The Planning Inspectorate

Appeal Decisions

Inquiry Held on 21, 22 and 23 June 2022
Site visit made on 22 June 2022
Closed in writing 23 August 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal A: APP/R3650/C/21/3271122
Land at Hopkins Reeds, Hatch Lane, Wormley, Godalming, Surrey

- 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 Denis O'Brien against an enforcement notice issued by Waverley Borough Council.
- The enforcement notice was issued on 17 February 2021.
- The breach of planning control as alleged in the notice is ` Without planning permission:
  - i) In the area coloured yellow on the attached plan the material change of use from a forest use to a storage use for storage of equipment and materials for a commercial building company.
  - ii) In the area coloured yellow on the attached plan an engineering operation consisting of the laying of hardstanding.
  - iii) In the approximate area dashed thick black from point A-B on the attached plan an engineering operation comprising of the laying of hardstanding to create a private way.
- The requirements of the notice are:
  - i) Cease the use of the area coloured yellow on the attached plan as storage.
  - ii) Remove the hardstanding in the area coloured yellow on the attached plan.
  - iii) Remove the hardstanding that creates the private way in the approximate position dashed in thick black A-B on the attached plan.
  - iv) Remove from the Land all materials resulting in compliance with the above steps.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/R3650/X/21/3271100
Land at Hopkins Reeds, Hatch Lane, Wormley, Godalming, Surrey

- 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 Mr Denis O'Brien against the decision of Waverley Borough Council.
- The application Ref: WA/2020/0661, dated 3 April 2020[1], was refused by notice dated 27 November 2020.
- The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.

[1] The date stated in the appeal form is 4 May 2020. However, the date recorded on the application form is 3 April 2020.

- The use and development for which a certificate of lawful use or development is sought is the existing use of land as builder's yard and use of track to serve the builders yard and provision of hard surfacing along track and in builder's yard.

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by

   - The deletion of the plan attached to the enforcement notice and its substitution thereto of Plan A attached to appeal decision APP/R3650/C/21/3271122:
   - The deletion of paragraph 3.i) in full;
   - The renumbering of paragraph 3.ii) as 3.i);
   - The renumbering of paragraph 3.iii) as 3.ii);
   - The deletion of the first sub paragraph of paragraph 4 beginning 'it appears';
   - The deletion of paragraph 5.i) in full;
   - The renumbering of paragraph 5.ii) as 5.i);
   - The renumbering of paragraph 5.iii) as 5.ii);
   - The renumbering of paragraph 5.iv) as 5.iii) and the deletion of the word 'in' and the substitution thereto of the word 'from'.

   And varied by:

   - In the renumbered paragraph 5.i) insert the words:
     - 'all' between the words 'Remove' and 'the'; and
     - 'Plan A attached to appeal decision APP/R3650/C/21/3271122' after the words 'yellow on'.
   - In renumbered paragraph 5.i) delete the words 'the attached plan';
   - In renumbered paragraph 5.ii) insert the words 'Plan A attached to appeal decision APP/R3650/C/21/3271122' after the words 'black A – B on'.
   - In renumbered paragraph 5.ii) delete the words 'the attached plan'.

   Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use and existing operation which is considered to be lawful.

Preliminary Matters

3. The Inquiry was adjourned after the final sitting day to allow the parties to submit agreed amended plans. The Inquiry was closed in writing on 23 August 2022.

4. All oral evidence at the Inquiry was heard under oath or affirmation.

5. Appeal A was originally made on grounds (a), (b), (d) and (f). In the light of the dismissal of appeal reference APP/R3650/X/21/3271100, the production of a rebuttal proof by the appellant and further discussion between the parties a Statement of Common Ground (SoCG) was drawn up, signed and submitted by both parties.

6. Grounds (a) and (f) were withdrawn in the appellant's rebuttal statement. The ground (d) appeal, as far as it related to the private way between A-B, was also withdrawn in the appellant's rebuttal statement. The basis of the ground (d) appeal relates to the matter covered in Appeal B of this decision.

7. At the Inquiry the ground (f) appeal was reintroduced. This was on the grounds that, if I found that hardstanding had been laid which was immune from enforcement by virtue of having taken place more than four years before the enforcement notice, but contrary to the appellant's case, that there had nevertheless been further laying of hardstanding going beyond repair and maintenance amounting to an engineering operation within the four year period, it would be excessive to require the removal of the earlier immune hardstanding. The appellant put forward, that in such circumstances, the alternative requirement of removal of only the hardstanding laid in the period beginning with the date four years before the issue of the Notice i.e. 17 February 2017 should be substituted.

8. The Ancillary Storage Area (ASA) on plan MAK 1 Rev D accompanying the SoCG and elsewhere, results in an unfortunate identification label. An ancillary use cannot be a primary use, and it is argued that the use is part and parcel of the builder's yard use. However, for ease of reference I will refer to this area as ASA in these decisions.

9. Appeal A therefore proceeds on grounds (b), (d) and (f) only.

10. The fenced area which was granted a lawful development certificate on 30 November 2020 (reference WA/2020/1242) I shall refer to as the compound in this decision. The description of the 2020 LDC was 'Certificate of Lawfulness under Section 191 for existing use of builder's yard and use of access track to serve builder's yard which have been in use for at least 10 years. Also provision of hard standing along access track and within builder's yard which have been completed in excess of 4 years ago'. I note that both the ASA and the compound are used as one area by the same commercial building company.

11. The SoCG sets out the areas that have been agreed as:
    - The appellant no longer appeals the breach described in paragraph 2.6(iii) i.e. the creation of the laying of a hardstanding to create a private way from points A to B, of the SoCG.
    - At the date when the notice was issued no enforcement action could be taken in respect of the specified material change of use within the

Ancillary Storage Area due to immunity from enforcement in accordance with section 171B(3) of the Town and Country Planning Act 1990;

- There has been no material change of use or laying of hardstanding within the area coloured yellow on the Notice Plan outside the Ancillary Storage Area and the Access Track i.e. the area which the Council accept is outwith the ASA on the site; and
- The remaining issue to be determined on the appeals is the lawfulness of the laying of hardstanding within the Ancillary Storage Area.

12. The SoCG also sets out variations to the Notice as:

- The substitution of a new plan and for that plan to be called Plan 1.
- The deletion of paragraph 3 i) in its entirety.
- Reference to area edged green on the plan marked Plan 1 in paragraph 3 ii).
- Reference to on the plan marked Plan 1 in paragraph 3 iii).
- Deletion of first paragraph after the heading 4. REASONS FOR ISSUING THE NOTICE.
- Deletion of requirement 5. i).
- Vary requirement 5 ii) to refer to the area edged green on the plan marked Plan 1.
- Vary 5. iii) to refer to Notice Plan
- Vary 5. iv) wording changed to refer to from compliance rather than in compliance.

13. In relation to Appeal B the SoCG states that a CLEUD can be issued for the following development (without prejudice to my decision and any further amendments in relation to the hardstanding of the ASA):

'Existing use of builder's yard and access track shown edged red on the attached plan and existing use of the ancillary storage area shown edged green on the attached plan which have been in use for at least 10 years. Also provision of hard standing along access track and within builder's yard which have been completed in excess of 4 years ago.'

The Notice

14. The Council and the appellant have agreed that the use of the ASA for storage of equipment and materials for a commercial building company has taken place for a continuous period of ten years prior to the issue of the Notice. As such, I will remove reference to the material change of use from the Notice. This would not cause injustice or prejudice to either party.

15. The Notice as corrected would allege only

'Without planning permission:
(i) In the area coloured yellow on the attached plan an engineering operation consisting of the laying of hardstanding.

(ii) In the approximate area dashed thick black from point A-B on the attached plan an engineering operation comprising of the laying of hardstanding to create a private way. `

Appeal A – ground (b)

16. This ground of appeal is that what has been alleged has not happened as a matter of fact. This ground of appeal relates only to the laying of hardstanding within the ASA and not the creation of a private way between points A and B.

17. The issue is whether or not the works carried out in the ASA, consisting of the laying of a hardstanding, is an engineering operation.

18. There is no definition of an engineering operation in the Act. The appellant referred to *Fayerwood Fish Farms Ltd v the Secretary of State for the Environment*. In this case, while it was found that an engineering operation is an operation of the kind usually undertaken by engineers i.e. operations calling for the skills of an engineer it did not mean that an engineer must actually be engaged on the project, simply that it was the kind of operation on which an engineer could be employed, or which would be within his purview. I therefore consider it is a matter of judgement, on the facts of the case, whether or not works amount to an engineering operation.

19. The Council referred to a number of appeal decisions where it is clear that on the particular facts of the cases dealt with the Inspectors concluded the works in question were engineering operations. In the Champions Farm case it was found that the scraping of the original surface, the spreading of scalpings, the compaction and levelling of the original surface, to an adequacy capable of withstanding the weight of manoeuvring vehicles, plant and machinery would be of sufficient scale as to amount to an engineering operation. It was irrelevant that hardstanding already existed in the same area because by that time the materials comprising it 'had been absorbed into the ground such that they no longer performed a function as a hardstanding'.

20. The other appeal decisions also turned on the particular facts of each case.

21. The appellant accepted that whether something amounted to an engineering operation required consideration of the scale of the works involved and required a fact and degree assessment. As such, it is a matter of judgement on the facts of any particular case whether or not works amount to an engineering operation.

22. The ASA is used by heavy vehicles including a tracked vehicle which is stated to 'wear hard onto' the hardstanding'. The ASA hardstanding is stated to require regular attention because of this. In 2002/3 Larry Kercher's truck became stuck in the ASA and needed towing out. This led to the appellant surfacing the whole area in the mid 2000's. The appellant did accept that works involving the laying of hardcore in the mid-2000's was an act of development.

23. In the mid- 2000's lorry loads of hardcore were tipped within the ASA and a hardstanding created. However, I note that not all trees had been removed in the ASA at that time and the extent of what was created is less than clear. The purpose of the hardstanding was to support heavy vehicles in manoeuvring on the surface and to prevent vehicles from sinking into the land. Storage of building materials also took place on the ASA. Due to the nature of the works

and importation of materials to create the hardstanding with works to level the ground and create the surface at that time, they were, in my view, clearly engineering operations requiring the strengthening of the ground to withstand the weight of heavy vehicles, plant and machinery manoeuvring, and the laying of materials and the levelling of those materials.

24. Subsequent to this, works were done in 2013, 2014 and 2015. In the four years preceding the issue of the notice works continued to be carried out including, what the appellant terms, maintenance layering and patching as well as filling holes from recently felled trees.

25. The appellant considers that subsequent works, between the initial creation of the hard surfacing in the mid 2000's and when the enforcement notice was issued, comprised maintenance and patching of the ASA and did not constitute engineering operations.

26. The nature of the soil is such that as previous materials used to form a hardstanding adequate to support heavy machinery sink down into the ground, they are absorbed into the ground. As the ground absorbs the materials it can no longer perform the function as a hard standing. This has led to the appellant carrying out works on numerous occasions to ensure the area is reinforced so that heavy vehicles can manoeuvre within the ASA and to allow plant and machinery and builder's materials to be stored on the land.

27. The appellant carried out works in 2013, 2014 and 2015 which involved importing many tonnes of material onto the site. In 2013 the works involved re-layering of the majority of the ASA, and this involved 100-120 tonnes of imported material. In 2014 it was estimated by the appellant that 20-30 tonnes of materials were imported to carry out work to the hardstanding. No estimate of tonnage of material used in works in 2015 was provided although it was stated that of the 160 tonnes delivered that year most of it 'went elsewhere'. In 2015 the Council considers that at least a 20 tonne truckload of material was involved in the works.

28. Aerial photographs produced in evidence show a significant difference in the surface colouring and texture of the ASA. In the 25 March 2017 aerial photograph it shows a number of trees still standing within the ASA area and the surface of the ASA area is markedly different to that within the compound area. In the 15 April 2020 aerial photograph all trees have been removed from the ASA area and the surface is of a more uniform colour and similar to that of the compound area.

29. The removal of the trees between the two photographs (2017 and 2020) indicates a material difference to the area over a period of 3 years. Clearly where tree trunks were in 2017 there could be no hard surfacing, even if I were to accept that hard surfacing existed up to and around the tree trunks.

30. The uniformity of the surface colour in the 2020 aerial photograph, indicates to me that some significant works had to have taken place between the dates of the two aerial photographs to produce the uniformity of the colour of the surface. Indeed, at my site inspection I saw one cohesive hardstanding area across the ASA and there was no evidence of patching where trees were sited in 2017.

31. The appellant's explanations for the differences in the aerial photographs in the colour of surfaces particularly between the ASA and the compound were that:

    - the ASA was covered in mud in 2017 from vehicles that use it leading to difference in the surface of the ASA to the adjacent compound;
    - that in March 2017 the ASA was covered in leaf litter from the tree canopy above;
    - the ASA area experienced fern growth in March 2017 and the compound did not.

32. In my view, the mud theory is not supported by the evidence. While I accept that mud may well have been brought onto the ASA by vehicles it cannot explain the way the ASA looks in 2017 similar to the woodland area and different from the compound area.

33. In relation to leaf litter, it goes some way to explaining the difference between the look of the ASA and the compound in 2017 but fails to explain the similarity to the unused area to the south. The appellant accepted that leaf fall in autumn/winter would be compacted into the ground. The area to the south of the ASA would not have had frequent vehicular use at that time but there is no material difference in how the ASA, or the southern area appears in the photograph in 2017.

34. In March 2017 I accept that it is likely that there was fern growth through the ground of the ASA. The evidence supports that fern growth occurs when the hardstanding starts to weaken, and this is why the ASA requires works to create or maintain it as a hardstanding. Although there was evidence of re-layering works in 2013, 2014 and 2015 there was no evidence of further works before March 2017 when the aerial photograph was taken. The evidence was also that the material delivered in 2015 contained a lot of earth which inevitably created a weaker surface area allowing the fern growth through.

35. The appellant stated that he carried out some scraping and dressing to some parts of the ASA after winter 2016. Given the fern growth in the 2017 aerial photograph I consider that the works were not significant. The ASA was largely unchanged from 2015 to the aerial photograph in 2017.

36. Between March 2017 and April 2020, the appellant estimated that work to the ASA involved using around 60-80 tonnes of material which was laid with the assistance of a digger. The appellant seeks to explain this as repairs and patching work and not an engineering operation. The Council dispute that explanation.

37. The site visit photographs from 3 June 2020 show a significant portion of the ASA is covered in darker road planings. There was no detritus such as mud or leaves shown in these photographs, and it appears as though the planings were freshly laid. The appellant accepted that planings had been laid in the top right hand photograph on page 2 of JB8 between 25 April and 3 June 2020. The appellant suggested that the layering of the ASA would involve a layer of between 25mm and 50mm. There were no test holes through the hardstanding carried out to demonstrate this measurement of top layer. Notwithstanding the limited evidence on this given the area of the ASA, this would amount to tonnes of material being laid. That material had to be formed into the cohesive surfacing for it to be able to support heavy vehicles and plant

on the hardstanding that is seen in the 2020 aerial photograph and that I saw at my site visit.

38. While I accept that the appellant and the Council disagree on some dates of photographs in evidence, the overall thrust of the evidence supports my findings and that it is more likely than not, that significant works to the ASA were carried out after 2017.

39. The appellant also considers that creating hardstanding where trees were removed would be *di minimus*. However, the number of trees removed can be clearly seen between the 2017 and 2020 aerial photographs. Moreover, there is a lack of substantiated evidence to demonstrate whether the trees were uprooted with the roots pulled out or whether they were ground down and stumps left. There is also a lack of substantiated evidence relating to what size holes were created by the removal of the trees and how the cohesive hardstanding I saw on my site visit was created. There was no visual indication of tree stumps within the hardstanding I saw. This leads me to conclude that, without evidence to the contrary, significant works took place between 2017 and 2020.

40. The appellant's explanations do not, in my view explain the differences in the aerial photographs, which are significant. In the light of the removal of the trees between the dates of the photographs and the consistent hard surfacing I saw across the ASA at my site visit, I conclude, on the balance of probabilities, that the hardstanding was created as one operation and that levelling and filling must have taken place where trees were removed.

41. Between 2017 and 2020 it is my view, that due to the significant area of land forming the ASA, the consistency of the surface formed across the ASA, the significant quantity of materials utilised, the taking out of trees and filling any holes left by the removal of the trees, levelling of the resultant surface to compact it so that it was able to support the weight of the vehicles, plant and machinery that uses the ASA, the works to renew or create the area as an area of hardstanding go beyond what could reasonably be described as repair, patching or making good. The actions required in forming the hardstanding between 2017 and 2020 which I saw at my site visit as a completed hardstanding, are such as to constitute an engineering operation that required planning permission. Furthermore, the base strength of the hardstanding created between 2017 and 2020 was the absorbed materials from earlier works and formed part of this engineering operation.

42. As such, I find that engineering operations did occur as a matter of fact The appeal on ground (b) therefore fails.

Appeal A – ground (d)

43. The SoCG states that the remaining issue to be determined on the appeal is the lawfulness of the laying of hardstanding within the ASA. The appellant accepts that an engineering operation comprising the laying of hardstanding to create a private way from point A to B on the plan is a breach of planning control and is not immune from enforcement action. As such the ground (d) appeal only relates to the creation of hardstanding within the ASA.

44. This ground of appeal is that the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this

ground lies with the appellant. As such, he needs to demonstrate, on the balance of probabilities that the engineering operation to create the hardstanding was carried out four years prior to the notice being issued. He also needs to demonstrate that any maintenance of the hardstanding, within the four years prior to the notice being issued, did not amount to an engineering operation.

45. The nature of the hardstanding that has been created is that it is periodically being added to and recreated or reformed. There is no clear date demonstrated by the appellant as to when a specific hardstanding could be said to have been formed, remained unchanged and thus become immune from enforcement action. The absorption of the earlier materials into the ground inevitably acts as part of the strengthening of the ground to support the additional layers, imported materials and thus the hardstanding that is created. There has been no demonstration by the appellant that previous materials form a distinct layer in the depth of the ground that has been untouched or complete as an entity such that that element is immune from enforcement action.

46. I have found under ground (b) that an engineering operation, which amounted to development, did occur between 2017 and 2020. This is within four years prior to the Notice being issued and as such the operations are not immune from enforcement action through the passage of time. The appeal on ground (d) therefore fails.

Appeal A – ground (f)

47. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections.

48. The Council confirmed that the purpose of the enforcement notice goes to paragraph (a) of section 173(4) of the Act as amended which is to remedy the breach of planning control.

49. The appellant referred to the Westwood Gardens appeal decision. In that case a requirement was to remove the hardstanding from the land. The Inspector noted in respect of the ground (f) in that case, that there was an issue of whether there was or is a pre-existing surface which was laid previously. The Inspector found no evidence of this and that there was no sound basis for varying the requirements. It was noted that it would be a matter between the appellant and the Council to consider whether any pre-existing surface that may exist other than the hardstanding laid by the appellant could remain.

50. While I have found that the hardstanding that exists at the appeal site was created between 2017 and 2020, there were clearly materials laid on the land before that time and at various times a hardstanding was created. The previous hardstandings, on the evidence available, failed and were recreated with the importation of significant quantities of materials and works to create a hardstanding that could support the manoeuvring of heavy machinery, most recently between 2017 and 2020.

51. The enforcement notice attacks the hardstanding that I saw on my site visit which I have concluded was created by an engineering operation and comprises one cohesive entity. The evidence indicates that the current hardstanding was formed sometime between the dates of the two aerial

photographs. Previous materials that at one time formed a hardstanding have been absorbed into the soil.

52. The nature of the hardstanding that has been created is that it follows on from previous hardstandings which have failed and the materials of those previous hardstandings have been absorbed into the ground. There is no date proffered by the appellant as to when a specific previous hardstanding could be said to have been formed as an entity and remains as such and thus became immune from enforcement action. It is likely that materials used to create previous hardstandings now reinforce the ground on which the current hardstanding occupies, creating a strengthening of the ground to support the hardstanding on top.

53. On the basis of the evidence before me, I cannot identify any element of hardstanding in the ASA that existed prior to 17 February 2017 i.e. four years before the service of the Notice, which has obtained immunity from enforcement action. As such, the requirement to remove the hardstanding is not excessive and the appeal on ground (f) therefore fails.

Appeal B – Lawful Development Certificate

54. In the light of the SoCG the revised description for which the appellant is seeking an LDC is:

'Existing use of builder's yard and access track shown edged red on the attached plan and existing use of the ancillary storage area shown edged green on the attached plan which have been in use for at least 10 years. Also provision of hard standing along access track and within builder's yard which have been completed in excess of 4 years ago.'

55. An amended plan has been submitted by the parties (drwg no MAK 1 Rev E), after the Inquiry sitting days but before it was closed in writing, which shows a redline around the compound area (hatched black and labelled builder's yard storage compound), the access track (coloured pink) and the ASA area (labelled builder's yard). The compound area and access track were the subject of the approved LDC application reference WA/2020/1242. The description of the LDC was '*Certificate of Lawfulness under Section 191 for existing use of builder's yard and use of access track to serve builder's yard which have been in use for at least 10 years. Also provision of hard standing along access track and within builder's yard which have been completed in excess of 4 years ago'*.

56. In relation to the provision of hardstanding on the ASA area I have concluded in Appeal A that the hardstanding is not immune from enforcement action and the enforcement notice will be upheld. As such, this is not lawful.

57. I instigated a discussion at the Inquiry into what elements of storage took place on the ASA. I explained my understanding of what the evidence had demonstrated, and the appellant provided a written submission of what his view of storage on the site was in document 6 submitted at the Inquiry. Amongst other things this referred to the bulk receipt of aggregates such as road planings and hardcore of about 300 tonnes at a time, around 4 times a year. The note states that this had been demonstrated for a continuous period of at least 10 years before 4 May 2020 (corrected to 3 April 2020). Following receipt of the note the appellant gave oral evidence in relation to this particular

point and through cross examination the appellant accepted that this tonnage of aggregates could not be evidenced and that the correct tonnage of aggregates was 100 tonnes.

58. In 2013 the appellant explained that the highway authority was resurfacing Haslemere Road in Witley and road planings from that work were delivered to the site. The evidence was that 100-120 tonnes of imported materials were used to relayer the majority of the ASA in 2013.

59. The introduction of deliveries of large quantities of aggregates either for use to form the hardstanding on the ASA at various times since 2013 or occasionally to sell on to other parties is not storage for a commercial building company. It was however storage for use in the creation of the hardstanding of the ASA which I have found to be unlawful and there is insufficient evidence to demonstrate whether the resale of aggregates was a primary use in itself. In my view, the evidence demonstrates that in the ten years prior to the application for the LDC being submitted resale to third parties was, on the balance of probabilities, infrequent and amounted on the evidence available to a *di minimus* activity.

60. The evidence supports the delivery of multiple tonnes of aggregates from about 2013 to the appeal site, which is less than ten years prior to the application the subject of the appeal. The majority of the tonnage was utilised to form the hardstanding in the ASA which I have found to be unlawful.

61. I appreciate that some smaller quantities of aggregates were utilised to create temporary hardstandings at building sites that the commercial building company, who uses the ASA and compound for storage, require. It is more likely than not, that this limited aggregate storage has taken place for more than ten years as it is something that is needed on many sites run by the commercial building company. However, the note in Document 6 submitted to the Inquiry specified that at least three times a week residual aggregates from building sites such as hardcore, scalpings, sand, chalk, and road planings mainly with 3.5 tonne tippers and associated storage and then delivery to building sites for re-use takes place. However, there was no substantiated evidence of this volume or frequency had taken place over at least a ten year period prior to the application the subject of the appeal. I do accept that such materials come and go from the site and have done for many years, but the number of vehicle movements and the volume of material has not been evidenced to demonstrate this level of activity.

62. I am therefore satisfied on the balance of probabilities that the aggregates for creation of the hardstanding were not a primary use but were brought onto the site principally to create the unlawful hardstanding. I am further satisfied that, on the balance of probabilities, the resale of aggregates has been infrequent, the amount of resale was not quantified in any detail, but on the evidence before me it was not of a scale or frequency to be material in my considerations. Aggregates stored as part of the use of the ASA for storage of materials and plant/vehicles was limited in volume and not at a tonnage rate of 100 tonnes four times a year.

63. Oral evidence from the appellant and his witnesses was that most materials are ordered for particular projects and delivered to the building site they have been ordered for. The appeal site is used for residual materials i.e. those that have

been ordered in too large a quantity or for one reason or another are not required on a particular building project.

64. In relation to the delivery of residual building materials from building sites such as bricks, blocks, tiles, kerbing, Heras fencing, drainage, insulation and wood I accept that the evidence supports that this is brought onto and taken off the appeal site mainly with a 3.5 tonne tipper truck. However, the note in Document 6 submitted to the Inquiry states that this takes place at least 3 times a week. The frequency of such deliveries was not the subject of substantiated evidence to the Inquiry. What is more likely than not, noting evidence in photographs, including aerial photographs, and what I saw on site is that roughly 20 pallets each of bricks, blocks and tiles were stored with a height of pallets not exceeding 2 pallets high in the combined compound and ASA area, albeit much was stored at the time of my site visit in the compound area. How often deliveries of these materials to the site takes place is dependent on whether materials are surplus on any particular project.

65. I accept that plant comprising of about 4 dumper trucks, 2 diggers, 2 forklifts, 2 tippers, a pickup, a trailer and two rollers when not in use on building sites are brought back for storage at the appeal site. I also accept that about four storage containers, when not in use on buildings sites, are stored on the appeal site and used for storage of materials and equipment for the building company use. This use is more likely than not to have taken place continuously for a period of at least ten years prior 3 April 2020.

66. I therefore find that a ten year continuous period prior to the appeal application has not been demonstrated for the quantities of aggregates (agreed as being about a 100 tonnes four times a year) as storage in connection with the commercial building company i.e. as a builders yard. While some aggregates were stored for use by the commercial building company it was not at the volume of 100 tonnes, four times a year.

67. I am satisfied that some storage of aggregates was part of the storage for the commercial building company and that those aggregates were collected and taken to building sites operated by the commercial building company to create hard standing at the sites to create yards or provide a surface for site offices for the period of building works being undertaken by the commercial building company.

68. The evidence therefore demonstrates that within the appeal site that the use of the areas of the land outlined in red and labelled as builder's storage compound (cross hatched black) and builder's yard (no colour) on drwg no MAK 1 Rev E have been in use as a builder's yard including
    - the receipt and storage of aggregates for use on building sites operated by the appellant's building company to create hardstandings at the building sites to create yards or provide a surface for site offices to be sited on;
    - storage of about 4 dumper trucks, 2 diggers, 2 forklifts, 2 tippers, a pickup, a trailer and two rollers when not in use on building sites;
    - storage of about 20 pallets each of bricks, blocks and tiles with a height of pallets not exceeding 2 pallets high; and
    - storage of four storage containers when not in use on building sites, which are also used for the storage of materials and equipment for the building company.

This use has taken place continuously for a period of more than ten years prior to the date of the application for the LDC.

The access track (coloured pink) has been in use as an access track to serve both the builder's storage yard and the builder's yard, continuously for over ten years.

Also, the hardstanding within the builder's yard storage compound, cross hatched black on drwg no MAK1 Rev E, the access track, coloured pink on drwg no MAK 1 Rev E have been completed in excess of four years prior to the date of the application for the LDC.

69. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the areas of the land outlined in red and labelled as builders storage compound (cross hatched black) and builders yard (no colour) on drwg no MAK 1 Rev E existing use of builder's yard storage compound, and the access track (coloured pink) to provide access to builder's yard storage compound and the builder's yard on drwg no MAK 1 Rev E have been in use for at least 10 years. Also provision of hard standing along access track (coloured pink) and within builder's yard storage compound (hatched black) on drwg no MAK 1 Rev E which have been completed in excess of 4 years ago was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Evans	Of Counsel instructed by Mr A Cunningham of Lavingham Planning Consultants
He called	
Mr D O'Brien	Appellant
Mr S Kercher	On behalf of the appellant
Mr L Kercher	On behalf of the appellant
Mr D Windebank	On behalf of the appellant
Mr A Cunningham MSc MRTPI	Lavingham Planning Consultants Ltd on behalf of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Dr A Williams	Of Council instructed by Legal Services Waverly Borough Council
He called	
Mr Ayscough	Planning Enforcement Officer, Waverley Borough Council
Mr Bennett BSc	Senior Planning Enforcement Officer, Waverley Borough Council

INTERESTED PERSONS:

Mrs Coxeter	Local resident
Mrs J Barton Longmore	Local resident
Mrs Burton	Local resident
Ms V Bales	Local resident
Mr D Coopper	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1 List of appearances submitted on behalf of the appellant
2 Opening submissions submitted on behalf of the appellant
3 Opening Submissions submitted on behalf of the Council
4 Photographs dated 21 July 2019 submitted by the appellant
5 A3 Aerial photograph dated 25 March 2017 submitted by the appellant
6 Reasons for LDC (DRAFT) submitted on behalf of the appellant
7 Photographs dated 25 May 2020 submitted by Mrs Coxeter
8 Aerial photographs dated 9 November 2020, 31 March 2021 (two photographs) 7 May 2022 submitted by Mr D Coopper
9 Closing Submissions submitted on behalf of the Council
10 Closing submissions submitted on behalf of the appellant

PLANS SUBMITTED AFTER THE INQUIRY BUT PRIOR TO CLOSING IN WRITING

A Enforcement Plan
B MAK 1 Rev E
C MAK 1 Rev E2

Plan A

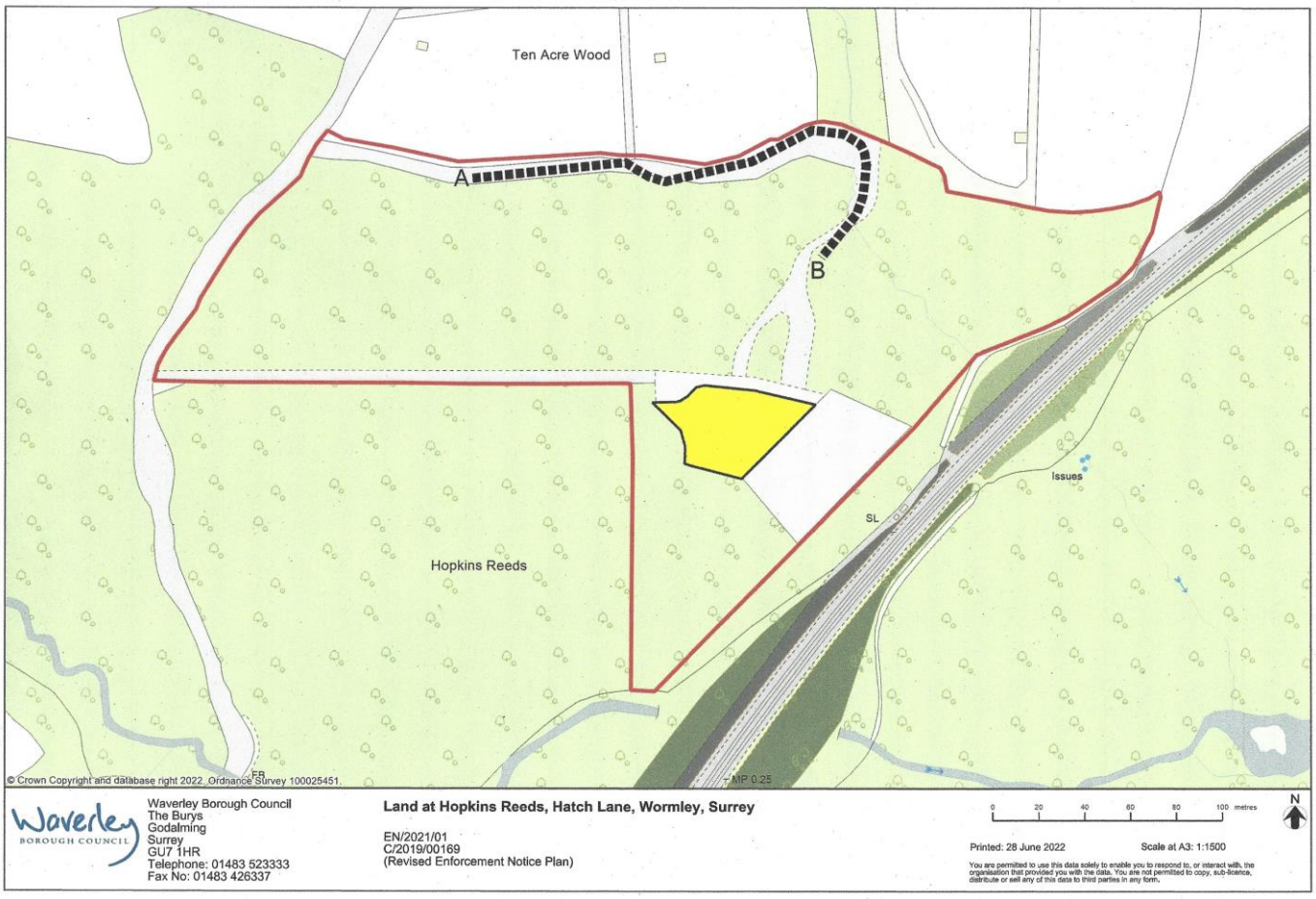
This is the plan referred to in my decision dated: 25 August 2022

by Mrs H M Higenbottam BA(Hons) MRTPI

Land at: Hopkins Reads, Hatch Lane, Wormley, Godalming, Surrey

Reference: APP/R3650/C/21/3271122

Scale:NTS



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 3 April 2020 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan (Plan B) attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence has demonstrated, on the balance of probabilities, that

(i) For a continuous period of over ten years on the land outlined in red on the attached plan (Plan B) and labelled as builders storage compound (cross hatched black) and builder's yard (no colour), there has been a builder's yard use which includes:
- the receipt and storage of aggregates for use on building sites operated by the appellant's building company to create hardstandings at building sites to create yards or provide a surface for site offices;
- storage of about 4 dumper trucks, 2 diggers, 2 forklifts, 2 tippers, a pickup, a trailer and two rollers when not in use on building sites;
- storage of about 20 pallets each of bricks, blocks and tiles were stored with a height of pallets not exceeding 2 pallets high; and
- storage of four storage containers, when not in use on building sites, which are also used for the storage of materials and equipment for the building company.

(ii) The access track (coloured pink) has been in use as an access track to serve both the builder's storage yard and the builder's yard, continuously for over ten years.

(iii) The provision of hard standing along the access track (coloured pink on drwg no MAK 1 Rev E) and within the builder's yard storage compound (hatched black on drwg no MAK 1 Rev E) which have been completed in excess of 4 years ago.

Signed

Hilda Higenbottam

Inspector

Date 25 August 2022

Reference: APP/R3650/X/21/3271100

First Schedule

Existing use of builder's yard storage compound (cross hatched black) and builder's yard (no colour) on drwg no MAK 1 Rev E (Plan B) which have been in use for at least 10 years. Existing use of the access track (coloured pink) on drwg no MAK 1 Rev E to access the builder's yard storage compound and the builder's yard for at least 10 years. Also provision of hardstanding along access track (coloured pink) on drwg no MAK 1 Rev E and within builder's yard storage compound (cross hatched black on drwg no MAK 1 Rev E) which have been completed in excess of 4 years ago

Second Schedule

Land at Hopkins Reeds, Hatch Lane, Wormley, Godalming, Surrey.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan B

This is the plan referred to in the Lawful Development Certificate dated: 25 August 2022

by Mrs H M Higenbottam BA(Hons) MRTPI

Land at: Hopkins Reeds, Hatch Lane, Wormley, Godalming, Surrey

Reference: APP/R3650/X/21/3271100

Scale:NTS