including pots, water irrigation systems, growing mediums, and nutrients. Mr Chapman refers to an amenity catalogue, or brochure, from Johnsons in 2011 showing the types of products they might offer. Mr Chapman confirms that the items shown in the catalogue are the sorts of items that would be at the site. He confirms that there was a constant turnover and supply of such and similar items as Johnsons were a wholesaler sending out products to clients selling to landscape gardeners, designers, and developers. Confirmation is given by Mr Chapman and Mr Wernham that plants were grown in another of Johnsons' nurseries and brought down to this site which was a wholesale business for London and the South East. Plants brought to the site were maintained and nurtured before being taken to customers. While Wyevale delivered to their garden centres and Johnsons delivered to their customers, the use was the same.
- 5.10. 2003 to 2005: The statutory declarations of Mr Chapman and Mr Wernham suggest that the mixed horticulture and storage use continued across the whole PUS without change.
- 5.11. 2006: An area to north of the western part of the site was retained for washing the vehicles, which is set out in Mr Chapman's statutory declaration. The vehicle washing was purely ancillary to the use of the PUS and does not change it. Mr Smith was employed at the PUS by Johnsons of Whixley at this time. He confirms the activities of Johnsons were as described by Mr Chapman above.
- 5.12. 2007 to 2008: The site continued to operate as a mixed use horticulture and storage site as part of the wider Johnsons business. Mr Wernham left Johnsons in 2007 to retrain as a tree surgeon.
- 5.13. 2009: My Chapman confirms polytunnels were removed to create more parking and servicing areas, and Johnsons made more organised picking bays. Mr Chapman explains how the picking bays worked, in that staff would "pick" what plants the customer wanted and put them in a bay in advance of a customer (or their representative) arriving in their van / lorry, and be able to pick it up in one place and leave. These were to support the horticulture and storage mixed use, and did not change the use of the PUS. Mr Chapman sets out in his declaration that vehicles unrelated to the businesses were now allowed to park on the site. General parking for the village centre, Chobham Carnival, Chobham Show, Cricket Club,

Chobham Adventure Farm overflow, weddings, funerals, charity events, agricultural shows, Chobham Rugby Club ad-hoc overflow, local music events, as well as long-term paid vehicle parking operated by T Hilling & Co. was provided from this point on. Mr Smith confirms that people unrelated to the businesses on the site were parking on it from around 2009/2010.

- 5.14. 2010: At this time Landform start sharing the use of the PUS with Johnsons. Landform were a client of Johnsons and knew them well, and one of their people knew the contracts director at Johnsons, who in turn suggested the area would be suitable for Landform. Landform knew Johnsons were storing mixed aggregates and sleepers, stakes, dressing stone as well as holding and nurturing plants. Johnsons were using Landform as a firm of landscape gardeners and horticulturalists. Landform created a compound in a small area of the site and used it for an office and storage of landscaping equipment. As the statutory declarations of Mr Gregory and Mr Chapman explain, Landform used the appeal site for storage of landscaping materials as well as an office. This introduced a landscaping business to the site. In my view, Landform presented itself in a very similar way to Johnsons in terms of how they use the site, mainly for storage and for growing plants. However, we have added a reference to “landscaping business” into the description of development to allow for this business operating. Mr Gregory sets out that some additional containers were brought into the western boundary of the compound, used for storage, and these are still there to this day. Parking unrelated to the businesses was also introduced by T. Hilling into the site, bringing a minor alteration to the use. When combined with the addition of Landform’s landscaping design element, the description of the use would now be more accurately described as *“Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses”*. In our view, 2010 is when the mix of uses ‘settled down’ to the mix that is taking place today. Although the additional structures (shipping containers) were placed on the land to support these uses, does not change the use of the site.
- 5.15. 2011: By this year, Richard Wernham returned to the site as a tree surgeon staying in a shipping container not on the PUS. The horticulture, storage and landscaping use of the site is unchanged. A caravan can be seen occupying the site which we know from Mr Gregory’s statutory declaration had a maintenance person living in it, maintaining Landform’s plants and trees and living stock. Mr Chapman says that additional structures had been added in the south western corner of the PUS, which would have supported the use. That would not change the use of the site. The use remained *“Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses”*. Mr Gregory, Mr Chapman, and Mr Smith confirm that Johnsons started pulling out of the site in 2011. When that happened, Mr Smith became an employee of Landform.
- 5.16. 2012: Nick Laister’s ground level photographs show the site as it appeared in 2012. Johnsons had pretty much completely pulled out in this year. Laister’s recollection is that Landform were located to the south west of the PUS (outside the ENS). Laister was told by Mr Chapman in March 2012 that Mr Chapman was intending to continue using the PUS and was discussing with occupiers who may take over some or all of

the site. Laister told Mr Chapman that he would not need planning permission if the site continues to operate in broadly the same use as the previous occupiers, which Laister now understand was largely a mixed growing and storage operation. Mr Chapman also told Laister that he intended to develop a farm attraction on the southern part of the OLS. In 2012, therefore, it would seem to us that there was no intention to continue the mixed use on the OLS land outside the PUS. This possibly had the effect of abandoning the use in that part of the site, and the steps taken to secure planning permission for a farm attraction confirm this intention. If the use was not abandoned, then it became a nil use until the start of the adventure farm use. We do not believe this distinction has an impact on the use of the PUS. The use certainly continued on the remainder of the site and there was no intention that we are aware of to stop the use of the remainder of the site. We do not consider that reducing the planning unit to only the OLS created a material change of use. It simply reduced the size of the area used by the mixed use. This change occurred in 2011/2012, so would have no effect on the last 10 years.

- 5.17. 2013: Mr Wernham confirms that RSR Tree Surgeon continues to operate on the PUS, and Mr Gregory and Mr Chapman recognises Landform operate on a larger area, spreading over the PUS. From the statutory declarations, it appears that Landform are using the site for the same mix of uses as Johnsons, primarily for storage and growing, but also for a landscaping business. The parking element continued.
- 5.18. 2014: The submitted evidence suggests there was no material change in 2014. Mr Chapman explains Morris Leslie moved onto the site this year. Morris Leslie were a plant hire/machinery company for the agricultural and earthworks sector, arriving in 2014. They stored their machinery in various places of the PUS. There is therefore no change to the use.
- 5.19. 2015: Landform have continued to expand their physical presence to a larger area of the PUS, however they still retain the horticulture, storage, landscaping use and ancillary activities. This is confirmed by Mr Gregory and Mr Chapman. Morris Leslie had arrived at the site by this point, and with reference to their aerial images, Mr Gregory and Mr Wernham confirm they stored their plant hire/machinery at in various places of the PUS. This is also confirmed by Mr Thorne, who has been working for Mr Chapman at Chobham Adventure Farm at this point. Easigrass also arrived at the site in this year. The Mr Gallagher declaration explains that this company were storing and growing items and acting and supporting landscaping businesses very similarly to how Landform operate. Easigrass created a compound by stationing shipping containers in July 2015. So whilst there was a rearrangement of occupiers, the overall use of the site, with Landform, Morris Leslie and Easigrass was still in mixed storage, horticulture, landscape business and parking use. By this time, Andy Thorne Groundworks was working at the Chobham Adventure Farm, and was aware of this PUS.
- 5.20. 2016: None of the evidence suggests there has been any change this year.
- 5.21. 2017: Morris Leslie vacated the site this year. Mr Chapman sets out they had completely gone by the 7<sup>th</sup> April 2017. It was Easigrass and Landform who continue to operate horticulture, storage and landscaping. Unrelated parking continued to

be a use at the site allowed by T. Hilling. Andy Thorne Groundworks had been working in the Chobham Adventure Farm area and stayed on the PUS from this point onwards storing his equipment and machinery and loading and unloading on the PUS. RSR Tree Surgeon also operated at the site without change. It seems that, in terms of the PUS, the overall use remained the same, with the same mix of components.

- 5.22. 2018: There was no change to the use of the site at this time. Mr Thorne confirms his Groundworks company created a compound area for the secure storage of their equipment and machinery, which we have established does not stop the mixed use of the site through the Section above. Mr Thorne continues to use the remainder of the PUS for its primary mixed use and ancillary activities which including vehicle manoeuvring, parking etc. Some resurfacing works had been carried out which does not change the use.
- 5.23. 2019: Aerial photographs for this year show that some resurfacing of parts of the PUS, noted by Mr Chapman and Mr Gregory were undertaken this year at the northwest of the PUS to assist with vehicle movement and parking. Andy Thorne Groundworks was now on site, with some items being stored in the north eastern corner of the PUS. Mr Thorne has said he used this for storing tractors and machinery for landscaping and that they use the area to the west of the small compound for loading and unloading machinery. It is evident that everybody on site uses this area; it is a shared area for parking, loading/unloading, moving machinery, etc. The rest of the site is used by Landform and Easigrass for growing, storage, parking and loading/unloading of machinery. Landform use it for loading and unloading plants. There is also parking of vehicles that have no connection with any of the businesses, which is confirmed by Mr Chapman and Mr Smith. Mr Wernham comments that a car wash is operating for the vehicles.
- 5.24. Between 2019 and 2022 there is no noticeable change to the how the site is used. The statutory declarations and aerial photographs seem to confirm continuity. The use is therefore a *“Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses”*.
- 5.25. On review of the Statutory Declarations, it is plainly clear that none of the parties providing a declaration suggest that any one of the businesses are a use in their own right. Each sets out that the businesses are sharing the land. This did not consider, in the recent enforcement notices, that the Easigrass compound is a use in its own right. This was demonstrated in the Enforcement Notices themselves, because the Council has drawn the red-line annotating the Notice Area well beyond the compound area. Based on the information provided in this application, we anticipate that the Council will accept the planning unit (the PUS area) is significantly larger than previously noted on the Notices as new evidence has been brought to them, and that a mixed use has taken place across the whole PUS area for more than 10 years.
- 5.26. On this, it is clear that a mixed use that has taken place continuously over the last 10 years includes storage and horticulture. It is also clear that the use includes a landscaping business (which may or may not be a use in its own right, but

regardless of whether it is or isn't, has taken place as part of the mixed use for more than 10 years, having begun in 2009). There also appears to be a parking use, which has been consistent since 2010. There are a number of ancillary activities taking place (parking, loading/unloading of vehicles), but these seem to be related to the primary uses.

### **Operational Development**

5.27. With the use established, we can now turn to the operational development that has concerned the Council in the past. These are:

- i) The construction of a hardstanding
- ii) The construction of a flat roof structure
- iii) Placement of shipping containers.

5.28. We comment on these now.

#### Hardstanding

5.29. It is clear from the aerial images, Mr Gallagher's statutory declaration and his photos at his Exhibit 4 (2015 photographs), Mr Gregory's declaration; and Mr Chapman's declaration and Exhibit 9 (2015 photographs) that the tarmac and road planings/shingle (with sub-base beneath) hardstanding surfacing was replaced by concrete in 2015. Mr Gregory notes that there is no longer flooding in that area, which was sometimes a problem because standing water had been a problem on that part of the site for many years. It is clear that it was laid more than 4 years ago and is now immune from enforcement.

#### Flat Roofed Structure

5.30. Previously, the Enforcement Notice reference 20/0019/ENF identified two different structures. That is because the plan and the photograph showed two different structures. Both have shallow pitched roofs.

5.31. For the sake of clarity we can refer to both of these. The structure photographed by the Council as the Flat Roofed Structure (as this is the name used by the Council on the photograph on the Notice), and we can refer to the other structure as the 'Orange Structure' as it is located on land shaded orange on the Notice.

5.32. Mr Chapman explains that he is certain that the Orange Structure would have been built before the end of June 2018. He refers to his Exhibit 6, which is a photograph of the Orange Structure in question on the 4th April 2018. He knows that the photograph was taken on that date because that is the name of the photograph file (20180404\_194135.jpg). The structure is clearly in position on the aerial image dated May 2018 (Figure 17), which corroborates Mr Chapman's declaration.

5.33. Both Mr Chapman and Mr Gallagher confirm the Flat Roofed Structure began being built in June 2019. It is a simple lean-to and was finished in early July 2019. You cannot see it on the June 2019 aerial image (Figure 20), but you can see it in the September 2019 image (Figure 21) which corroborates their declarations.

5.34. On this evidence it is clear that the Orange structure indicated on the Notice is immune from enforcement. The Flat Roofed Structure appears to have been in place now for more than four years and is also therefore immune from enforcement.

#### Shipping Containers

5.35. Mr Gallagher has provided his statutory declaration that was submitted as part of previous application reference 19/2275/CEU. The application was for a Certificate of Lawfulness of Existing Use or Development for the siting of storage containers.

5.36. The reason the application was refused was because the Council claimed that the containers were supporting an unauthorised use and that it was therefore necessary for the operational development to have been in place for 10 years, not 4 years (the application documents and decision notice are enclosed at **Appendix 19**). This is in line with the Murfitt principles (*Murfitt v Secretary of State for the Environment and East Cambridgeshire* [1980]). In the Murfitt case, it was established that where operational development was part and parcel of the material change of use, or integral to it, then the four year rule does not necessarily apply and as such the works would be subject to the ten year enforcement time limit. In that case, hardstanding was laid for the parking of HGVs, and although the hardstanding had been laid more than 4 years before the enforcement notice was issued, it was considered so much an integral part of the unauthorised use of the site that it could not be considered separately.

5.37. The Council would agree that the shipping containers have been stationed on the land for at least 4 years.

5.38. Mr Gallagher refers to his Statutory Declaration prepared in support of application reference 19/2275/CEU enclosed at his Exhibit 6.

5.39. In that Statutory Declaration, he declared that the containers have been stationed on the land outlined in red (as shown in that accompanying Figure 1 site location plan) and that they were used as storage related to the activities on the site since July 2015.

5.40. The wording of that Statutory Declaration is clear, and reads:

*"1. I have been in the employ of Easigrass (Distribution) Ltd since 2 February 2010 and as Managing Director of the Chobham Depot since 18 June 2015. My role includes general management of the site and management of the business day-to-day operation on the site.*

*2. By 18th July 2015 we prepared the site and the ground to receive a number of containers which were purchased from 1st Containers (uk) Ltd. On 19th July 2015 the containers were stationed on site.*

*3. Since that date, the containers have been stationed on the land outlined in red as shown in Figure 1 (site location plan) submitted with this planning application and have been used as storage related to the activities on site".*

- 5.41. The number of containers does not change, but the first floor level (the top level) can move and their position does change to accommodate demands.
- 5.42. Overall then, there is ample evidence that containers have been on the land for more than 4 years.

## 6. Summary and Conclusion

- 6.1. Laister Planning Limited has been instructed by our clients, to hereby submit an application under Section 191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Existing Use or Development (CLEUD) for *'Mixed use horticultural nursery, storage, landscaping business, car parking and activities ancillary to these uses, and retention of hardstanding and a flat roof structure, and retention of shipping containers'*.
- 6.2. A search of the planning history of the site reveals that the application area does not benefit from any extant planning permission or lawful development certificate. Since July 2022 a total of five enforcement notices have been issued, each of them including some part of application site within their red line. Each of these notices has been withdrawn following the submission of an appeal against the notices.
- 6.3. In this statement we have reviewed the purpose of an application under Section 191 of the Planning Act. Within such an application, the Applicant should provide evidence that, on the balance of probability, the use has taken place for a period exceeding 10 years and operational development has been in place for a period exceeding 4 years.
- 6.4. The planning unit has been established through examining the evidence provided in Statutory Declarations, reviewing photographs taken by Nick Laister in 2012 and 2022, and then applying the *Burdle* tests, the application site comprises all the land that is used as the mixed-use site. It is not possible to separate any one use away from the planning unit which has been identified. It is however, quite clear, what the planning unit is and what the mixes of uses taking place in that unit is in the present day.
- 6.5. The applicant has provided evidence accompanying this application which demonstrates, on the balance of probability, the existing use has taken place for at least the last 10 years. Statutory Declarations from people who have a good knowledge of the site dating back over at least the last 10 years supplemented by declarations made by others with fewer than 10 years of knowledge, and photographs by Nick Laister, have been provided. Each person has made a declaration of their knowledge of the uses that have taken place on the application site for the period of their knowledge.
- 6.6. From this evidence it is clear that on the balance of probabilities, the application site has been used for more than 10 years for the purposes described and the built development has been in place for more than 4 years. There is no unlawful use taking place, so the four year rule would still apply at this time.