

Appendix 19.1

Cover Letter for reference 19/2275/CEU

Our ref: PPS1422

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Milton Park
Abingdon, Oxfordshire
OX14 4SH
T +44 1235 863 206

Date: 12 December 2019

Planning Department
Surrey Heath Borough Council
Surrey Heath House,
Knoll Road,
Camberley, Surrey
GU15 3HD

Dear Sir / Madam,

Application under S191 of the Town and Country Planning Act (TCPA) 1990 (as amended) for a Certificate of Lawfulness of Existing Use or Development (CLEUD) for the siting of storage containers at Easigrass Chobham Depot, Bagshot Rd, Chobham, Woking GU24 8DB.

On behalf of our client Easigrass (Distribution) Ltd ('The Applicant'), please find enclosed an application under Section 191 (S191) of the TCPA 1990 (as amended) for a Certificate of Lawfulness of Existing Use or Development (CLEUD) for the siting of containers in the land at Easigrass Chobham Depot, Bagshot Rd, Chobham, Woking GU24 8DB.

This application seeks to demonstrate that the containers, considered to constitute operational development, have been sited at the site for a continuous 4-year period and therefore have become immune from enforcement action and thus lawful. To this end, evidence is provided in this covering letter and appendices to demonstrate that, on the balance of probabilities, the operational development resulting from the siting of containers on the site is lawful by virtue of time.

The application comprises:

- This cover letter;
- Application form;
- Site Location Plan (Figure 1);
- Email trail with enforcement officer (Appendix A);
- Copy of appeal decision ref. APP/W1850/X/11/2164822 (Appendix B);
- Copy of appeal decision ref. APP/C3620/C/17/3174102 and APP/C3620/C/17/3174111 (Appendix C);
- Signed Statutory Declaration by Anthony Gallagher, Managing Director Easigrass Chobham Depot (Appendix D);
- Photographic evidence (Appendix E);

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- Invoice for acquisition of containers from 1st Containers (uk) Ltd (Appendix F);
- Aerial photographs (Appendix G);
- Google Streetview Aug 2016 (Appendix H);
- Photos of the site from the applicant, December 2019 (Appendix I);
- Planning Application Fee (based on 0.1Ha of site area: £234.00 to follow).

The site and surroundings

Easigrass Depot is located on the south side of Bagshot Road, to the west of the village of Chobham in Surrey. To the front (north) of the site is a car parking area covered by hardstanding, the same to the north-west and west of the site. To the rear (south) is Chobham Adventure Farm, the buildings of which are separated from the application site by car parking areas and boundary treatment.

Purpose of an application under Section 191 of the Planning Act

The purpose of a Lawful Development Certificate (LDC) 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, emphasis our own).

Appendix A contains correspondence with the Council’s enforcement officer who, after consultation with the Planning Department, concluded that the siting of the containers at the site is considered to constitute ‘operational development’. Operational development becomes immune from enforcement if no action is taken within 4 years of substantial completion for a breach of planning control (PPG, Paragraph: 004 Reference ID: 17b-004-20180222).

The burden of proof to demonstrate the development is lawful rests with the applicant and when considering Lawful Development Certificates, a Local Planning Authority needs to consider “***whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process***” (PPG, 009 Reference ID: 17c-009-20140306).

The PPG further adds “...***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***” (PPG, 006 Reference ID: 17c-006-20140306).

It is worth highlighting that although the burden of proof is on the applicant, the courts have held that the relevant test of the evidence on such matters is **on the balance of probability**. This test will be applied by the Secretary of State in any appeal and therefore an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely ‘beyond reasonable doubt’.

Moreover, the Court has held (see *F.W. Gabbittas 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.

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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'.

The guidance quoted above provides the basis on which any LDC application under Section 191 of the TCPA 1990 (as amended) must be assessed.

This approach has been followed by the Applicant and the evidence provided with this application unambiguously prove that, on the balance of probability, the operational development consisting in the siting of containers at the site is lawful by virtue of time.

In summary, it is considered that the key elements to demonstrate that the containers are immune from enforcement are:

- i) Considering whether the containers do represent operational development;
- ii) Establishing the date on which the breach of planning control was substantially completed and;
- iii) Evidencing that four years or more have passed since that date.

We address each of these matters in turn below.

Whether the containers represent operational development

Section 55 of the Act, which defines development as follows:

“(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act “building operations” includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.”

In order to qualify as 'building operations' for the purposes of the Act, operations must relate to a building. The term 'building' in section 336(1) of the 1990 Act has a wide meaning, including any structure or erection. The case law is clear in concluding that the definition of 'building' should be interpreted to include structures which would not ordinarily be described as buildings.

There is no single definition as to what constitutes a building operation. However, the size of the building/structure, the degree of permanence and the degree of physical attachment to the land are generally considered to be the main deciding factors. In most cases, shipping containers are considered to fall within the category of building operations by virtue of their size and permanence.

Development Control Practice (DCP) covers this issue, and states (21.3151) that: *“Containers stored on land, whether full or empty, would normally be judged as operational development and tantamount to a permanent building”*.

A number of appeals have considered the question of whether a shipping container is a building or a use of land (a chattel). Almost all decisions have taken the view that a shipping container is a building, particularly where the container has not moved. Examples would be APP/W1850/X/11/2164822 (Smallbrook Farm, Clehonger, Hereford HR2 9TP, 18th June 2012, **Appendix B**), where Inspector Brian Cook considered that

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containers are buildings and that their erection is operational development for which express planning permission is required because of their size (particularly cumulative size of several containers) and permanence. See also conjoined appeals APP/C3620/C/17/3174102 and APP/C3620/C/17/3174111 (Land on the south side of Horley Road, Charlwood, RH6 0BJ, 20th March 2018, **Appendix C**), where Inspector BM Campbell made the same judgement – see in particular paragraphs 6 and 7.

Establishing the date on which the breach of planning control was completed

Appendix D is a statutory declaration signed in the presence of a solicitor by the Applicant confirming the following:

- By 18th July 2015 the site was prepared to receive the containers purchased from 1st Container (UK)
- On 19th July 2015 the containers were stationed on site
- Since the above date, the containers have been stationed on the land subject to this application and used as storage in connection with the use of the site.

Appendix E contains photos taken by the applicant in 18th and 19th July 2015.

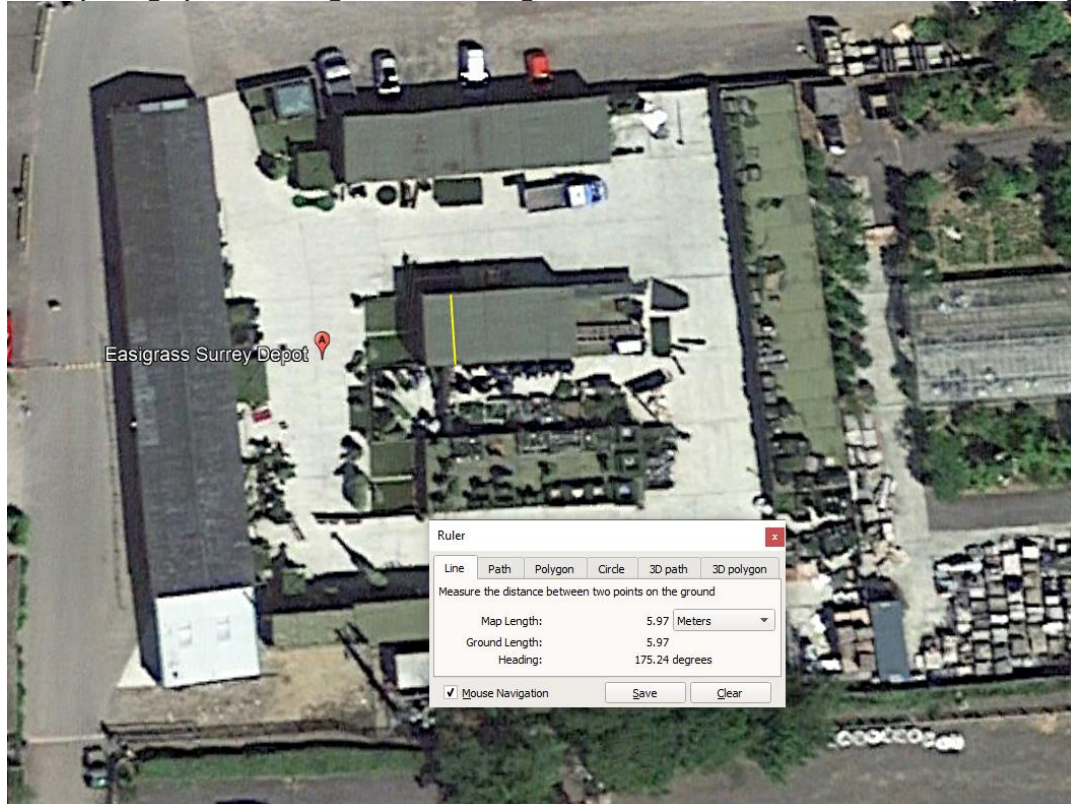
Image 1 shows the site on 18th July 2015 (as noted by the photo's date and location, clearly visible in the Appendix). This photo supports the Applicant's assertion that, by this date, the site was being prepared to receive the containers by creating openings in the concrete bases that cover the site as to allow the containers to be safely sited on the land. The Applicant indicates that Image 1 was taken the day before the containers were due to be sited on the land. Image1 was taken looking east to west on the site.

Image 2 was taken on 19th July 2015 looking from within the site towards the north (front of the site). It shows a number of green containers on site. Image 3 was taken the same day from within the site looking east and again show a number of containers of varying colours (green, blue and brown) on the land. These photos demonstrate the containers were in place by 19th July 2015 and in any case, by the end of July 2015.

Appendix F provides further evidence of the above, as it contains an invoice from 1st Containers (uk) Ltd dated 04/08/2015 to the attention of Easigrass (Distribution) Ltd (the Applicant) regarding the acquisition and delivery of 45no 20ft containers. The dimension matches the containers in site, as evidenced by measuring in Google Earth, a screenshot shown below:

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Image 4 Aerial photograph from Google Earth showing measurement of containers of circa 20ft. (Google Earth)



The dated invoice in **Appendix F** was issued by a third party and its description matches the containers in place. This evidence along with the declarations contained within **Appendices D and E** (dated photos provided by the applicant) unambiguously and precisely establish that the date by which the breach of planning control comprising on operational development resulting from the siting of containers was completed on 19th July 2015.

Evidence that 4 years or more have passed since the breach was completed

In order for the operational development to be considered lawful by virtue of the passage of time, meaning no enforcement action can be taken, evidence must be provided to show that, on the balance of probabilities, the operational development which does not benefit from planning permission, meaning the containers subject of this application, have been in place between July 2015 and July 2019 (4-year period).

Appendix G contains aerial photographs dated March 2014; June 2015; March 2017 and June 2018. These have been obtained from Google Earth and Bluesky Aerial Imagery. There are no aerial photographs available for 2016.

The aerial photos show that by March 2014 and June 2015, the containers were not on site, corresponding with the evidence provided in the section above.

The photos on **Appendix E** show the beginning of the siting of the containers on site, however the applicant has confirmed that a second tier of containers were added to those which sit facing north shortly after the first containers were on site. The containers to the east of the site are single storey. These have remained in the same configuration since their installation on July 2015.

The aerial photographs dated March 2017 and June 2018 clearly show the containers in place thus demonstrating continuity of the breach. Since no aerial photographs are available for 2019, **Appendix I** contains photos of the site dated December 2019. These show the containers continue to be in place.

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Additional 'Google streetview' photo presented in **Appendix H** dated August 2016 also reveal containers sited on the land. The statutory declaration contained in **Appendix D** also indicates the containers remain on site to date, showing the breach has continued in 2019. It can also be confirmed by the Local Planning Authority that the containers remain in place to date by visiting the site.

Conclusions

The present is an LDC for an existing operational development under S191 of the TCPA,1990 to demonstrate that, on the balance of probabilities, containers have been sited on the land outlined in red in the submitted Figure 1 for a period of 4 years or more. These have been considered to constitute 'operational development' as expressed by Council correspondence included as **Appendix A** and supported by case law.

Amongst the evidence submitted with this application are dated photographs taken by the Applicant in July 2015 and December 2019; aerial photographs and streetview photos from third parties (Google and Bluesky Imagery) showing the containers in place between 2016 – 2019; a dated invoice from 1st Containers (uk) Ltd for the purchase of the containers and a statutory declaration signed by the Applicant and certified for a solicitor.

We are of the view therefore that this cover letter, appendices and supporting information sets out the basis under which a S191 application should be determined and provides unambiguous evidence that the containers are now lawful by virtue of time since they have been in place for a continuous 4-year period and hence no enforcement action can be taken.

Bearing the above in mind, we look forward to your confirmation that the certificate can be issued on this basis.

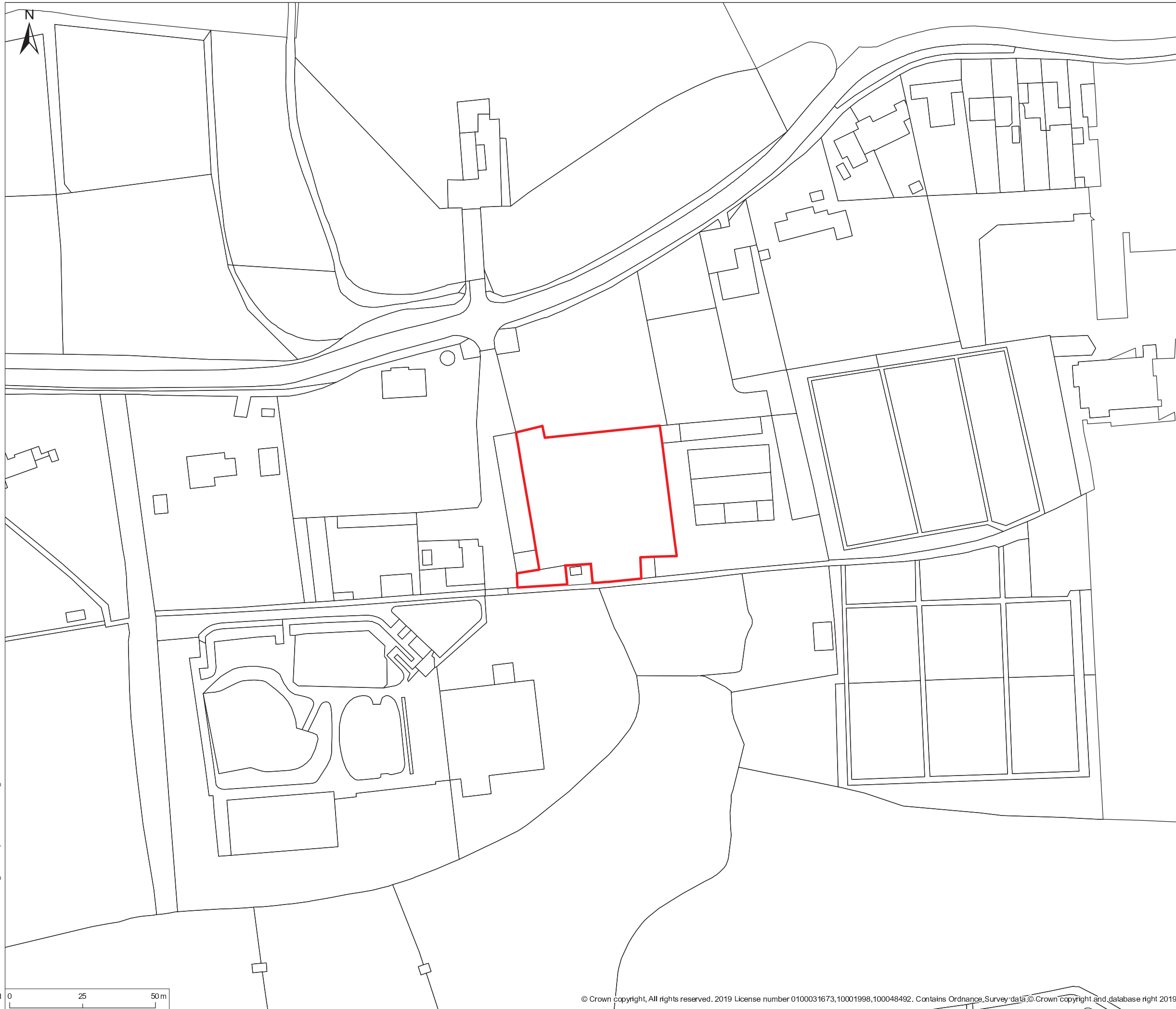
Yours sincerely,
for RPS Consulting Services Ltd

Joney Ramirez

Mrs Joney Ramirez MRTPI
Senior Planner
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Appendix 19.2

Location Plan



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 Notes
 1. This drawing has been prepared in accordance with the scope of RPS's appointment with its client and is subject to the terms and conditions of that appointment. RPS accepts no liability for any use of this document other than by its client and only for the purposes for which it was prepared and provided.
 2. If received electronically it is the recipient's responsibility to print to correct scale. Only written dimensions should be used.

- Legend**
- Site Location
 - Other Land Under Ownership of Applicant

Rev	Description	By	CB	Date

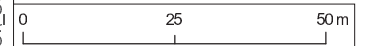


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Client -
 Project Easigrass (Distribution) Ltd.
 Title Site Location Plan

Status	Drawn By	PM/Checked By
DRAFT	BG	JR
Project Number	Scale @ A3	Date Created
PPS1422	1:1,250	DEC 2019
Figure Number	Rev	
1	-	

O:\SOUTH PLANNING\1422 Easigrass Depot\TechDrawings\1422-0001-03.mxd



Appendix 19.3

Appendix A – Correspondence With Case Officer

Our ref: PPS1422

20 Western Avenue
Milton Park
Abingdon, Oxfordshire
OX14 4SH

Date: 03 March 2020

Planning Department
Surrey Heath Borough Council
Surrey Heath House,
Knoll Road,
Camberley, Surrey
GU15 3HD

[Via email only]

Dear Ms. Sarita Bishop,

Response to queries and to objections received regarding application ref. 19/2275/CEU for a Certificate of Lawfulness of Existing Use or Development for the siting of storage containers.

Many thanks for providing us with an opportunity to clarify the proposals and respond to the objections received on this application.

For the avoidance of doubt, we attach Drawing No. 1422-0003-002 (Figure 1) which is an additional drawing to be read in conjunction with the drawings and supporting documentation initially submitted with the application. Drawing No. 1422-0003-002 (Figure 1) shows the location of the existing containers on site as well as the number of containers and whether these are single or double stacked.

The number of containers subject to this application

There are currently a total of 67 containers on site. This application seeks to regularise the siting of a total of 52 containers as follows:

- 9 containers at the bottom tier of those located to the north (front) of the site (first row);
- 12 containers at the centre of the site (second row), these comprise 5no. containers double-stacked plus 2 containers single stacked;
- 7 containers at the centre of the site (third row), these are arranged on a single row;
- 4 containers at the south west of the site; accommodating toilets and office (double-stacked);
- 6 containers at the rear of the site (fourth row). The 4 containers to the eastern part are currently double stacked however, only the bottom tier forms part of this application.
- 14no. containers arranged single-stacked towards the east of the site.

Clarification on the evidence submitted

Appendix E of the submitted evidence:

- Image 1 shows the site on 18 July 2015 looking east to west, towards the original barn building at the west boundary. It evidences that concrete slabs were removed to form the two central rows, each accommodating 7 containers at ground level. The image shows two areas of similar size matching the location of the second and third row of containers shown on aerial photographs (**Appendix G**).
- Image 2 shows 9 containers on August 2015. The photo was taken looking north, with the original barn building showing to the left of the image, serving as reference point. The photo is clear enough to allow counting of the containers. These correspond to the containers shown on aerial photographs as the first row. It is acknowledged that a second tier of 9 containers was added later, and therefore do not form part of the current application.
- Image 3 shows 14 containers on August 2015. The photo was taken looking north-east and the number of containers is easily identifiable in this photo. The greenhouse at the neighbouring site to the east serve as a reference point to evidence the exact location of these containers. The amount and siting of these containers correspond to aerial photographs (**Appendix G**).

Appendix F of the submitted evidence shows an invoice for the acquisition of 45 containers which match the size of those on site. Although a total of 7 containers are not accountable under this invoice, its date provides with additional evidence to corroborate the applicant's assertion that the containers were sited on the land on 19 July 2015.

Appendix G of the submitted evidence contains dated aerial photographs. We would like to highlight that an aerial dated 30 June 2015 shows the site being cleared to allow the containers to be sited on the land. This image correlates to other submitted evidence and cumulatively demonstrate that, on the balance of probabilities, a total of 52 containers have been on the site since at least July 2015.

There is no aerial imagery available for 2016 however, evidence under **Appendix H** shows a Google Streetview image dated August 2016 that further corroborates the applicant's recount of the events on site since it shows the first row of containers as well as the two-tier containers at the second row.

An aerial photo dated March 2017 was also submitted in **Appendix G**, clearly showing the current rows of containers, including those to the rear of the site. Cast shadows from the containers to the south-west, as those at the second and third rows, show these are double stacked, in line with the evidence shown in **Appendix H**.

Appendix I contains up to date photos of the site. These show the containers at the south-west, second row, third row and to the east to the site remain as in 2015. All the containers have been re-painted in dark green for aesthetic reasons. The last image in this appendix shows the double-stacked containers at the first row (front of the site), the second tier of these not forming part of this application.

Response to the objections received

Two objections (1 from the Parish Council, 1 from a neighbour) were received. We address the comments below:

Chobham Parish Council

- **Insufficient evidence has been provided to demonstrate the storage containers have been in place since 19th July 2015** – In conjunction with this current letter, we are of the view that sufficient and precise evidence has been provided to demonstrate that, on the balance of probabilities, a total of 52 containers have been in place since 19th July 2015.
- **Statutory declaration refers to 'a number of containers' which is ambiguous. The declaration should include exact numbers and a plan showing the containers' location** – The current letter and submitted Drawing No. 1422-0003-002 (Figure 1) provide unambiguous information on the location, number and stacking of the containers and clearly identifies which containers do not form part of the current application.
- **Photos labelled August 2015 show only 23 containers with no evidence of containers along southern boundary or towards the centre of the site** – Information has been provided showing that, on 18th July 2015, the site was being prepared to receive the containers. Image 1 of **Appendix E** shows two areas of similar size matching the location of the second and third row of containers

shown on aerial photographs. The Parish Council has provided no evidence to contradict the applicant's recollection of events. We further put forward that, given that the business started operating at the site on June 2015 (**Appendix D**) and the site was ready to receive the containers on 18th July 2015, it would be highly unlikely these were not sited at the site on the positions shown on Drawing No. 1422-0003-002 (Figure 1). As such, the submitted evidence demonstrates the containers subject to this application being in place since at least July-August 2015.

- **Photos labelled December 2019 include additional containers of different designs, many double stacked** – As mentioned in this letter, the containers were painted green to improve their appearance and as evidenced, the initial 52 containers sited on July 2015 have not changed their location or design. It is acknowledged that a total of 15 additional containers were subsequently sited on the land, to form a second tier at the first row and partly at the second and fourth rows. These have been clearly identified on Drawing No. 1422-0003-002 (Figure 1) and do not form part of this application.
- **Submitted invoice for 45 containers includes no detail for location or installation. The invoice is for more than the 23 containers shown on the photos with the rest being possibly delivered to other Easigrass branches. The invoice cannot be considered as evidence** – The submitted invoice needs to be seen in the context of the other evidence provided as it gives further corroboration that 45 containers were purchased by Easigrass on August 2015.

We would like to highlight that, in line with Paragraph 006 (ref. 17c-006-20140306) of the Planning Practice Guidance (PPG), when “... 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.”

The Parish Council has not provided any evidence to contradict the applicant's evidence as to demonstrate that applicant's recollection of events is less than probable, only providing unsubstantiated comments. The Applicant developed the site in 2015, so has first-hand knowledge of the dates on which containers were sited on the land, and the documentary evidence (aerial photographs, ground level photographs) do not in any way suggest that the Applicant's evidence is not an accurate reflection of how the site developed.

- **Aerial captures do not show any containers until 25th March 2017. On this date containers are shown double stacked at the south-west corner with the rest being single storey (based on cast shadows). By 23rd June 2018 the configuration appears to have changed with containers double stacked to the north** – As mentioned in this letter, there are no aerial photographs available for the site covering the period 2016 – 2017. RPS has looked to source aerial photographs from Getmapping, Ordnance Survey, Google Earth and Bluesky-GeoPerspectives with aerial photos only available for 30/06/2015 and 25/03/2017. In addition, the Parish Council appears to conclude that cast shadows only show double-stacked containers at the south-west corner of the site.

We are of the opinion that the lack of an aerial photo for 2016 does not make the applicant's recollection of events less than probable, in particular when taking into consideration that GoogleStreetview photos are available (**Appendix H**) showing the containers in place, with two-tier containers at the second row of the site. As such, we are of the opinion that the Parish Council's comment that containers only show on site from 25th March 2017 is unsubstantiated.

Neighbour objection

- **The present number of containers have not been there since 2015, there has been an increase in the number of containers since 2017 with double storey containers only appearing between 2016 and 2017 with more double storey containers added in 2019** – It has been acknowledged that not all the containers currently on site have been in place since 2015, with Drawing No. 1422-0003-002 (Figure 1) clearly showing those containers subject to the current application. Cumulatively, our submitted evidence demonstrates that the containers at the centre and south-west of the site were double-stacked, as they remain.
- **Between 2016 and 2017 a line of single containers formed the eastern boundary between the site and my property, they were then moved to the Depot and a permanent fence erected in May 2017** – There is no evidence this was the case and therefore this comment is purely anecdotal. Should evidence to substantiate these comments be provided, we would kindly request the Council provides us with a copy, to enable us to prepare a response. Despite this, we are of the

Our ref: PPS1422

view that the comment confirms the containers were in place by 2016 and the submitted evidence in **Appendix E** shows the 14 containers at the east boundary in the same location as in aerial photos included at **Appendix G**.

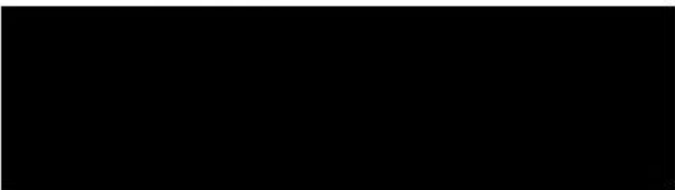
When looking at the evidence cumulatively, it is clear that, on the balance of probabilities, a total of 52 containers have been sited on the site for more than 4 years, and therefore these are immune from enforcement action. To this regard, we kindly request the Council issues a Lawful Development Certificate for the retention of 52 containers, as shown in submitted Drawing No. 1422-0003-002 (Figure 1).

Please do not hesitate to contact me if you have any queries.

Yours sincerely,
for RPS Consulting Services Ltd



Mrs Joney Ramirez MRTPI
Senior Planner



Appendix 19.4

Appendix B - Copy of appeal decision ref. APP/W1850/X/11/2164822



Appeal Decision

Site visit made on 12 June 2012

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 June 2012

Appeal Ref: APP/W1850/X/11/2164822

Smallbrook Farm, Clehonger, Hereford HR2 9TP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Stuart Sayce against the decision of Herefordshire Council.
 - The application Ref DMS/110750/V, dated 22 March 2011, was refused by notice dated 4 July 2011.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is proposed stationing of storage containers.
-

Decision

1. The appeal is dismissed.

Procedural matters and main issue

2. Notwithstanding the manner in which section E of the appeal form has been completed, all the evidence is that the application has been made under s192 of the Act, not s191. However, in section 8 of the application form (Description of Proposal), the appellant has stated that the proposal consists of neither the carrying out of building or other operations nor a change of use of land or buildings and therefore fails to identify the development for which the LDC is sought.
3. In dealing with the application the Council described the development as 'proposed additional commercial storage containers'. On the appeal form however, the appellant describes it as 'proposed stationing of storage containers'. There is no power to impose conditions on a LDC. Where a submission is made under s191 of the Act it is possible to specify, say, a level of use or scale within the description of the development declared lawful so that a benchmark is set against which any future material changes may be judged. However, there is no such power under s192 to vary or modify the description of the development proposed in the application. The onus is therefore on the applicant to describe in precise terms the development that is proposed. In this case details relating to the size of the units to be placed, the period during which they are to remain and whether they are to be removed at the end of that period have varied during the appeal process. I can therefore only deal with the application on the basis described by the appellant on the appeal form.

4. The main issue therefore is whether at the date that the application was made the proposed stationing of storage containers would have amounted to development for which planning permission would have been required.

Reasons

The case for the appellant

5. On 21 March 2000 the Council granted planning permission at the appeal site (ref: SW1999/2115/F) for the 'change of use of redundant farm buildings into light industrial workshops and storage facilities' (the 2000 permission). Nine conditions were imposed. Numbers 2 and 3 require respectively the development and the new access arrangements to be carried out in accordance with numbered plans while numbers 6 and 7 control the uses to which particular buildings may be put.
6. A further planning permission (ref: SW2001/1584/F) was granted on 19 September 2001. The development is described on the decision notice as 'variation of conditions 2 & 3 in relation to planning permission SW1999/2115/F – change of use of redundant farm buildings into light industrial workshops and storage facilities' (the 2001 permission). This is subject to two conditions only, the standard commencement condition and what is effectively a replacement of condition 2 of the 2000 permission substituting a later revision for one of the approved plans.
7. The appellant states that both planning permissions have been implemented. The most recent clarification by the appellant of the details of the proposal is given in the 'final comments' stage letter to the Planning Inspectorate dated 16 January 2012. This states that the proposal is to site a maximum of 20 shipping containers with dimensions of 10 ft by 8 ft in three areas of the appeal site all of which are within the area subject to the 2000 and 2001 permissions. The containers would be transported by vehicle and off loaded using a single hoist which is an integral part of the delivery vehicle. They would not be affixed to the land and are fully portable. They would be in place for a maximum of three years after which they would be removed. They would be used for commercial self-storage and the purpose of the limited period siting is to test market interest in what represents a business diversification project.
8. The essence of the appellant's case is that the appeal site is a single planning unit in the use permitted by the two planning permissions. The development proposed would be wholly within that planning unit and would not affect its extent or nature in any way. The stationing of the storage containers would amount to a use of land. However, it would be for a use that is already permitted at the site and, although it would represent an intensification of the use, its character would remain the same. The development would not therefore represent a material change of use and consequently would not amount to development within the meaning of s55 of the Act. A number of judgements are cited in support of this position.

The case for the Council

9. The Council accepts that if the development proposed is considered to be a use of land then, in the planning circumstances of the appeal site, it would not constitute a material change in the use of the land. However, its view is that the development amounts to operational development and that planning permission is therefore required.

10. It takes this view on the basis of the information supplied with the LDC application. In this, the units are described as being either 20 ft by 8 ft or 40 ft by 8 ft in size. Although some indication is given as to when the units might be placed, it is possible that all 20 could be on site at the same time. The application submission does not indicate that they would be removed either when not in use or at the end of a three year period. Having regard to the weight of the units, the difficulty of moving them within what is a constrained site and the length of time that they would be in-situ, the Council concludes that the number of units and the degree of permanence means that the particular proposal represents a form of operational development.
11. While the Council notes the clarifications given on certain aspects by the appellant through the appeal process neither this nor its review of various judgements and appeal decisions leads it to take a different view.

Appraisal

12. While I do not have a complete picture in the evidence, it seems to me from the description that the 2001 permission is likely to have resulted from an application under s73 of the Act. A permission granted pursuant to this section does not replace the previous permission; it creates a new one subject to the conditions imposed which stands along side the earlier permission(s). It seems to me therefore that the appellant's assertion that both have been implemented is unlikely to be correct. The permission that has been implemented will, in my view on the evidence before me, be determined by whichever of the plans approved is reflected in the development on the ground. Importantly, neither permission includes a condition limiting or prohibiting the use of land surrounding the buildings. However, 'use' in relation to land does not include the use of land for the carrying out of any building or other operations on it (s336(1) of the Act).
13. My determination of the main issue therefore turns on whether the development proposed is, as the appellant asserts, a use of land or, as the Council contends, operational development. Although both parties cite various authorities for their respective positions, no copies of the judgements or appeal decisions have been provided. In any event, it is clear from the evidence that these matters are fact sensitive and I have therefore determined this appeal on those before me.
14. The meaning of development given in s55 of the Act includes the carrying out of building operations. The approach of the Court when being asked to construe the various definitions has been to ask whether what has been done has resulted in a building. If it has, then the Court has said that it would require a great deal of persuading that the erection of it had not amounted to building or other operations. The term 'building' is defined in s336(1) of the Act and includes any structure or erection. The Court has identified three primary factors as being relevant to the question of what is a building. These factors are size, physical attachment to the ground and permanence and I deal with each in turn.
15. Although it need not be large, a building would usually be constructed where it is to stand rather than brought to site already made. In this case the storage containers would be delivered to the site already fabricated. The ground on which they would be placed is already hard surfaced and mostly level. Some open storage of materials and equipment already takes place within fenced-off

- pens in certain areas. It seemed to me however that little groundwork would be required before the containers were lowered into position.
16. Although the site did not appear to present any particular constraints for the movement of the delivery vehicle, placement of each container will nevertheless require the specialist lifting equipment referred to in the application and some skill in manoeuvring each into the precise positions shown on the application drawing. A degree of precise levelling of the ground or the container may also be required to achieve the three lines of containers illustrated. Furthermore, while individually the units may not be large, when placed side-by-side in groups, they would have the appearance of a substantial structure. In summary, I consider that some, albeit relatively modest, building or other operations would be involved in the placing of what would result in structures of some size on the land.
 17. Physical attachment to the ground is not regarded in itself to be conclusive either way but it is a factor to be weighed in the balance. In this case although the structures will merely stand directly on the ground, their own weight will provide the necessary stability.
 18. Turning finally to permanence, it is my understanding that the same specialist lifting gear would be required to move the containers. As a whole, the three groups of containers would have ample dimensions and would be anchored to the ground by their own weight. The evidence suggests an intention that at least some of the containers are to be in place for a period of some three years. Moreover, nothing in the proposal that could be the subject of the certificate would ensure their removal. As a matter of fact and degree I regard these factors as denoting an intention that the containers are to be placed with the prospect of some permanence and therefore conclude that, on this element, there will be a physical change of some permanence to the land.
 19. Having regard to all these factors I consider that the absence of any works to secure the physical attachment of the structures to the ground does not assist either way and, in any event, is outweighed in any balancing exercise by both the nature of the operations required to place them on the land and their permanence which I regard as the decisive factor of the three in this case. Therefore, as a matter of fact and degree judgement, I consider that the containers proposed are buildings and that their erection is operational development for which express planning permission is required.

Conclusions

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed stationing of storage containers was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Brian Cook

Inspector

Appendix 19.5

Appendix C - Copy of appeal decision ref. APP/C3620/C/17/3174102 and APP/C3620/C/17/3174111



Appeal Decisions

Site visit made on 10 January 2018

by **B M Campbell BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2018

Notice A: APP/C3620/C/17/3174102

Land on the south side of Horley Road, Charlwood, RH6 0BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Saunders against an enforcement notice issued by Mole Valley District Council.
- The enforcement notice, numbered 2017/0002/ENF(a), was issued on 6 April 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land to a mixed use comprising a (B2) timber processing place, (B8) storage and (sui generis) ground maintenance and tree surgery contractors yard/depot.
- The requirements of the notice are:
 1. To cease the use of the Land as a mixed use comprising a (B2) timber processing place, (B8) storage and sui generis ground maintenance and tree surgery contractors yard/depot.
 2. To completely remove from the Land all materials, plant and machinery stored on the land that is associated with the unauthorised use.
 3. To completely remove from the Land the timber logs and wood chip storage piles.
 4. To completely remove from the Land the hardcore, hardstanding, polytunnel, log shelter, pole barn, two storage containers, office building and portable toilet.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variation.

Notice B: APP/C3620/C/17/3174111

Land on the south side of Horley Road, Charlwood, RH6 0BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Saunders against an enforcement notice issued by Mole Valley District Council.
- The enforcement notice, numbered 2017/0002/ENF(b), was issued on 6 April 2017.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised laying of hard-core and associated material onto the Land creating a hardstanding and the erection of a polytunnel, log shelter and pole barn building and the stationing of two storage containers, office building and portable toilet and the erection of a perimeter fence.
- The requirements of the notice are:
 - (i) To completely remove from the Land the hardcore and associated materials and all imported waste and other materials used to create a hardstanding.
 - (ii) To completely remove from the Land the polytunnel, log shelter and pole barn building.
 - (iii) To completely remove from the land the two storage containers, office building and

portable toilet.

- (iv) To completely remove from the land the perimeter fence.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Appeal C: APP/C3620/W/17/3174096

Land opposite Redleaf, Horley Road, Charlwood, RH6 0BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr L Saunders against the decision of Mole Valley District Council.
- The application Ref MO/2016/1265/PLA, dated 4 August 2016, was refused by notice dated 7 November 2016.
- The development proposed is described as *"The land is to be used as a yard for storing arisings from forestry operations such as timber, logs and woodchip. The area had previously had road plantings put down to make the area hardstanding but it had completely overgrown over time and had become completely covered in bramble and saplings. The area has now been cleared of undergrowth which has uncovered some young good specimen trees which we have retained and has been fenced and secured"*.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. At the site visit, the Appellant's Agent pointed out that the postcode on the enforcement notices is wrong. The correct postcode is as given in the headings above and I will correct the notices accordingly. The site address also differs between the notices and the planning application but it seems to me that this is because of the lack of a formal postal address prior to occupation. Neither description seems to me to be incorrect. With a site plan accompanying each notice and the application and the postcode corrected, I find no need to make any further alteration.
2. Prior to the site visit the Inspectorate wrote to the parties expressing my concern about the description of the development in Notice A and that used for Appeal C. As a consequence the parties agreed the following description: *Change of use of land to Arboricultural contractor's depot, office storage, the laying of hardcore to create a hardstanding and the erection of a perimeter fence, pole barn, log store [2 storage containers, polytunnel, portable toilet] and building.*
3. The alleged breach of planning control in Notice A, however, only addresses the use of the site (a separate notice the subject of Appeal B addresses the associated operational development). Furthermore, the office and storage activities are part and parcel of the depot use and not separate primary uses. As such they are embraced by the description as an Arboricultural contractor's depot and should not be itemised separately in the allegation. I intend to correct the description of the alleged breach in Notice A accordingly and am satisfied that this can be done without any injustice arising.
4. With regard to the description of the proposed development in relation to Appeal C, I will adopt the same description of the use and note that the

application and drawings also include all structures other than the portable toilet. I shall, therefore, determine the application as having been made for the use and all the structures other than the portable toilet.

5. I note the Appellant's claim that the only structures on the site which amount to buildings are the log shelter and pole barn and that all the others are moveable and so should be considered to be chattels. Such an argument should have been brought on ground (c) in relation to Notice B, that is: that there has not been a breach of control in that some of the matters alleged do not amount to development requiring planning permission. No such ground has been brought.
6. However, even if it had it would have been likely to have failed. In the first instance, s336 of the Act defines building as including any structure or erection and any part of a building as so defined but does not include plant or machinery comprised in a building. Thus the perimeter fence would be included within this definition. Moving on to consider whether other "potentially moveable" structures are buildings or chattels, it is well established that there are three primary factors of relevance – size, permanence and physical attachment. In this respect each of the structures is of a size sufficient to be considered to comprise a building. Each can be entered into in the manner that one would a building. Although, other than the polytunnel, they might not be physically attached to the ground, they remain securely in position by their own weight and, with the possible exception of the toilet, could not be moved without the aid of lifting gear, or in the case of the polytunnel by dismantling.
7. Of particular importance is the fact that each structure has remained in one position and indeed the block plan accompanying the planning application identifies a permanent location for each (other than the toilet which is not identified). I know of no intention to move any one of them and, as permanent structures, I find, as a matter of fact and degree that each amounts to a building as defined by s336 of the Act and that their installation has involved operational development within the meaning of s55 for which planning permission is required. No such permission has been granted and thus a breach of planning control has occurred in relation to each one of them. An appeal brought on ground (c) in relation to Notice B would have failed.
8. Moreover, even if some of the structures had been held not to amount to buildings and so not to have comprised development requiring planning permission, their removal could still be required in the steps set out in Notice A since s173(4) of the Act states that the breach can be remedied by restoring the land to its condition before the breach took place. Thus in seeking to remedy the breach comprising the change of use, everything brought onto the land in connection with, and to facilitate, that use can be required to be removed.

The appeals on ground (a), Notices A and B and Appeal C

Identification of the main issues

9. The Appellant's property comprises a long narrow wedge of land sandwiched between Horley Road to the north and Manns (or Man's) Brook to the south¹.

¹ The Environment Agency gives the name of the brook as Manns whilst the Appellant uses Man's

The enforcement notices address the whole of the property although the use is currently taking place on the western portion of the site. Appeal B seeks planning permission for the use on the western portion only.

10. The site lies outside the settlement of Charlwood which is a short distance to the west and so is within open countryside for planning policy purposes. It also lies within designated Green Belt. The Development Plan for the area includes the Council's Core Strategy (2009) and the saved policies of the Mole Valley Local Plan 2000. Policy CS 1 directs the location of future development in the District. In the countryside and Green Belt, however, the policy might be said to be out of date insofar as it refers to the provisions of national and regional policy guidance now revoked. Subsequent and current national Green Belt policy, however, is set out in the National Planning Policy Framework 2012 (NPPF). Paragraphs 87 and 88 indicate that inappropriate development in the Green Belt is by definition harmful; that it should not be approved except in very special circumstances; and that such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
11. Against that background and having regard to the reasons for issuing the enforcement notices and for refusing the planning application the main issues in this case are:
 - Whether the use and associated operational development are inappropriate development in the Green Belt.
 - The effect on the openness and the purposes of including land in the Green Belt.
 - The effect on the character and appearance of the rural area.
 - The effect on flood risk.
 - If inappropriate, whether the harm by reason of inappropriateness and any other harm identified would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the developments.

Reasons

Inappropriate development?

12. The proposals involve both a material change of use and associated operational development. Looking first at the buildings, paragraph 89 of the NPPF says these are inappropriate unless they are for one of the exceptions listed therein. The Appellant suggests that they fall within the first exception as they can be considered to be buildings for forestry.
13. There is no statutory definition of forestry for planning purposes and, given its ordinary meaning, it comprises the science or practice of planting, managing and caring for forests. The appeal site is clearly not in such use. Whilst the business is concerned with working on trees, that is quite different from the site being in active forestry use. It is not. It is a contractor's yard where the business is concerned with working on trees. It is no more a forestry use than an agricultural contractor's yard would be an agricultural use. Moreover, the Appellant's work will take place in a variety of locations including on private

properties such as domestic gardens, farms and business premises in addition to woodland. The buildings do not fall within any of the exceptions listed in paragraph 89 of the NPPF and are, therefore, inappropriate development in the Green Belt.

14. Following on from the consideration of buildings, paragraph 90 of the NPPF says that other forms of development are also not inappropriate provided they preserve openness and do not conflict with the purposes of including land in Green Belt. Those developments are then listed but do not include changes of use. Contrary to the view expressed by the Appellant, this is a closed list. It says "These are" and not "These include". The material change of use of the site to an Arboricultural contractor's depot thus comprises inappropriate development in the Green Belt.
15. Engineering operations, which would include the provision of a hardstanding, is included in the list at paragraph 90. From the following section of my reasoning, however, it will be seen that the hardstanding, in facilitating the use, contributes to the loss of openness and adds to the encroachment of development in the countryside. It too is, therefore, inappropriate development.

Effect on openness and purposes of the Green Belt

16. Paragraph 79 of the NPPF says the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that their essential characteristics are openness and permanence.
17. Prior to the developments taking place, the appeal site appears to have been overgrown and neglected with an unmanaged hedge to the roadside. Although the Appellant describes it as previously developed land, there is no suggestion that there were any pre-existing buildings.² Furthermore, whilst the Appellant says that it is "understood" that the land was previously used to store road plantings, nothing further is offered in support of that suggestion and there is no planning history indicating any lawful storage or indeed any other use.
18. From a site absent any built development; the whole of the Appellant's property along the Horley Road frontage has been enclosed with solid timber fencing and solid gates. The site has been subdivided internally with further fencing to either side of the pole barn. Added to this, and in combination, the collection of buildings, the hardsurface and the considerable amount of open storage, including mounds of timber and wood chips and the presence of many vehicles, including a tractor and truck, result in a substantial loss of openness when compared with the previous situation of a vegetated and undeveloped site, albeit overgrown and, I am told, suffering from fly tipping.
19. In addition to this loss of openness, there is conflict with one of the purposes of including land in the Green Belt³ in that the introduction of development where formerly there was none results in an encroachment into the countryside. Both the use and the associated operational development do not, therefore, assist in the identified purpose of the Green Belt to safeguard the countryside from encroachment.

² Annex 2 to the NPPF defines Previously Developed Land as land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure.

³ Para.80 of the NPPF sets out the 5 purposes.

Effect on the character and appearance of the countryside

20. The interior of the site is largely hidden from public view because of the boundary treatment, but a large enclosed and hard surfaced yard with an assortment of utilitarian buildings, open storage, vehicles and machinery detracts from the undeveloped rural nature of the surroundings which, in the main, along this stretch of Horley Road, is characterised by open farmland. A scatter of development along the road does not provide justification for more and neither does the presence of the nearby airport and aviation museum.
21. Moreover, the continuous line of solid fencing along the road is intrusive, although I appreciate that it would be less noticeable in the summer months when the roadside hedge in leaf would better screen it. In addition, some of the buildings and open storage mounds on the site are clearly visible from the road, rising above the fence. Added to the harmful effect on the rural character of the area, therefore, there is also a negative visual impact where that part of the development that can be seen from the public realm erodes the largely undeveloped, open and verdant appearance of this stretch of the country road.
22. The use and operational development thus harm both the character and appearance of the countryside. In this respect I find conflict with saved Local Plan policies ENV22 and ENV23 which, amongst other things, are concerned with respect for the character and appearance of the locality and the impact on the rural amenities of the Green Belt. In addition, there is a degree of conflict with the requirement of policies CS 13 and saved policy ENV4 to respect landscape character.

Effect on flood risk

23. National policy in the NPPF and in the Planning Practice Guidance (PPG) aims to steer new development to areas with the lowest probability of flooding. The appeal site is identified as situated in Flood Zone 3a by the Environment Agency (EA) – defined as having a high probability of flooding.⁴ Core Strategy policy CS 20 addresses flood risk management. However, as with policy CS 1 and Green Belt; this policy might also be said to be out of date insofar as it indicates that applications will be determined in accordance with national and regional policy on flooding which has since been withdrawn and which predated the NPPF and PPG.
24. The Appellant did not submit a Flood Risk Assessment (FRA) with his planning application for the use of this site as is required by both current national and local policy but has submitted one in connection with these appeals. This has been reviewed by the EA who do not consider it to be an adequate assessment of flood risk posed by the use and buildings. In particular the EA criticises the approach taken by the Appellant that the proposed use should be considered as “water compatible” and that the site is incorrectly defined as being within the high risk Flood Zone 3. In the absence of an acceptable assessment the EA considers the risks posed to be unknown.
25. Table 2 in the PPG sets out the Flood Risk Vulnerability Classification. Developments in the “water compatible” classification are generally those which would normally be found in a waterside location (for example docks and

⁴ Susceptible to more than a 1 in 100 chance of river flooding each year.

marinas, sand and gravel workings) but also include amenity space and recreation. The use of the appeal site as a contractor's yard is not analogous to any of the uses listed. Rather I find it more commensurate with those listed in the "less vulnerable" classification which includes buildings used for general industry, storage and distribution and land and buildings used for agriculture and forestry.

26. The FRA suggests that that the site could not be occupied for any length of time because there is no toilet or place to make a drink or to work. However, there is a toilet on site (albeit a portaloos) and there is also a portacabin office. It seems to me that there are sufficient facilities to enable the site to be occupied during the day. Moreover, the site gives the appearance of being manned (at least to a degree) with a bell at the entrance gates to ring for attention and indeed the office was staffed throughout my visit.
27. To suggest that the lack of habitable space and the use of common sense during flood events justify a different classification is not accepted. The same could be argued for much of the development listed as "less vulnerable" in Table 2. Moreover the portacabin office is an enclosed building and is one where occupants could be taken by surprise. I find no reason to depart from the EA assessment guided by Table 2 of the PPG that the development falls within the "less vulnerable" classification.
28. Development with a "less vulnerable" classification is, however, shown in Table 3 of the PPG to be appropriate to Flood Zone 3a. Nonetheless, since the FRA has been grounded on the incorrect classification, the risks associated with the scheme have also been assessed on the wrong basis. Furthermore, the topographical survey appears to have been undertaken after the development was carried out and so might not reflect pre-development levels given that the works have included the laying of hard-core and associated material on the land.
29. The buildings are said to be water compatible and not watertight, but the portacabin office and portaloos seem to have been left out of the assessment. Only "polytunnels" (although there is only one) and a "small barn" are assessed despite there being other structures present on the site. In addition, when considering the flow of water across the site, no account appears to have been taken of impediments such as the solid boundary fence, substantial amounts of storage both within the buildings and in the open and possible level changes. This could affect flood risk elsewhere.
30. I note that the historic flood extents map indicates that land to the west, where the only access into the site is located, flooded in September 1968. This, to my mind, reinforces the advisability of a precautionary approach to the risks of flooding. It is not an exact science. Finally, it seems to me that an arboricultural contractor might well be in demand during periods of flooding to remove obstructions to water courses etc. and so there could well be a need to keep the premises operational during such events.
31. Drawing my findings together I conclude that the FRA does not demonstrate adequately that there are no adverse effects in terms of flood risk either on or off the site arising. The FRA does not satisfactorily demonstrate that the site itself would be safe or that it would not increase flood risk elsewhere. The requirements of both national and local planning policies relating to the management of flood risk have not been met.

Other considerations.

32. I am told the land was previously neglected and overgrown and that the Appellant has cleared vegetation and rubbish in addition to tidying the hedgerow along the road boundary. However, this is not good reason to allow inappropriate development in the Green Belt. If it were it could simply encourage neglect and dereliction of other land to justify development. The encouragement given to local authorities to improve “damaged and derelict land” in Green Belts at paragraph 81 of the NPPF should not be interpreted, in itself, as providing justification for inappropriate development.
33. In support of the argument that the land is not capable of use for agriculture, a letter from a local agricultural contractor has been submitted⁵. That letter however only suggests unsuitability for crop growing; indicating that it has been unsuccessfully tried many times in the past. It does not say all agriculture – for example use for grazing or pasture – would not be feasible. Moreover the possibility of other beneficial uses as identified in paragraph 81 of the NPPF such as outdoor sport or recreation have not been considered. Without relevant evidence it would be wrong to conclude that the site is incapable of being used in a manner compatible with its Green Belt designation.
34. The Appellant’s business is clearly highly valued by the local community and I have taken into account the many letters of support received. I have also had regard to the contribution the business makes to the local economy along with planning policy advice to support economic growth, and also its contribution towards providing some local employment. However, this is not a case where there is no option other than to run the business from the appeal site. Historically it appears to have been successfully operated from a number of different sites. Whilst I can understand the Appellant’s desire to buy his own yard rather than renting from others, it would appear that no regard was given to the need for planning permission and whether it would be forthcoming before he went ahead and purchased the appeal site.
35. The argument that a rural location is required is not explained. The yard primarily comprises a base for the business where machinery, equipment and materials are stored with the majority of work undertaken on-site elsewhere. Whilst a location convenient to the client catchment area is clearly desirable, I have been given no reason why that could not be located within a built up area or, if a countryside location is necessary, why that should be within the Green Belt. There is no evidence before me of any alternatives considered and so nothing before me from which I might draw a conclusion that there is no alternative reasonably available that would better comply with planning policy (even if circumstances were such that a Green Belt location could not be avoided).
36. My attention has been drawn to the planning permission granted to the Appellant to run his business from a site less than two miles from the current appeal site in 2012⁶. That too was considered to be inappropriate development in the Green Belt but in that case the Council concluded the very special circumstances required to justify such development were present. Whilst I have not seen the application drawings for that site, the report to Committee suggests a smaller scale of operation than that currently going on at the appeal

⁵ Appellant’s appendix NJA-3

⁶ Appellant’s appendix NJA-4

site and on a site with very different locational characteristics. In that case the site adjoined existing development and was tucked behind houses rather than located on a road frontage. Furthermore, contrary to my findings on the current appeal site, that report concluded that there would be no adverse impact on openness or on the rural area and no countryside encroachment when the previous use of the site was taken into account. The two sites are not comparable.

The balance of considerations and conclusion

37. Inappropriate development is, by definition, harmful to the Green Belt. Added to that, and arising from both the use and the associated operational development, there is loss of openness and conflict with one of the purposes of including land within Green Belt. Paragraph 88 of the NPPF says substantial weight is to be given to any harm to the Green Belt. Also to be weighed in the balance is the harm to the character and appearance of the countryside which, in conflict with Development Plan policies, must carry significant weight and the failure to adequately address flood risk.
38. For the reasons given above inappropriate development cannot, in itself, be justified by land being neglected nor by it being unsuitable for crop growing and thus these arguments carry little weight. The need to foster economic growth, the contribution the business makes to the local economy and to local employment, together with the value placed on the business and its operators by the local community are all matters which weigh in favour. However, it has not been demonstrated that relocating to the appeal site was the only option open to the Appellant in order to continue operating his business and this reduces the weight I give to these matters.
39. Taking into account all the considerations weighing in favour of the developments, I find nothing that, either individually or cumulatively, clearly outweighs the harm identified so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt. Neither do I find any considerations sufficient to outweigh the conflict with the policies of the Development Plan identified or to indicate that the proposals should be determined otherwise than in accordance with the provisions of the Development Plan.
40. I have noted the Appellant's reference to sustainable development but the harm I have identified clearly demonstrates that the use and associated operational development are not sustainable environmentally. Insofar as the Green Belt and flood risk policies of the Development Plan are considered to be out of date, paragraph 14 and footnote 9 of the NPPF do not advocate the grant of permission where specific policies of the NPPF (which include those relating to land designated as Green Belt and locations at risk from flooding) indicate that development should be restricted. That is the case here. For completeness it is also plain from my assessment that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits assessed against the policies of the NPPF taken as a whole.
41. For the avoidance of doubt I would confirm that even if the flooding concerns had been satisfactorily addressed and taken out of the equation, the other considerations weighing in favour would not have been sufficient to outweigh the remaining harm to the Green Belt and to the character and appearance of the countryside identified. My decision would have been the same.

42. Finally, the Government has recently published a draft revised NPPF for consultation. As this is at a very early stage and could be subject to change it carries very little weight. Nonetheless, I note that one revision would be to add material changes of use to the list of other forms of development that are not inappropriate (currently para.90 in the NPPF). However, even if that change is effected when the revised NPPF is published it would still not change my finding that the use of the appeal site is inappropriate since the prerequisite to preserve openness and not to conflict with the purposes of including land within the Green Belt would, as I have found, not be met.
43. The appeals on ground (a) brought against Notices A and B and Appeal C fail.

The appeals on ground (f), Notices A and B

44. The ground of appeal is that the steps required to be taken by the notice exceed what is necessary. In relation to Notice A, the Appellant says it is excessive to require the removal of the timber logs and wood chip storage piles as this is a forestry activity and thus does not amount to development. That argument is misconceived. There is only one primary use taking place on the planning unit and that is use as an Arboricultural contractor's yard. Storage taking place on the site is part and parcel of that use and not a separate forestry use.
45. The purpose of the notice is clearly to remedy the breach of planning control which has occurred and s173(4)(a) of the Act makes clear that that can be achieved by requiring the land to be restored to its condition before the breach took place. In requiring the use to cease and everything brought on to the land in connection with that use to be removed, the Council is clearly seeking such restoration. The requirement to remove the timber logs and wood chip piles is not, therefore, excessive.
46. In relation to Notice B, the Appellant argues that it is unnecessary to remove the perimeter fence given that the site is well screened. However, if the fence was to remain in position the breach would not be remedied and, since all the itemised operational development is required to be removed, remedying the breach is clearly the purpose of the notice. The requirement is not excessive. Furthermore, whilst it would have been possible to grant planning permission for the fence in isolation in the appeal on ground (a) by issuing a split decision, I found in my consideration of that ground that the solid fence contributes to the harm identified and it is not, therefore, acceptable.

The appeals on ground (g), Notices A and B

47. The ground of appeal is that the time given to comply with the requirements of the notices is too short. The time given is four months and the Appellant asks for twelve as he has no alternative premises to which he can relocate. The notices should be complied with expeditiously given the planning harm identified. However, four months is a particularly short period given the need to seek a suitable alternative yard, possibly apply for planning permission and to effect a move. I consider a period of nine months would be more appropriate and would strike the appropriate balance between the competing private and public interests.
48. To this limited extent the appeals on ground (g) succeed.

Formal Decisions

Appeal A: APP/C3620/C/17/3174102

49. It is directed that the enforcement notice be corrected by:

- The deletion from paragraph 2 of "RH6 ODR" and the substitution therefor of "RH6 OBJ"
- The deletion of the content of paragraph 3 and the substitution therefor of the words "Without planning permission, the material change of use of the Land to use as an Arboricultural contractor's depot."
- The deletion of item 1 in paragraph 5 and the substitution therefor of the words "1. Cease the use as an Arboricultural contractor's depot."

and varied by:

- The deletion from paragraph 6 of the words "Four (4) months" and the substitution therefor of the words "nine months" as the time given to comply with the requirements of the notice.

50. Subject to these corrections and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/C3620/C/17/3174111

51. It is directed that the enforcement notice be corrected by:

- The deletion from paragraph 2 of "RH6 ODR" and the substitution therefor of "RH6 OBJ"

and varied by:

- The deletion from paragraph 6 of the words "Four (4) months" and the substitution therefor of the words "nine months" as the time given to comply with the requirements of the notice.

52. Subject to this correction and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C: APP/C3620/W/17/3174096

53. The appeal is dismissed.

B M Campbell

Inspector

Appendix 19.6

Appendix D - Signed Statutory Declaration by Anthony Gallagher, Managing Director Easigrass Chobham Depot

J. E. KENNEDY & CO.

SOLICITORS

~~J.E.KENNEDY~~

C.A.KENNEDY BSc

FAX NUMBER 020 8864 4900

**59/61 HIGH STREET
HARROW ON THE HILL
MIDDLESEX, HA1 3HT**

(OPPOSITE THE KINGS HEAD HOTEL)

TELEPHONE 020 8864 3056

RPS Consulting UK & Ireland
20, Western Avenue Milton Park
Abingdon
Oxfordshire
OX14 4SH

Our Ref: 4650
Your Ref: Mrs J Ramirez

4 December 2019

Attn Mrs Joney Ramirez MRTPI, Senior Planner

Dear Sirs

PART OF "HILLINGS NURSERIES", BAGSHOT ROAD, CHOBHAM,
WOKING GU24 8DB/ LEASE DATED 18/06/2015

I am a solicitor and at the request of Mr A J Gallagher of Easigrass Distribution Ltd I now attach original signed documentation as follows

- (1) Statutory declaration dated 4/12/2019
- (2) Figure 1 as referred to in (1) above

Please make sure that that postal address we have for you above is correct as soon as possible before close of business today at 4pm to avoid any delay in receiving this letter and its attachments.

I am copying this letter and its attachments as follows

joney.ramirez@rpsgroup.com

anthony@easigrass.com

We should be obliged if you would please acknowledge receipt in due course.

Yours faithfully

Caspar Kennedy
J E KENNEDY & CO SOLICITORS

casparkennedy@outlook.com

Statutory Declaration

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

at

Easigrass Chobham Depot, Bagshot Rd, Chobham, Woking GU24 8DB.

I, Anthony James Gallagher, Managing Director of Easigrass (Distribution) Ltd solemnly and sincerely make this Statutory Declaration in support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD).


I DECLARE AS FOLLOWS:

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.

I make these solemn declarations conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared by Anthony James Gallagher, Managing Director at Easigrass Chobham Depot

At



J. E. KENNEDY & CO.
59/61 High Street
Harrow on the Hill
Middlesex HA1 3HT

This.....^{4th} Day of *December* 2019

Casper Kennedy

Before me (a solicitor empowered to administer oaths)

Casper Kennedy

This is figure 1 referred to in my statutory declaration dated 4/12/2019.

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Notes

- 1. This drawing has been prepared in accordance with the scope of RPS's appointment with its client and is subject to the terms and conditions of the appointment. RPS accepts no liability for any use of this document other than that intended by its client and only for the purposes for which it was prepared and provided.
- 2. If received electronically it is the recipient's responsibility to print to correct scale. Only written dimensions should be used.

Legend

- Site Location
- Other Land Under Ownership of Applicant

Rev	Description	By	CB	Date



20 Western Avenue, Milton Park, Abingdon, Oxfordshire, OX14 4SH
 T: +44(0)1235 821 888 E: rps@rpsgroup.com

Client -

Project Easigrass Depot

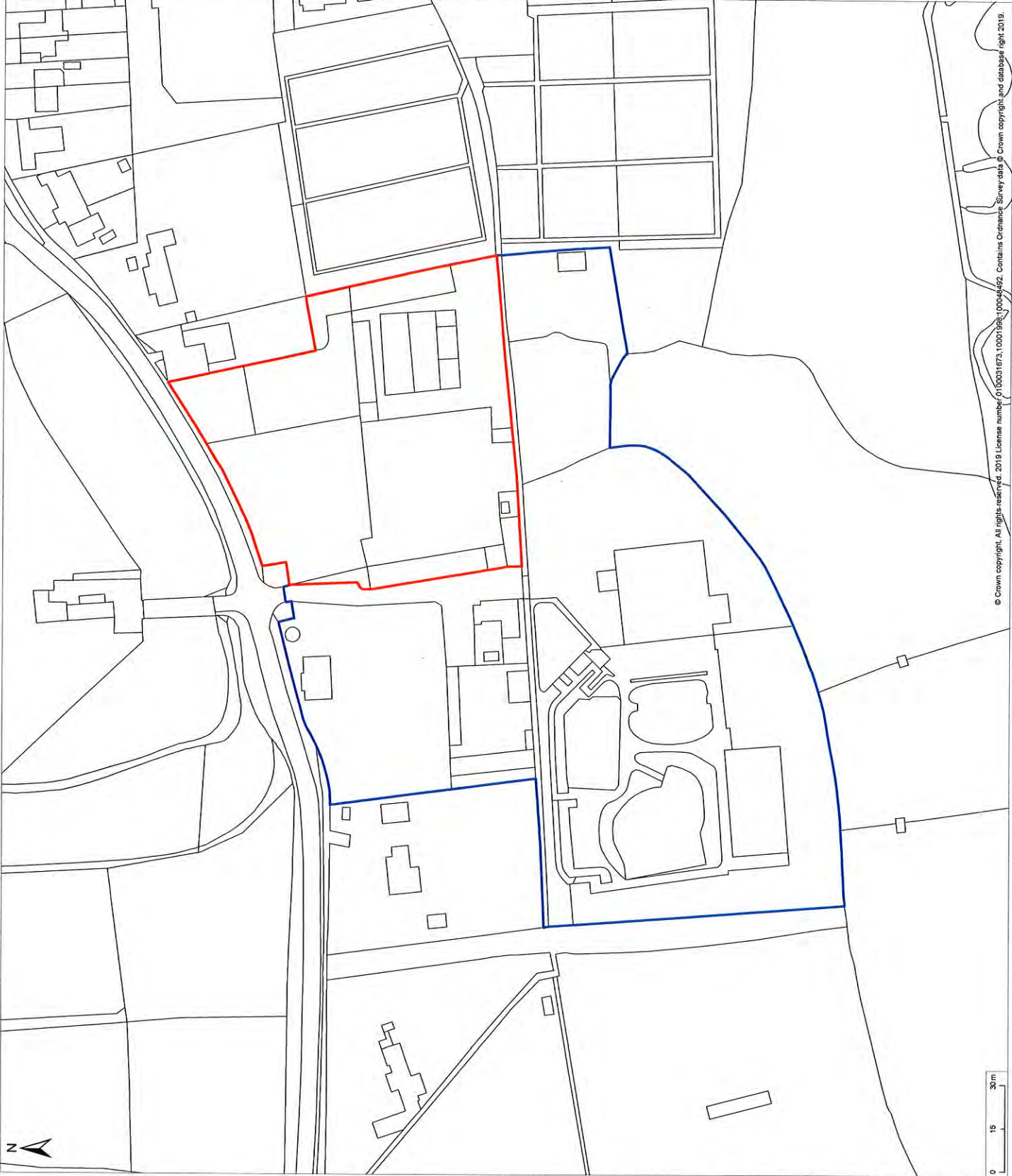
Title Site Location Plan

Status DRAFT
 Project Number PPS1422
 Figure Number 1

Drawn By BG
 Scale @ A3 1:1,250

PM/Checked By JR
 Date Created OCT 2019
 Rev

rpsgroup.com



Appendix 19.7

Appendix E - Photographic evidence

Image 1 – Site being prepared to receive containers – July 2015

< Chobham 18 July 2015 07:50 Edit



Thumbnail gallery with icons for share, heart, and trash.

Image 2 – View of containers to the north of the site – August 2015



Image 3 – View of containers to the east of the site – August 2015



Appendix 19.8

Appendix F - Invoice for acquisition of containers from 1st Containers (uk) Ltd (

1st Containers (uk) Ltd
 Marsh View Industrial Estate
 Ferry Lane South
 Rainham
 Essex
 RM13 9BD
 VAT Reg No: 836 0679 10

Easigrass (Distribution) Ltd Old Grass Depot Park Avenue London UB1 3AJ VAT Reg No:
--

Invoice No.	25062
Invoice/Tax Date	04/08/2015
Cust. Order No.	
Account No.	EASIGRAS

Quantity	Details	Unit Price	Net Amount	VAT Rate	VAT
1.00	45 * 20fts all wind and water tight	46,200.00	46,200.00	20.00	9,240.00

Bank Details HSBC Sort Code: 40-10-27 Account Number: 21362925

Total Net Amount	46,200.00
Carriage Net	0.00
Total VAT Amount	9,240.00
Invoice Total	55,440.00

Appendix 19.9

Appendix G - Aerial photographs

09/03/2014 - Google Earth



30/06/2015 – Bluesky-GeoPerspectives



25/03/2017 - Google Earth



23/06/2018 - Google Earth



Appendix 19.10

Appendix H - Google Streetview Aug 2016

Google Streetview photo showing containers in place (highlighted) in place – August 2016 (not to scale)



Appendix 19.11

Appendix I - Photos of the site from the applicant, December 2019

















Appendix 19.12

Supplementary Information

Our ref: PPS1422

20 Western Avenue
Milton Park
Abingdon, Oxfordshire
OX14 4SH

Date: 03 March 2020

Planning Department
Surrey Heath Borough Council
Surrey Heath House,
Knoll Road,
Camberley, Surrey
GU15 3HD

[Via email only]

Dear Ms. Sarita Bishop,

Response to queries and to objections received regarding application ref. 19/2275/CEU for a Certificate of Lawfulness of Existing Use or Development for the siting of storage containers.

Many thanks for providing us with an opportunity to clarify the proposals and respond to the objections received on this application.

For the avoidance of doubt, we attach Drawing No. 1422-0003-002 (Figure 1) which is an additional drawing to be read in conjunction with the drawings and supporting documentation initially submitted with the application. Drawing No. 1422-0003-002 (Figure 1) shows the location of the existing containers on site as well as the number of containers and whether these are single or double stacked.

The number of containers subject to this application

There are currently a total of 67 containers on site. This application seeks to regularise the siting of a total of 52 containers as follows:

- 9 containers at the bottom tier of those located to the north (front) of the site (first row);
- 12 containers at the centre of the site (second row), these comprise 5no. containers double-stacked plus 2 containers single stacked;
- 7 containers at the centre of the site (third row), these are arranged on a single row;
- 4 containers at the south west of the site; accommodating toilets and office (double-stacked);
- 6 containers at the rear of the site (fourth row). The 4 containers to the eastern part are currently double stacked however, only the bottom tier forms part of this application.
- 14no. containers arranged single-stacked towards the east of the site.

Clarification on the evidence submitted

Appendix E of the submitted evidence:

- Image 1 shows the site on 18 July 2015 looking east to west, towards the original barn building at the west boundary. It evidences that concrete slabs were removed to form the two central rows, each accommodating 7 containers at ground level. The image shows two areas of similar size matching the location of the second and third row of containers shown on aerial photographs (**Appendix G**).
- Image 2 shows 9 containers on August 2015. The photo was taken looking north, with the original barn building showing to the left of the image, serving as reference point. The photo is clear enough to allow counting of the containers. These correspond to the containers shown on aerial photographs as the first row. It is acknowledged that a second tier of 9 containers was added later, and therefore do not form part of the current application.
- Image 3 shows 14 containers on August 2015. The photo was taken looking north-east and the number of containers is easily identifiable in this photo. The greenhouse at the neighbouring site to the east serve as a reference point to evidence the exact location of these containers. The amount and siting of these containers correspond to aerial photographs (**Appendix G**).

Appendix F of the submitted evidence shows an invoice for the acquisition of 45 containers which match the size of those on site. Although a total of 7 containers are not accountable under this invoice, its date provides with additional evidence to corroborate the applicant's assertion that the containers were sited on the land on 19 July 2015.

Appendix G of the submitted evidence contains dated aerial photographs. We would like to highlight that an aerial dated 30 June 2015 shows the site being cleared to allow the containers to be sited on the land. This image correlates to other submitted evidence and cumulatively demonstrate that, on the balance of probabilities, a total of 52 containers have been on the site since at least July 2015.

There is no aerial imagery available for 2016 however, evidence under **Appendix H** shows a Google Streetview image dated August 2016 that further corroborates the applicant's recount of the events on site since it shows the first row of containers as well as the two-tier containers at the second row.

An aerial photo dated March 2017 was also submitted in **Appendix G**, clearly showing the current rows of containers, including those to the rear of the site. Cast shadows from the containers to the south-west, as those at the second and third rows, show these are double stacked, in line with the evidence shown in **Appendix H**.

Appendix I contains up to date photos of the site. These show the containers at the south-west, second row, third row and to the east to the site remain as in 2015. All the containers have been re-painted in dark green for aesthetic reasons. The last image in this appendix shows the double-stacked containers at the first row (front of the site), the second tier of these not forming part of this application.

Response to the objections received

Two objections (1 from the Parish Council, 1 from a neighbour) were received. We address the comments below:

Chobham Parish Council

- **Insufficient evidence has been provided to demonstrate the storage containers have been in place since 19th July 2015** – In conjunction with this current letter, we are of the view that sufficient and precise evidence has been provided to demonstrate that, on the balance of probabilities, a total of 52 containers have been in place since 19th July 2015.
- **Statutory declaration refers to 'a number of containers' which is ambiguous. The declaration should include exact numbers and a plan showing the containers' location** – The current letter and submitted Drawing No. 1422-0003-002 (Figure 1) provide unambiguous information on the location, number and stacking of the containers and clearly identifies which containers do not form part of the current application.
- **Photos labelled August 2015 show only 23 containers with no evidence of containers along southern boundary or towards the centre of the site** – Information has been provided showing that, on 18th July 2015, the site was being prepared to receive the containers. Image 1 of **Appendix E** shows two areas of similar size matching the location of the second and third row of containers

shown on aerial photographs. The Parish Council has provided no evidence to contradict the applicant's recollection of events. We further put forward that, given that the business started operating at the site on June 2015 (**Appendix D**) and the site was ready to receive the containers on 18th July 2015, it would be highly unlikely these were not sited at the site on the positions shown on Drawing No. 1422-0003-002 (Figure 1). As such, the submitted evidence demonstrates the containers subject to this application being in place since at least July-August 2015.

- **Photos labelled December 2019 include additional containers of different designs, many double stacked** – As mentioned in this letter, the containers were painted green to improve their appearance and as evidenced, the initial 52 containers sited on July 2015 have not changed their location or design. It is acknowledged that a total of 15 additional containers were subsequently sited on the land, to form a second tier at the first row and partly at the second and fourth rows. These have been clearly identified on Drawing No. 1422-0003-002 (Figure 1) and do not form part of this application.
- **Submitted invoice for 45 containers includes no detail for location or installation. The invoice is for more than the 23 containers shown on the photos with the rest being possibly delivered to other Easigrass branches. The invoice cannot be considered as evidence** – The submitted invoice needs to be seen in the context of the other evidence provided as it gives further corroboration that 45 containers were purchased by Easigrass on August 2015.

We would like to highlight that, in line with Paragraph 006 (ref. 17c-006-20140306) of the Planning Practice Guidance (PPG), when “... 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.”

The Parish Council has not provided any evidence to contradict the applicant's evidence as to demonstrate that applicant's recollection of events is less than probable, only providing unsubstantiated comments. The Applicant developed the site in 2015, so has first-hand knowledge of the dates on which containers were sited on the land, and the documentary evidence (aerial photographs, ground level photographs) do not in any way suggest that the Applicant's evidence is not an accurate reflection of how the site developed.

- **Aerial captures do not show any containers until 25th March 2017. On this date containers are shown double stacked at the south-west corner with the rest being single storey (based on cast shadows). By 23rd June 2018 the configuration appears to have changed with containers double stacked to the north** – As mentioned in this letter, there are no aerial photographs available for the site covering the period 2016 – 2017. RPS has looked to source aerial photographs from Getmapping, Ordnance Survey, Google Earth and Bluesky-GeoPerspectives with aerial photos only available for 30/06/2015 and 25/03/2017. In addition, the Parish Council appears to conclude that cast shadows only show double-stacked containers at the south-west corner of the site.

We are of the opinion that the lack of an aerial photo for 2016 does not make the applicant's recollection of events less than probable, in particular when taking into consideration that GoogleStreetview photos are available (**Appendix H**) showing the containers in place, with two-tier containers at the second row of the site. As such, we are of the opinion that the Parish Council's comment that containers only show on site from 25th March 2017 is unsubstantiated.

Neighbour objection

- **The present number of containers have not been there since 2015, there has been an increase in the number of containers since 2017 with double storey containers only appearing between 2016 and 2017 with more double storey containers added in 2019** – It has been acknowledged that not all the containers currently on site have been in place since 2015, with Drawing No. 1422-0003-002 (Figure 1) clearly showing those containers subject to the current application. Cumulatively, our submitted evidence demonstrates that the containers at the centre and south-west of the site were double-stacked, as they remain.
- **Between 2016 and 2017 a line of single containers formed the eastern boundary between the site and my property, they were then moved to the Depot and a permanent fence erected in May 2017** – There is no evidence this was the case and therefore this comment is purely anecdotal. Should evidence to substantiate these comments be provided, we would kindly request the Council provides us with a copy, to enable us to prepare a response. Despite this, we are of the

Our ref: PPS1422

view that the comment confirms the containers were in place by 2016 and the submitted evidence in **Appendix E** shows the 14 containers at the east boundary in the same location as in aerial photos included at **Appendix G**.

When looking at the evidence cumulatively, it is clear that, on the balance of probabilities, a total of 52 containers have been sited on the site for more than 4 years, and therefore these are immune from enforcement action. To this regard, we kindly request the Council issues a Lawful Development Certificate for the retention of 52 containers, as shown in submitted Drawing No. 1422-0003-002 (Figure 1).

Please do not hesitate to contact me if you have any queries.

Yours sincerely,
for RPS Consulting Services Ltd



Mrs Joney Ramirez MRTPI
Senior Planner

