



Appeal Decisions

Site visit made on 24 January 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH APRIL 2023

Appeal A Ref: APP/D3640/C/21/3281220

Land at Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by J W Elliott & Sons (West End) Limited against an enforcement notice issued by Surrey Heath Borough Council.
- The notice, numbered 19/0055, was issued on 23 July 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the use of buildings on the site known as Buildings B, C, D and E (as identified on the attached Site Location Plan and coloured blue) as general industrial and storage uses. The stationing of a number of containers used for storage and general industrial uses, and storage of vehicles on associated hardstandings. The use of car parking and circulation areas ancillary to the unauthorised uses of the site.
- The requirements of the notice are to:
 - 1) Cease the use of buildings B, C D and E as shown shaded blue on the enclosed site location plan, for general industrial and storage uses;
 - 2) Remove from the land all items contained within buildings B, C D and E as shown shaded blue on the enclosed site location plan;
 - 3) Remove from the land the containers, including all associated fixtures, fittings and drainage that are located within the area as shown shaded green on the site location plan;
 - 4) Remove from the land all vehicles parked anywhere outside the car park area to the east of building F that is shown shaded red on the site location plan;
 - 5) Remove from the land all miscellaneous items associated with the general industrial or storage use of the land;
 - 6) After the compliance with steps 3 and 4 above, regrade the land evenly and reseed with grass.
- The period for compliance with the requirements is six months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal succeeds in part, but is otherwise dismissed. The enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/D3640/X/21/3280462

Land at Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Elliot of J W Elliott & Sons Limited against the decision of Surrey Heath Borough Council.
- The application ref SU/20/0132, dated 7 February 2020, was refused by notice dated 3 June 2021.
- The application was made under section 191(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: The use of buildings identified with a 'B', 'C', 'D' and 'E' on the FLN 1 Revised plan¹ for a storage use falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended; the use of the land identified in green on the FLN 1 Revised plan for the storage of vehicles, caravans and boats, and the use of the land identified in blue for storage a storage use, both being uses that fall within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended; the use of the land identified hatched in orange on the FLN 1 Revised plan for a car park associated with the uses taking place on the site; and the use of the land identified hatched in black on the FLN 1 Revised plan for vehicle circulation associated with the uses taking place on the site.

Summary Decision: The appeal succeeds in part, but is otherwise dismissed.

Applications for costs

1. An application for costs was made by Mrs Josephine Meaney and Mr Simon Meaney against J W Elliott & Sons (West End) Limited. This application is the subject of a separate decision.

Preliminary Matters

2. There is a slight difference in the name of the appellant company given for Appeal A and Appeal B. The statutory declarations submitted with both appeals refer to J W Elliott & Sons (West End) Limited. I have, therefore, regarded this company as the appellant for both appeals.
3. Appeal A has been made on grounds (c) and (d). A ground (c) appeal is that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. Such a ground of appeal is usually made where the appellant does not dispute that the matter stated in the notice has occurred, but is of the view that the matter does not require the benefit of express planning permission for whatever reason.
4. The allegation in the notice includes the use of buildings and land for 'storage and general industrial uses'. Whilst the appellant acknowledges that the land and buildings are used for storage, they have made the case that neither have been used for a general industrial use. They have, therefore, made the case that the allegation is not correct. This is a matter that ought to be considered under a ground (b) appeal, which is that the matters stated in the notice have not occurred.
5. The appellant has also made the case that the use that they suggest has taken place on the land and in the buildings is immune from enforcement action. They do not, however, suggest that planning permission is not required for the use, which would be a ground (c) matter. Rather, they suggest that they are lawful as they have continued for a period of ten years beginning with the date of the breach, in accordance with section 171B(3) of The Town and Country Planning Act 1990 as amended (the 1990 Act).
6. In view of the above, I will consider a ground (b) and ground (d) appeal for appeal A, and not a ground (c). In doing so I am satisfied that neither party

¹ The FLN 1 Revised plan is a revised plan submitted by the parties during the course of the appeal. A copy of the plan is attached at the end of this decision.

will be prejudiced. The Council has responded to the appellant's case that I consider to fall within ground (b).

7. On a separate matter, whilst the appellant has made the case that building C is used only for storage, in their appeal submissions they say that they no longer maintain that this use of the building is lawful. The use of this building is not, therefore, subject of the ground (d) appeal or Appeal B.
8. I have had regard to the representations of interested parties, both in support of the appeal or objecting to the development. Many of these refer to the planning merits of the development, including such matters as the effect of the development on their living conditions, traffic and matters of pollution. To be clear, Appeal B relates to an application under section 192(1)(b) of the 1990 Act and seeks to ascertain whether the development would be lawful. This matter, together with the grounds of appeal to be considered in Appeal A, are determined on the basis of fact and law. This means that the planning merits of the development subject of either appeal can form no part of my assessment in this case.
9. Finally, I will refer in these decisions to The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). I will refer to Class B2 (General Industrial) and Class B8 (Storage or Distribution) of Part B, Schedule 1 of the 1987 Order. From here on in, I will refer to these in the short form as Class B2 and Class B8. There is also reference to Class B1, which is a former use class that fell within Part B of Schedule 1. This Class was, however, revoked in September 2020. Most uses that formerly fell within Class B1, now fall within Class E of Part A, Article 3, Schedule 2 of the 1987 Order.

The Notice - Appeal A

10. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
11. The allegation in the notice refers to several matters. I have separated these out as follows:
 - i. The use of Buildings B, C, D and E as general industrial and storage uses.
 - ii. The stationing of a number of containers used for storage and general industrial uses.
 - iii. The storage of vehicles on associated hardstandings.
 - iv. The use of car parking and circulation areas ancillary to the unauthorised uses of the site.
12. I have a number of concerns with regard to the notice and have, therefore, raised these matters with the parties. I sought their comments and have had regard to the responses received in reaching my decision.

The Planning Unit

13. I raised the matter of the relevant planning unit with the parties and sought their views on whether or not there is a single planning unit on the site (outlined in red) or whether the land to which the notice relates contains several planning units. On this matter, I have had regard to the settled case law.
14. I note that each building I saw on site is contained and occupied individually. There are also defined parts of the site used for open storage or storage facilitated by shipping containers. The buildings and storage area referred to in the notice each have a primary use. They are also physically and functionally separate from one another and from the wider parts of the site, which includes buildings A and F (that were considered in the previous Inspector's decision² relating to an LDC appeal), and land that might be regarded as having the historic nursery use referred to by the parties. As such, I am satisfied that the site is occupied by a number of planning units. This is consistent with the approach taken by the previous Inspector, who identified several planning units on the site and considered each in turn.
15. In view of the above, I intend to correct the notice so that it refers separately to the individual planning units to which it relates.

Allegation i.

16. The notice alleges 'Without planning permission, the use of buildings on the site known as Buildings B, C, D and E.....as general industrial and storage uses'.
17. Part 1 of the enforcement notice states that there has been a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.
18. Whilst the notice refers to a use of the land and buildings, it does not allege that a **material change** in the use of the land has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
19. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
20. In addition to the above, I have read the allegation as being of a mixed use of each of the four buildings listed, although this is not specified.
21. Having considered the appellant's case, I am satisfied that they have understood that the allegation as it relates to these buildings is of a **material change of use**. Accordingly, I am satisfied that injustice would not be caused were I to correct the notice to include this in the allegation. I conclude the same in correcting the notice to include reference to a **mixed**

² Appeal reference APP/D3640/X/19/3241266

use. The appellant's case that the buildings are not used for a general industrial use is a matter that falls to be considered under the ground (b) appeal.

22. I also intend to correct the requirements of the notice that relate to the buildings so that it is consistent with the allegation.

Allegations ii. and iii.

23. The second part of the allegation is also of 'storage and general industrial uses', whereas the third is of the 'storage of vehicles on associated hardstandings'. Again, there is no allegation of a material change of use in either case. Neither is there reference to a mixed use in allegation ii.
24. Notwithstanding the above, these allegations are not accompanied by a reference to the plan attached to the notice identifying the land on which the uses are alleged to be taking place. I note the area shaded green on the enforcement notice plan, but this is only referred to in the requirements, not in the allegation. This is important in order for the recipient of the notice to be certain with regard to the area of the appeals site to which the allegation relates. At the site visit I noted shipping containers and vehicles in the green area highlighted on the enforcement notice plan. This area is also occupied by caravans and boats, which are not mentioned in the notice. The recipient of the notice would not, therefore, be certain that the allegation relates to the storage of these items.
25. I have been provided with an amended plan entitled 'FLN 1 Revised', which identifies areas in this central part of the appeals site in green and blue. These areas correspond more precisely to the areas of storage I observed on site. The amended plan provides some clarity.
26. There is, however, a more fundamental defect in the notice. Where the notice requires the cessation of the storage and general industrial uses, this requirement only relates to the buildings. The notice, as drafted, does not require the cessation of either the storage and general industrial uses of the land or the storage of vehicles. 5.3) only requires the removal of the containers. My reading of the 5.4) requirement to remove 'parked vehicles' is that this relates to the car parking use in the fourth part of the allegation, rather than to the vehicle storage use.
27. Section 173(11) of the 1990 act states that 'where (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities'. As the notice does not require the cessation of the use of the land for storage and general industrial uses or for vehicle storage, planning permission would be deemed to have been granted by reason of section 173(11), once the requirements of the enforcement notice are complied with. The provisions of section 181 of the 1990 Act, which relates to the continuing effect of a notice, would not affect the permission that would be granted in this case.

28. Having sought the views of the parties on this matter, it is clear that the Council had not intended to underenforce and grant permission for the use of the land for storage and general industrial uses or for vehicle storage. This is plain, having considered what is within the four corners of the notice, which includes the reasons for issuing the notice. Part 4 of the notice identifies the harm that is said to be caused by the use. There is clearly conflict in the notice, between the reasons for its issue and what it will permit once it is complied with. Accordingly, the notice is defective in this respect.
29. The Council has suggested corrections to the notice, which include a requirement to cease the uses of the land. This would, however, make the notice more onerous and would, therefore, cause injustice to the appellant. It does not, however, follow that the notice will be quashed. The flawed parts of the notice are discrete. Accordingly, I intend to correct the defect in the notice by removing reference to this second and third part of the allegation, as well as removing the associated requirements. In doing so injustice would not be caused to either party, particularly in view of the provisions of section 171B(4) of the 1990 Act to issue a further notice, should it be considered expedient to do so.

Allegation iv.

30. The notice alleged 'the use of car parking and circulation areas ancillary to the unauthorised uses of the site'. As with the second and third part of the allegation, the location of the parking and circulation areas are not identified in the allegation with reference to a plan and could, therefore, be read as relating to the whole of the site. Indeed, I saw the vehicles of those who used the site parked on land other than that identified in red as the 'car park area' on the enforcement notice plan.
31. In addition to the above, there is also no reference to a material change of use and no requirement to cease the use. The implications of this are, therefore, similar to those set out above. Having regard to requirement 5.4) of the notice, it would appear that the Council had intended to rely on the provisions of section 173(11) of the 1990 Act and underenforce in respect of the car parking use of the land highlighted in red on the plan. However, I am not certain that the Notice, as drafted, would achieve this as the notice does not require the car parking use to cease. In view of the provisions of section 173(11) of the 1990 act, I am concerned that the notice, once complied with, would grant permission for car parking and circulation across the entire site.
32. On a final matter, the notice refers to the car parking and circulation areas as 'ancillary to the unauthorised uses of the site'. However, it is agreed that the appeal site is occupied by a number of planning units. For a use to be ancillary to another, it must be carried on within the same planning unit.
33. For the reasons given above, the notice is defective. Having sought the parties views with regard to how the notice could be corrected, the Council suggest that the allegation and the associated requirements can be removed from the notice. In view of this, and having regard to the appellant's comments on the matter, I am satisfied that these defects of the notice can be corrected by removing this part of the allegation and the associated requirements without injustice being caused to any party.

Other matters

34. I find requirement 5.5) to be particularly vague. If the notice was intended to attack uses on several planning units within the land outlined in red, this requirement is not consistent with this. The requirement relates to the whole of the land outline in red on the enforcement notice plan, whereas the planning units in this case may not fill the site. It is not clear which use this requirement relates to and so the recipient of the notice would not have reasonable certainty as to what they are required to do to comply with the notice.
35. The Council suggest that this requirement can be removed from the notice without affecting its aims. I agree and see no reason why the removal of this requirement would cause injustice to any party.

Summary

36. In order to clarify the matters that remain as the subject of the ground (b) and (d) appeal, at this stage I intend to correct the notice so that it only alleges the material change of use of each of the buildings identified as B, C, D and E on the enforcement notice plan to a mixed use for general industrial and storage uses. The requirements of the notice will also be varied to only require the cessation of the mixed use of each building.

Description of Development – Appeal B

37. The description used in the header for Appeal B has not been taken from the LDC application form. Indeed, having considered both the LDC application and appeal submissions, it is not entirely clear what development is the subject of Appeal B. The description of the development given in the LDC application form is particularly vague with regard to the use or uses for which the LDC is sought and the areas of the site on which this use or uses take place. The appeal form provides little assistance in clarifying the matter or matters that were the subject of the LDC application.
38. In terms of the relevant class of the 1987 Order, the form only mentions '[Class] B1 (a) - Office (other than A2)', whereas the letter accompanying the application mentions a '[Class] B2 (General Industrial) and [Class] B8 (Storage & Distribution)' for building C and then 'existing activities on the site, which are within Class B1(Business), Class B2 (General Industrial) and Class B8 (Storage & Distribution)'.
39. The LDC decision notice refers to buildings B, C, D and E, as well as to a 'container and storage area'. The plan submitted with the LDC application identifies these buildings on the site. There are other buildings on site that I have seen referred to as buildings A and F. I understand why these have been omitted from the plan, having regard to the previous Inspector's decision on the lawfulness of the use of these buildings. Notwithstanding this, neither the plan nor the letter that accompanied the application assist in identifying the location of the container and storage area. The appellant's appeal statement also refers to the use of the 'car parking area to the front of site adjacent to Fenns Lane', and to 'circulation areas'.
40. In view of the above, before considering the LDC appeal, it is essential that I make clear the development that is the subject of the appeal. The powers to correct the description of the development are set out in section 191(4) of the

1990 Act. To this end I wrote to the parties on this matter. I have had regard to the comments I have received in response, including the revised annotated FLN 1 Revised plan, referred to above. From these I have been able to clarify the precise nature of the development that is the subject of this appeal.

41. From the responses received, I have been able to conclude that the site is occupied by a number of planning units. As for the use of each of these planning units, the appellant has referred only to a use falling within Class B8 of the 1987 Order. As noted earlier in this decision, they have also withdrawn building C from the LDC appeal. Accordingly, the appeal will be determined on the basis that the LDC is sought for the following:
 - The use of buildings B, D and E (in the location identified on the FLN 1 Revised plan) for a storage use falling within Class B8 of Part B, Schedule 1 of the 1987 Order;
 - The use of the land identified in green on the FLN 1 Revised plan for the storage of vehicles, caravans and boats, and the use of the land identified in blue for storage, both being uses that fall within Class B8 of Part B, Schedule 1 of the 1987 Order;
 - The use of the land identified hatched in orange on the FLN 1 Revised plan for a car park associated with the uses taking place on the site; and
 - The use of the land identified hatched in black on the FLN 1 Revised plan for vehicle circulation associated with the uses taking place on the site.
42. This description has been used in the header above.
43. I note from the decision notice that the Council considered whether the use of the container and storage area, and buildings B, D and E for the purposes of a use falling within Class B8 was lawful. My consideration of Appeal B, as set out above, will be consistent with this. However, the decision notice does not refer to the car park and circulation areas. Despite this, I am satisfied that the Council's evidence deals with these matters. My consideration of these matters on the basis set out above would not, therefore, prejudice any party.

Ground (b)

44. The appeal on ground (b) is that the matters alleged in the enforcement notice, as I intend to correct them, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that the matters stated in the enforcement notice have not occurred.
45. In view of the corrections I intend to make to the notice, the ground (b) appeal relates only to buildings B, C, D and E. The matter in dispute between the parties is whether or not a material change of use of these buildings to a mixed general industrial and storage use has occurred.

Building B

46. Building B is described by the previous Inspector as the second half of a small tin building. The first half being building A. At the time of the LDC application subject of the previous appeal, building A was occupied by the Decorative

Ceiling Company (DCC). The Inspector granted a LDC for the use of this building for a purpose falling within Class B2.

47. The appellant says that the same company occupied building B up until 2012, but that, since 2012, building B has been occupied independently of building A and used for the purposes of storage.
48. Turning to the Council's case, it acknowledges that the use of building B by DCC ceased in 2012. It refers to 'latter uses as [Class] B1' after this time, but it does not refer to a Class B1 use in the notice. Indeed, there is no evidence that leads me to conclude that a use that might otherwise fall within Class B1 ought to comprise part of the mixed use alleged.
49. The Council says it does not have sufficient evidence regarding how the subsequent occupiers used building B. However, it maintains that it had intended the notice to target a mixed use, suggesting that the building was 'largely operating as a B2 (general industry)', but with 'elements of storage and distribution'. In doing so, it appears to rely on the occupation of the building by DCC and the previous Inspector's conclusions with regard to their use of building A.
50. I acknowledge that section 174(2)(b) of the 1990 Act is worded in the past tense, and the question in the ground (b) appeal is whether the breach **had** occurred by the date of issue of the enforcement notice. Whilst DCC's use of building B may well have included a general industrial use (a matter to be considered in the context of the ground (d) appeal), their use of the building was some 9 years prior to the issue of the enforcement notice. Since that time there have been other occupiers of the building and the evidence indicates that their use of the building is more likely than not to have been for a storage use. Whilst I note that third parties have referred to individuals working within buildings on the site, they have not said that this is within building B.
51. For the reasons given above, I find as a matter of fact and degree that the allegation with regard to the use of building B is not correct. The appeal on ground (b) should succeed in so far as it relates to building B. I will correct the notice to allege a material change of use of building B to a storage use, falling within Class B8. I will also vary the requirements of the notice that relate to this building so that they require the cessation of this use.

Building C

52. Despite not being the subject of the ground (d) appeal and Appeal B, in their response to my questions the appellant makes the case that building C is used for the purposes of storage only. However, the evidence provided with in the statutory declarations submitted with the LDC application indicates that the last three tenants of the building used it for vehicle repairs. I also note from the previous appeal decision that the LDC was sought for the use of the building for Class B2 purposes. Notwithstanding this, the Inspector notes submissions from the appellant in that case indicating a mixed use of the building for purposes that might otherwise fall within Class B2 and Class B8.
53. Whilst both I and the previous Inspector observed the building being used for what appeared to be a storage use, again I am mindful that section 174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the

breach had occurred by the date of issue of the enforcement notice. Having regard to the evidence before me, I am satisfied that the description of the breach with regard to building C, of a material change of use to a mixed general industrial and storage use, is correct and that this material change of use has occurred. The appeal on ground (b) should, therefore, fail in so far as it relates to building C.

Buildings D and E

54. In the previous appeal the LDC was sought for the use of these buildings for a storage use, falling within Class B8. The statutory declarations submitted with the Appeal B application are consistent with this. At my site visit, whilst I noted some tools within building D, I saw no obvious evidence of an active general industrial use of this building. Similarly, building E appeared only to be in a storage use and was mainly occupied by builders' materials.
55. The Council acknowledge that these buildings are primarily used for storage, but says that 'there were still significant enough elements of general industry activity during the investigation work prior to and at the point the enforcement notice was issued'. The Council does not, however, say what general industrial process was taking place within the buildings.
56. I have considered the evidence of local residents, which suggests that individuals have worked within buildings on the site, but note that most do not specify the building in question. I have had regard to the photographs provided by an interested party who suggests they show a use of the building for the repair of boats. I note that the photographs were taken by the Council, but do not form part of their evidence. I cannot be satisfied that the photograph taken of the inside of the building shows a boat repair activity. I also note the other two photographs taken are of land outside the building. This evidence is not, therefore, sufficient for me to conclude that a general industrial use has been a primary use of the building, such that I could conclude that this use forms part of a mixed use.
57. In view of the above, and having regard to all other evidence before me, in particular the previous appeal decision and the statutory declarations, I find that as a matter of fact and degree that the allegation is not correct in so far as it relates to buildings D and E. The material change of use of buildings D and E to a mixed use for general industrial and storage use has not occurred. For these reasons, the appeal on ground (b) should succeed in so far as it relates to these buildings. I will correct the notice to allege a material change of use of buildings D and E to a storage use, falling within Class B8. As with building B, I also intend to vary the requirements of the notice that relate to these buildings.

Ground (d) and Appeal B

Main Issues and Considerations

58. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The starting point for the ground (d) appeal is the date of the breach. In order to succeed on this ground, the appellant must show that, prior to the date of the issue of the enforcement notice (the relevant date for the purposes of Appeal A), the use

of buildings B, D and E had been continuous for a period of ten years beginning with the date of the breach. It is worth noting that the date 10 years prior to the relevant date in the case of Appeal A is 23 July 2011.

59. As for Appeal B, section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application (the relevant date for the purposes of Appeal B), they shall issue a certificate to that effect; and in any other case they shall refuse the application. The main issue in Appeal B is whether or not the Council's refusal of the LDC application was well founded. To succeed, the appellant must demonstrate that on the date the LDC application was made, the use of the buildings and land to which the application relates had been continuous for a period of ten years or more. Again, it is worth noting that the date 10 years prior to the relevant date in the case of Appeal B is 7 February 2010.
60. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, 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. This advice is relevant to the ground (d) appeal, as well as Appeal B.
61. Having regard to the matters in dispute between the parties, the main considerations in this case are, namely:
- whether or not the use of the buildings and land for the purposes claimed commenced more than 10 years prior to the relevant dates in this case; and
 - whether or not there has been a continuous use of the buildings and land for the purposes claimed for a period of 10 years beginning with the date (i.e. commencement) of the breach.
62. In view of the corrections and variations I intend to make to the notice, the ground (d) appeal only relates to buildings B, D and E. I will, therefore, consider the ground (d) appeal together with Appeal B in so far as it relates to these buildings. I will then move on to consider the matters that remain the subject of Appeal B.

Reasons

Building B

63. Having regard to the corrections I intend to make to the notice pursuant to the ground (b) appeal, the use of building B that is the subject of this ground (d) appeal is a use for the purposes of storage falling within Class B8. The appellant does not say when the storage use commenced. However, their evidence starts with the use of the building by DCC between November 2006 and up until August 2012.

64. Three statutory declarations have been provided by three of the directors of the appellant company. Whilst these confirm DCC's occupation of building B, they do not state how DCC used the building. In the appeals statement the appellant claims that DCC used building B as storage in association with their use of building A. These claims are not, however, supported by the evidence of Mr Melling, who clearly provides his evidence on behalf of DCC. He refers to the periods of his occupation of buildings A and B, but does not say how either buildings were used during DCC's occupation, or that building A was used in a different way to building B.
65. With regard to any other evidence of how building B was used by DCC, the Council point to the previous appeal decision. The description of the development for which the LDC was sought in that case includes a use for building B for a purpose falling within Class B2, not Class B8. Whilst I note that the Inspector took this description from the Council's decision notice, he says that he has had full regard to all the evidence submitted for the purposes of his assessment. He was clearly content that the appellant's claim was that the lawful use of building B was for a Class B2 purpose. Importantly, the appellant does not now suggest that the Inspector was incorrect in this regard.
66. The use of both building A and building B by DCC was considered by the previous Inspector. Having regard to DCC's use of building A, he concluded that its use for a purpose falling within Class B2 was lawful. Whilst he does not conclude the same for building B, he is not concerned that DCC's use of the building was not for a Class B2 purpose. Had he had these concerns, he would have dealt with this matter in his decision. As I have done, he would have put his mind to the commencement of the breach and the first evidence he refers to of this in his decision is that of DCC's use of the building. Yet he does not question whether DCC used the building for the Class B2 use claimed. The Inspector refers in general to contradictory evidence, but this is with regard to the occupation of building B, rather than the use.
67. In view of the above, I conclude that it is less than probable that the use of building B for the purposes of storage commenced with DCC's occupation and use of the building.
68. There is no dispute that building B was occupied and used continually by DCC from November 2006, up until August 2012. As such, DCC's use of the building commenced more than 10 years prior to either of the relevant dates in this case, and continued for at least a year after. For this reason, I cannot conclude that, on the balance of probability, the use of building B for the purposes of storage commenced more than 10 years prior to either of the relevant dates in this case.
69. The appellant suggests that the subsequent occupier of the building used it for storage purposes. The Council does not dispute this, and I have no reason to disagree with the parties on this matter. The appellant is, therefore, able to demonstrate that the building was used for the purpose of storage following its occupation and use by the company Move Me Now. However, the appellant's evidence is that this company's use of the building did not commence until August 2012, which is less than 10 years prior to the relevant dates in the case of both Appeal A and Appeal B.

70. Having regard to all of the above, the appellant has failed to discharge the burden of proof that is upon them in demonstrating that the use of building B for a storage use falling within Class B8 had been continuous for a period of ten years prior to either of the relevant dates in this case. In view of this, I see no reason to consider the evidence regarding the use of building B further. Both the ground (d) appeal and Appeal B must, therefore, fail in so far as they relate to this building.

Building D

71. Having regard to the corrections I intend to make to the notice pursuant to the ground (b) appeal, the use of building D that is the subject of this ground (d) appeal is a use for the purposes of storage falling within Class B8. In their statutory declarations the directors of the appellant company say that there are three occupiers of the building and suggest that these have each used the building continuously. They say the first of these occupied the building in September 2007, followed by the second and third occupiers in November 2007 and June 2008. Whilst the directors' evidence with regard to building D is briefly stated, I am mindful of the significant weight that is carried by evidence provided in such statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence.
72. The appellant's evidence suggests that Mr Jespersen stored a trailer tent in the building, whereas Mr and Mrs Watts have used the building to store either a trailer tent or TRV car. They also say that the Cuckoo Valley Shooting Club have used the building since November 2007 to store their equipment. Having regard to this, the evidence indicates that the material change of use of the building took place sometime between September 2007 and June 2008.
73. With regard to the continuity of the use, I note the statements from Mrs Watts and a representative of the shooting club in which they confirm the period of their use of building D for the purposes of storage. I have also been provided with a copy of the appellant's financial records, which show that regular payments were made by the three occupiers of the building for the use of the storage space over the periods of their occupation.
74. The Council has pointed to gaps in the financial records in recent years. It is, however, worth noting that in considering the lawfulness of a use, the period considered need not be the 10 years (or 4 years in some cases) directly prior to the relevant date. Evidence demonstrating the continuity of a use over any 10 year period following the date of the breach can be relied upon to demonstrate the lawfulness of that use. If a use has become lawful, it may still be regarded as 'existing' and lawful, even if it is dormant or inactive.
75. With the above in mind, I note that the payment records submitted demonstrate continuous payments by the three occupiers for a period of more than 10 years after the commencement of the storage use. Notwithstanding this, the appellant has provided further evidence in response to the Council's concerns, including further, more recent financial records. I also note that for periods during her occupation of building D, Mrs Watts has rented a container on the site and stored a TRV car in building D. This may explain why her financial records refer to container rent and car parking.

76. I have had regard to the statutory declarations of interested parties³, including the evidence regarding the shooting club's use of the building. Notwithstanding that this does not contradict the appellant's claim that the building has been used by the shooting club for storage since 2007, my understanding is that Mr Gill's knowledge of the site is only recent, having been engaged by the neighbouring occupiers as their representative in this case. Furthermore, I have not been provided with the evidence from the shooting club which suggests that their use of the building was limited.
77. The building may well have been used for storage in association with the nursery use elsewhere on the appeals site. However, the parties agree that the building is a planning unit separate from other planning units on the site, including that occupied by the nursery use. As such, the use of the building for storage of nursery equipment would only add weight to the appellant's claims.
78. I have had regard to the previous Inspector's decision and his comments regarding the evidence before him of the use of building D. Whilst I do not know what was comprised in that evidence, I note his reference to some evidence that is not before me, including evidence from the shooting club. Nevertheless, the evidence I have is robust in demonstrating the lawfulness of the storage use over the periods claimed. I am also mindful of the weight I should attribute to the appellant's statutory declarations.
79. All things considered, I am satisfied that the appellant's evidence is sufficiently precise and unambiguous in demonstrating that the use of building D commenced more than 10 years prior to the relevant dates in this case. Furthermore, I have no evidence to contradict the appellant's claim that the building has been used continuously for the purposes of storage for a period of 10 years beginning with the date of the breach. Both the ground (d) appeal and Appeal B must, therefore, succeed in so far as they relate to this building.
80. In concluding as such, the enforcement notice will not be quashed. The Notice must remain in effect in respect of the use of building B. Instead of removing from the allegation reference to building D, I will correct the allegation in the manner set out earlier in this decision, pursuant to my conclusions on the ground (b) appeal. This will leave no doubt with regard to the use of building D that I have found to be lawful. I will, however, vary the notice to remove the requirements that relate to building D. In doing so, I am satisfied that the provisions of section 173(11) of the 1990 Act will not be engaged. The notice could not have required the use of the building for a storage purpose falling within Class B8 to cease as this use of the building is lawful.
81. On a final matter, whilst I have seen reference in evidence to the use of the curtilage of Building D, my conclusions above relate only to the use of the building itself. To be clear, I have found no evidence sufficient for me to conclude that, on the balance of probabilities, the use of the curtilage of building D, whatever that might be, for a storage use is lawful.

³ Those provided by Josephine Meaney, Simon Meaney, James Meaney and Mr Kevin Gill.

Building E

82. Having regard to the corrections I intend to make to the notice pursuant to the ground (b) appeal, the use of building E that is the subject of this ground (d) appeal is a use for the purposes of storage falling within Class B8. In their three statutory declarations the directors of the appellant company say that there have been a number of occupiers of Building E since 2003 to present. They suggest that there has been a storage use of the building since January 2003. However, there is a gap in the chronology of occupiers of the building between September 2003 and October 2005. Otherwise, their evidence indicates that the storage use commenced in October 2005 and has been continuous since that time.
83. I note the Inspector's concerns regarding the number of occupiers of the building and that, because of this, he doubted the uninterrupted and continuous use of the building. The Inspector refers to a lack of corroborative evidence and has concerns regarding the storage use claimed in the declarations. I am, however, mindful that the statutory declarations are from the directors of a company that has owned the site since 2003, which is longer than the period claimed in respect of any of the uses subject of these appeals.
84. Notwithstanding this, the appellant has provided evidence to supplement the statutory declarations. I have been provided with a statement signed by Mr Mark Ainsworth who says that he has occupied the building continuously to the current day, although I note that he does not say how he used the building. This is accompanied by copies of the financial records related to his occupation of the building.
85. I have referred in the ground (b) appeal to the photographs provided by an interested party who suggests they show a use of the building for the repair of boats. These were taken during Mr Ainsworth's occupation of the building. With regard to the photograph taken of the inside of the building, this was not taken by the interested party and does not, therefore, document activity within the building that he observed. Neither this, nor any other evidence before me is sufficient for me to conclude that the appellant's claims regarding the continuity of Mr Ainsworth's use of the building for the purposes of storage are less than probable.
86. Again, I am mindful that the appellant need only demonstrate continuity of the use during any 10 year period following the commencement of the breach. In this regard I note that Mr Ainsworth's use of the building has been for a substantial portion of the 10 year period prior to the relevant dates in this case.
87. With regard to the use of the building prior to Mr Ainsworth, I acknowledge that I do not have a statement similar to that of Mr Ainsworth from the occupiers of the building prior to him. However, I note that the declarations of the directors of the appellant company say that the appellant, JW Elliott, occupied the building between October 2010 and December 2010. Whilst the Council also point to the lack of financial records to support this claim, I would not expect to see such records as the appellant was also the owner of the site at this time.

88. I have had regard to the third party representations, referred to by the Council. This evidence is not, however, sufficiently precise to make the appellant's version of events less than probable. Furthermore, the Council does not point to any evidence sufficient to demonstrate that it could not have taken enforcement action against the use of building E at any time since the commencement of the storage use.
89. I find the appellant's evidence sufficiently precise and unambiguous. For this reason, and having regard to all evidence before me, I find it more likely than not that the storage use of building E commenced more than 10 years prior to the relevant dates in this case and that the use has been continuous for a period of 10 years beginning with the date of the breach. Both the ground (d) appeal and Appeal B must, therefore, succeed in so far as they relate to this building.
90. In accordance with my conclusions with regard to building D, instead of removing from the allegation reference to building E, I will correct the allegation in the manner set out earlier in this decision. I will also vary the notice to remove the requirements that relate to building E, being satisfied again that the provisions of section 173(11) of the 1990 Act will not be engaged. The notice could not have required the use of building E for a storage purpose falling within Class B8 to cease as this use of the building is lawful.
91. Again, my conclusions above relate only to the use of building E and not to the curtilage of this building, whatever that might be. I have found no evidence sufficient for me to conclude that, on the balance of probabilities, the use of the curtilage of the building for a storage use is lawful.

Storage Areas

92. I note that the plan submitted with the LDC application identifies a single area labelled 'container and storage'. This same plan was submitted with the previous LDC application. I agree with the previous Inspector, that this plan is not sufficiently precise in identifying land for which the LDC is sought or, indeed, the use.
93. In response to my questions to the parties, the appellant has provided a revised version of this plan, FLN 1 Revised, that separately identifies a vehicle storage area in the approximate location highlighted blue, and the areas occupied by containers identified in green. The appellant has also confirmed that the LDC is sought for a use of land for the storage of vehicles, caravans and boats. They say that this use takes place on a planning unit that is separate from that occupied by the containers.
94. I note that the Council does not agree with this last point. It says that the containers occupy the same planning unit as the vehicle, caravan and boat storage; as an open storage use. However, I find the revised plan and the appellant's approach to be consistent with the defined areas of the site that I saw during my site visit being used separately for different types of storage uses. The aerial photographs also consistently show what appear to be vehicles, rather than shipping containers, on the land in the approximate location highlighted in blue on the FLN 1 Revised plan. In view of this I shall consider the matter of the use of land for vehicle, caravan and boat storage separately to the use of the land occupied by the shipping containers.

- Vehicle, Caravan and Boat Storage

95. In support of the appellant's claim, no less than 4 individuals have written to confirm the periods during which they have stored their vehicle or caravan at the site. These statements accompany a copy of the appellant's financial records relevant to that individual. These individuals say that they stored their vehicle at the site for a substantial number of years, most exceeding 10 years.
96. I note that some of this evidence has been submitted in response to the Council's concerns. I find all of these statements corroborative of the appellant's claims with regard to the vehicle storage use of land at the appeals site. Furthermore, there is no evidence sufficient to contradict that provided by the appellant.
97. With regard to the extent of land used, I have had regard to the aerial photographs. I can see that in the 2009 photograph there are not items across the whole of the blue land. However, this changes in the aerial photograph dated January 2010, which was taken over 10 years prior to the relevant date in Appeal B. It shows items on the whole of the blue land. The shape of the items and the shadow they cast would be consistent with the type of caravans, motorhomes and larger vehicles I saw at my site visit. Indeed, I have no reason to conclude that these are not vehicles.
98. The March 2011, June 2013 and March 2017 aerial photographs are consistent with the January 2010 photograph in terms of the area covered and the type of items visible. Whilst I acknowledge that these photographs show only a moment in time, I have no reason to find that there would have been a material change in the area covered by the items stored at other times throughout the 10 year period prior to the relevant date in this case.
99. All things considered, I find it more likely than not that the use of the land identified in blue on the FLN 1 Revised plan for the storage of vehicles, caravans and boats falling within Class B8 of Part B, Schedule 1 of the 1987 Order commenced more than 10 years prior to the relevant date in Appeal B and that the blue land has been used continuously for this purpose for a period of 10 years since the date of the breach. Appeal B must, therefore, succeed in so far as it relates to this land.

- Container Areas

100. At the site visit I was shown into 6 of the shipping containers on the site. Each of these were occupied by various types of items, including furniture, carpet tiles, camping equipment, builders' materials and equipment, motorbikes, and slot machines. All of the units I saw appeared to be in use for the storage of various domestic, business and hobby items. There were no obvious signs of any other uses taking place within the containers, including any sort of industrial process or activity.
101. I note that reference in the directors' statutory declarations to 'storage of containers'. This use is also referred to at various points in the appellant's appeals statement and is the use mentioned in the previous appeal decision. However, I was not shown any containers that were being stored on the land. I saw the land being used for the storage of domestic, business and hobby items, with this use being facilitated by the shipping containers that have

been placed on the land. My observations are consistent with that of the Council's evidence of the use of the containers it observed during its inspection on 5 January 2022.

102. There may be no material difference between a use of the land for the storage of containers and a use of the land for the storage of domestic, business and hobby items, with this use being facilitated by the shipping containers. Nevertheless, the appellant provides little clarification with regard to the actual use of the green land, which is a matter that concerned the previous Inspector. This is an important point as the appellant's evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It is simply the case that the storage use referred to by the appellant is not consistent with the storage use I observed.
103. The appellant's response to my questions provides no further clarification or precision. Neither do the statements made by the 6 individuals regarding their rental of containers on the site. All say that they rented a container for the periods they specify and have referred to the financial records relevant to this. Indeed, I find this evidence persuasive in demonstrating the continuity of their occupation of the site. However, these individuals have clearly had a knowledge of the site for a substantial number of years, most exceeding 10 years, yet none say how they used the containers they rented or how they observed other containers or other parts of the site being used. I have no doubt that these individuals would not have simply rented a container for no purpose other than to store it on the land. It is not, however, for me to assume how these individuals used the containers they rented.
104. In addition to the above, I have seen the photograph provided by an interested party suggesting that this shows a person working in a container. I have also had regard to the statutory declarations of three local residents. They say that they have observed people 'working inside containers' and that they have witnessed 'vehicle breaking and repairs happening in the containers opposite building C'. The appellant says that this is not correct. There is, therefore, competing evidence before me. I must, however, favour the evidence of the neighbouring occupiers in this case. This is not only because of the ambiguity and imprecision of the appellant's evidence about the use of the green land in general, but also because of the weight that should be attributed to evidence given under oath.
105. I acknowledge that the evidence of the third parties is briefly stated, and that it may well be the case that the incidents referred to were so limited as to render them of no consequence to the overall use of the green land over the periods claimed. However, the third party evidence is sufficient to cast doubt over the ambiguous and imprecise evidence of the appellant that is before me.
106. Notwithstanding the above, I share the Council's concerns with regard to the extent of the land claimed to have been occupied by containers over the relevant 10 year period. Having compared all aerial photographs provided by the parties, I understand why the previous Inspector says that these indicate an increase in the extent of the area concerned over time. There are no shipping containers visible in the southernmost parts of the green land on the 2009, 2010 and 2011 aerial photographs. The area of the site indicated in

green on the FLN 1 Revised plan does not appear to be occupied by containers until when the 2013 aerial photograph was taken.

107. Whilst I have had regard to the number of containers the appellant suggests have been on the site over time, the photographic evidence does not support their claims regarding the extent of land occupied for the relevant 10 year period. I am mindful of the provisions of section 193(4)(a) of the 1990 Act, which would allow me to issue a LDC part of the land specified in the application. I will not, however, rely on these provisions in this case in view of my conclusion with regard to the evidence of the use of even part of the green land.
108. The appellant has not discharged the burden of proof in this case. On the basis of the evidence before me I conclude that, on the balance of probability, the land identified in green on the FLN 1 Revised plan has not been continuously used for a storage use falling within Class B8 of Part B, Schedule 1 of the 1987 Order for a period of 10 years prior to the relevant date in this case. Appeal B must, therefore, fail in so far as it relates to this land.

Parking and Circulation Areas

109. The directors of the appellant company, along with the Council, describe the parking and the circulation areas as ancillary to the uses on the wider site. However, as I have indicated earlier in this decision, for a use to be ancillary to another, it must be carried on within the same planning unit. That said, it is clear that the car park and circulation areas are associated with the uses on the wider site, as indicated by the appellant in response to my questions.
110. With regard to the car park, the appellant identifies this hatched in orange on the FLN 1 Revised plan. In their statutory declarations the directors describe a car park and hard standing in this general location, although they do not identify the boundary and extent of this with reference to a plan and it is not identified on the plan attached to their declarations.
111. The directors say that the car park and hard standing has been used by a number of occupiers and the appellant for car parking from 2008. They refer to financial records showing payments made between March 2008 and January 2020. These refer at various points to 'minibus parking' or 'parking rent'. The directors do not, however, specify the link between these records and the use of the car park. It may well have been the case that parking spaces were rented in the car park, but this is not made clear. This uncertainty is not helped by the fact that vehicle storage takes place elsewhere on the site.
112. The buildings close to the front of the site may well have enjoyed parking and access on the land identified hatched orange on the FLN 1 Revised plan. There is, however, insufficient evidence to demonstrate that the whole of the orange hatched land was used for this purpose.
113. I have had regard to the aerial photographs. In some of the photographs I can see surfacing on the orange hatched land that contrasts with the adjoining fields, as well as a small number of vehicles in each one. These are not, however, consistent in what they show, as is the case with the vehicle storage area (the blue land).

114. I acknowledge that the officer's report does not refer to the appellant's evidence regarding the use of the car park and does not contradict the evidence submitted. Although limited, I have had regard to the evidence of an interested party with regard to the use of the car parking area for vehicle repairs. All of this considered, I do not find the appellant's evidence as it relates to the car park sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
115. Turning to the circulation areas, whilst these were not identified in any detail on the plan submitted with the LDC application, they have been identified hatched in black on the FLN 1 Revised plan. In their appeals statement the appellant says they 'have been used in excess of 10 years for the various associated buildings'. However, the director's statutory declarations do not refer to the use of these parts of the site specifically.
116. In most of the aerial photographs I can see what appears to be hard surfacing in the hatched black areas. I can also see some of this provides a means of access to the various parts of the site, including land that I have not considered as part of these appeals. Nevertheless, I have not found the use of all land and buildings on the site to be lawful.
117. The black hatched area, or parts of it, may well have been used for some time to provide access to the various buildings and land within the appeals site, whether in their current or previous use. I do not, however, have sufficiently precise and unambiguous evidence to justify the grant of a certificate, on the balance of probability, for even part of the land identified on the FLN 1 Revised plan.
118. All things considered, I cannot conclude that the use of the land identified hatched in orange on the FLN 1 Revised plan for a car park associated with the uses taking place on the site and the use of the land identified hatched in black on the FLN 1 Revised plan for vehicle circulation associated with the uses taking place on the site is lawful, on the balance of probabilities. Appeal B must, therefore, fail in so far as it relates to this land.

Conclusion Appeal A

119. From the evidence before me, I conclude that part of the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal on ground (b) should succeed to that extent.
120. On the balance of probabilities, the appeal on ground (d) should succeed in part in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. Otherwise, the appeal on ground (d) should fail.
121. The enforcement notice will be corrected, varied and upheld.

Conclusion Appeal B

122. 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 use of the buildings identified with a 'D' and 'E' on the FLN 1 Revised plan and the use of the land identified in blue on the FLN 1 Revised plan was not well-founded and that the appeal should succeed insofar as it

relates to these matters. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

123. Otherwise, the Council's refusal to grant a certificate of lawful use or development in respect of the building identified with a 'B' on the FLN 1 Revised plan and land identified in green on the FLN 1 Revised plan was well-founded and that the appeal should fail insofar as it relates to these matters. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision – Appeal A

124. It is directed that the enforcement notice is corrected by the deletion from part 3 of the words 'Without planning permission, the use of buildings on the site known as Buildings B, C, D and E (as identified on the attached Site Location Plan and coloured blue) as general industrial and storage uses. The stationing of a number of containers used for storage and general industrial uses, and storage of vehicles on associated hardstandings. The use of car parking and circulation areas ancillary to the unauthorised uses of the site.' and their substitution with the words 'Without planning permission:
1. The material change of use of the building shown in the location highlighted in blue and labelled 'Building B' on the plan attached to this notice ("the Plan") to a use for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended;
 2. The material change of use of the building shown in the location highlighted in blue and labelled 'Building C' on the Plan to a mixed use for a general industrial and a storage use;
 3. The material change of use of the building shown in the location highlighted in blue and labelled 'Building D' on the Plan to a use for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended; and
 4. The material change of use of the building shown in the location highlighted in blue and labelled 'Building E' on the Plan to a use for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.'
125. It is directed that the enforcement notice is varied by the deletion from part 5 of the words '1) Cease the use of buildings B, C D and E as shown shaded blue on the enclosed site location plan, for general industrial and storage uses; 2) Remove from the land all items contained within buildings B, C D and E as shown shaded blue on the enclosed site location plan; 3) Remove from the land the containers, including all associated fixtures, fittings and drainage that are located within the area as shown shaded green on the site location plan; 4) Remove from the land all vehicles parked anywhere outside the car park area to the east of building F that is shown shaded red on the site location plan; 5) Remove from the land all miscellaneous items associated with the general industrial or storage use of the land; 6) After the compliance with steps 3 and 4 above, regrade the land evenly and reseed with grass.' and their replacement with the words '1. Cease the use of the building shown in the location highlighted in blue and labelled 'Building B' on the Plan for a use

for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended; and 2. Cease the use of the building shown in the location highlighted in blue and labelled 'Building C' on the Plan a mixed use for a general industrial and a storage use.'

126. Subject to the corrections pursuant to ground (b) and variations pursuant to ground (d), otherwise the appeal is dismissed and the enforcement notice is upheld.

Formal Decision – Appeal B

127. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful. Otherwise, the appeal is dismissed.

J Moss

INSPECTOR



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 7 February 2020 the uses described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probability, that the buildings referred to as building D and building E are used for a storage use falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended, and that land identified in blue and labelled with a 'G' on the FLN 1 Revised plan attached to this certificate is used for the storage of vehicles, caravans and boats, being a use that falls within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended. It has been demonstrated, on the balance of probability, that these uses of the buildings and land has continued substantially uninterrupted for a period in excess of 10 years, and that these uses were lawful on the date the application for a lawful development certificate was made.

Signed

J Moss

Inspector

Date: 4TH APRIL 2023

Reference: APP/D3640/X/21/3280462

First Schedule

The use of the building identified with a 'D' on the FLN 1 Revised plan attached to this certificate for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.

The use of the building identified with a 'E' on the FLN 1 Revised plan attached to this certificate for the purposes of storage falling within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.

The use of the land identified in blue and labelled with a 'G' on the FLN 1 Revised plan for the storage of vehicles, caravans and boats, being a use that falls within Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

The buildings identified with a 'D' and 'E' on the FLN 1 Revised plan attached to this certificate, and land identified in blue and labelled with a 'G' on the FLN 1 Revised plan on land at Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE.

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

This certificate applies only to the extent of the uses described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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

This is the plan referred to in the Lawful Development Certificate dated: 4TH APRIL 2023

by J Moss BSc (Hons) DipTP MRTPI

Land at: Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE.

Reference: APP/D3640/X/21/3280462

Scale: Not to scale

