The Planning Inspectorate

Appeal Decisions

Inquiry Held on 8-11 November 2022, 27 February 2023 & 10 March 2023

Site visit made on 11 November 2022

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 May 2023

Land at Alba Stables (aka Alma Stables, Hunts Farm & Stables), Bridge Way, Cobham, Surrey KT11 1HW

- Appeal A is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the refusal (in part) to grant a certificate of lawful use or development (LDC).
- Appeals B-F are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against enforcement notices issued by Elmbridge Borough Council
- Appeals A,B & D are made by Mr R Hunt (senior).
- Appeals C,E & F are made by Mr R Hunt (junior).

Appeal A: APP/K3605/X/20/3253349

- The application Ref 2017/3611, dated 4 November 2017, was refused (in part) by notice dated 12 September 2018.
- The application was made under sections 191(1)(a) & (b) of the Town and Country Planning Act 1990 as amended.
- The use and development for which a LDC is sought is: (i) the creation of areas of hardstanding (ii) the residential use of the dwellinghouse (iii) the stationing of caravans for purposes of human habitation (iv) the storage of building materials, and (v) the parking and storage of vehicles.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/K3605/C/19/3230212
Appeal C: APP/K3605/C/19/3230213

- The enforcement notice (Notice 1) was issued on 3 May 2019.
- The breach of planning control as alleged in the notice is:
  - Within the last four (4) years and without planning permission, the formation of hardstanding.
  - With [sic] the last four (4) years and without planning permission, the erection of walls, gates and piers.
- The requirements of the notice are:
  (1) Break up the hardstanding, and permanently remove it from the Land, the approximate location and layout of which is hatched in black on the plan attached to the notice.
  (2) Reinstate the areas [sic] to its former condition, as hatched on the plan attached to the notice, by re-grassing.
  (3) Permanently remove from the Land the walls, gates and piers erected north of the stable block, approximately located between A and B as indicated on the plan attached to the notice.
- The period for compliance with the requirements is 3 calendar months.
- The appeals are proceeding on the grounds set out in section 174(2)(d)&(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed, and the enforcement notice is upheld as corrected.

Appeal D: APP/K3605/C/19/3230219
Appeal E: APP/K3605/C/19/3230220

- The enforcement notice (Notice 3) was issued on 3 May 2019.
- The breach of planning control as alleged in the notice is within the last four (4) years and without planning permission, the raising of the ground levels.
- The requirements of the notice are:-
  (1) Permanently remove 897m^3 (1345.5 tonnes) of volume from the Land within area 1, as shown on the plan attached to the notice, and restore this area of land to its previous land form.
  (2) Permanently remove 1882m^3 (2823 tonnes) of volume from the Land within area 3, as shown on the plan attached to the notice, and restore this area of land to its previous land form.
  (3) Permanently remove all of the deposited materials from the Land, which were imported in association with raising the land levels, other than that used to restore the land to its previous land form.
  (4) After completing steps (1)-(3), to reinstate the Land in areas 1 and 3 to its former condition, as indicated on the plan attached to the notice by re-grassing.
- The period for compliance with the requirements is 3 calendar months.
- The appeals are proceeding on the grounds set out in section 174(2)(b)&(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed, and the enforcement notice is upheld as corrected.

Appeal F: APP/K3605/C/22/3303872

- The enforcement notice (Notice 5) was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the land to a mixed use comprising of:-
  i) A scaffolders yard;
  ii) Commercial dog walking;
  iii) The storage of tyres;
  iv) The storage of reclaimed windows and doors;
  v) The storage and parking of vehicles, trailers, diggers, plant and lorry bodies;
  vi) The siting of a mobile home used for human habitation;
  vii) The siting of storage containers and portacabins for commercial storage;
  viii) The importation, deposit, stationing and storage of assorted empty and full skips containing various mixed inert and non-inert building waste materials including and not limited to timber, wood, white goods, general building waste materials, porcelain, metal and tyres as well as the periodic sorting, transfer and export of previously imported waste materials;
  ix) The storage of timber, scrap metal, building materials, rubble and waste;
  AND
  x) The material change in use of the building adjacent to the stables as a self-contained residential dwelling.
- The requirements of the notice are:
  1. Permanently cease the mixed use of the Land;
  2. Remove all vehicles, trailers, diggers, plant and lorry bodies from the Land;
  3. Remove all scaffolding and associated equipment including the portacabin office from the Land;
  4. Remove from the Land the fencing, supporting posts and gates, as indicated on the site plan attached to the notice;
  5. Remove all mobile home [sic] from the Land;
  6. Remove all storage containers and portacabins from the Land;
  7. Remove all reclaimed windows and doors;
  8. Remove all tyres from the Land;
  9. Remove the security office from the Land;
  10. Remove all skips from the Land;

11. Remove the area of hardstanding (as shown on the attached [sic]);
12. Remove all timber, building rubble and waste and miscellaneous building materials associated with the unauthorised mixed use;

AND

13. Cease the use of the building adjacent to the stables as a self-contained residential dwelling and remove the kitchen facilities.

- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b),(d)&(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed, and the enforcement notice is upheld as corrected.

Procedural Matters

The appeals

1. Appeal A is made against the Council's decision to refuse (in part) to issue a LDC. The Council's decision of 12 September 2018 had granted a LDC for development described as: (i) the erection of a building (ii) the erection of stables (iii) the use of the stables for the keeping of horses (iv) the use of the land for the grazing of horses (v) the erection of two workshops (vi) the use of the workshops as carpenter's workshops, and (vii) the creation of hardstanding leading to and around the workshop and stables (in part). The Council was satisfied those uses and operations had continued for a period of 10 and 4 years, respectively, to become immune from enforcement action.

2. Appeal A is made against the Council's decision to refuse the remaining part of the LDC application for development described in the banner heading above. Whilst the appellant's closing submission describes one element of the application as being for 'the use of the site as a builders yard', the application was made for 'the storage of building materials' and this is the basis on which the appeal shall be considered.

3. For the same site, there are five appeals against three enforcement notices. The three enforcement notices attack the development for which the LDC was refused along with other development alleged to have also taken place without planning permission. Essentially, the same arguments are raised by the appellants under ground (d) in Appeals B,C and F as those arising in Appeal A.

The Inquiry

4. The Inquiry opened at 10am on 8 November 2022 but was immediately adjourned in the absence of the appellants' advocate who was unavoidably delayed due to motorway closure. The Inquiry resumed later that morning upon his arrival. No evidence was heard on day 1 although detailed discussion took place on the enforcement notices, grounds of appeal and procedural matters in an attempt to clarify the parties' positions and narrow the issues.

5. There was insufficient time to conclude the Inquiry within the allotted 4 days. The Inquiry was adjourned on 11 November 2022 and resumed as a virtual event on 27 February 2023 and 10 March 2023. All evidence was concluded by the end of day 6. I agreed to accept closing submissions in writing in order to avoid further delay in finding a seventh sitting day. The advocates requested and agreed that both sides submit their written closings on the same day. The Inquiry was formally closed in writing on 5 April 2023.

6. All witness evidence at the Inquiry was given on oath or sworn affirmation.

The background

7. The Inquiry had been scheduled to open on 5 April 2022 but was postponed when it transpired that the public notices erroneously omitted sufficient or correct details of the enforcement notice appeals.

8. After the postponement, the Council on 30 June 2022 withdrew the two separate enforcement notices issued on 3 May 2019 (described as Notices 2 and 4) which were directed at the material change in use of the land. The Council issued a single notice in their place. This new notice is described as Notice 5, to avoid confusion with those issued and appealed earlier.

9. Another enforcement notice was previously issued by the Council against the same appeal site on 8 November 2016 ('the 2016 Notice'). That notice was directed at the erection of fencing, hardstanding, decking and increase in land levels along with the siting of a mobile home for residential purposes and material change of use of the land to open storage of vehicles and materials. This notice was withdrawn on 5 December 2017 before it came into effect.

10. A further enforcement notice was issued by the Council on 22 December 2020 ('the 2020 Notice') against an unauthorised material change in use of the appeal site for the importation and disposal of inert materials and the formation of an additional area of hardstanding to that identified in these appeals. When no appeal was brought, the 2020 Notice came into effect on 2 February 2021.

The appellants

11. The appeal form in Appeal F identified the appellant as 'Messrs R Hunt'. Each person has their own separate appeal but only one appeal was submitted. It was subsequently confirmed that there is a single appeal against Notice 5 made by Mr R Hunt (junior). Mr R Hunt (senior) was confirmed at the Inquiry as an occupier of the appeal site, hence his application for the LDC and joint appeals against the 2019 notices (Notices 1 and 3).

The grounds of appeal

12. Following the withdrawal of the ground (a) appeals against Notices 1 and 3, the planning merits do not fall to be considered in any of the appeals. This includes arguments, such as, the effects on the Green Belt and flood risk.

13. On the Appeal Form against Notice 1, the box was ticked to indicate appeals were also brought on grounds (b) and (c). The appellants' advocate suggested ground (b) was a validity argument concerning the notice. There was never any suggestion that Notice 1 was issued pursuant to the second bite provisions and ground (b) was apparently flagged in the mistaken belief that it was. The appellants' statement of case had indicated that the walls, gates, piers, and hardstanding were permitted development, which would fall within ground (c). On day 1 of the Inquiry, the appellants' confirmed withdrawal of grounds (b) and (c). The appeals against Notice 1 proceed on grounds (d) and (g) in respect of the hardstanding only.

14. It was clarified that ground (b) is pursued against Notice 3 on the basis that ground levels have not been raised. Ground (c) was withdrawn on day 1 of the

Inquiry upon the appellants realising that Notice 3 was not issued under the second bite provisions. It was submitted that ground (f) is argued for the ground levels to remain the same. However, on day 5 of the Inquiry the appellant's planning agent said that ground (f) was no longer pursued and there should not be a ground (d) appeal. The appeals against Notice 3 proceed on grounds (b) and (g) only.

15. The appellants confirmed on day 1 that all grounds, except grounds (a) and (e), are pursued against Notice 5. However, at the start of cross-examination of the appellant's planning agent on day 5 of the Inquiry, grounds (c) and (f) were withdrawn, leaving grounds (b),(d) and (g).

16. Grounds (b) and (d) are among those referred to as legal grounds of appeal. When making an appeal on legal grounds, the burden of proof is on the appellants and the test of the evidence is the balance of probabilities.

Matters relating to the LDC application

17. Both parties agreed that it would be more accurate to describe part of the LDC application as being for '*the material change in use of the building adjacent to the stables to use as a single dwellinghouse'* rather than '*the residential use of the dwellinghouse'*.

18. When I queried how many caravans the LDC application concerned, the appellant's agent stated that it was just one. It was agreed that the description should be amended to refer to '*the stationing of a caravan [singular] for the purposes of human habitation.'*

19. The appeal shall be considered on the above corrected basis.

Matters relating to the enforcement notices

20. At proof of evidence stage the Council invited me to make a series of corrections to the enforcement notices. Some corrections sought were subsequently addressed by the withdrawal of Notices 2 and 4 and the issue of new Notice 5. Other corrections remain outstanding. I also highlighted several drafting issues and typographical errors which were discussed with the parties.

21. Pursuant to section 176(1) of the 1990 Act I may— (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the notice, if satisfied that the correction or variation will not cause injustice to the appellant or the Council.

<u>Notice 1</u>

22. The Council requests the addition of the words '*the approximate location and layout of which is hatched in black on the attached site plan*' at the end of the first allegation to make it clearer where the hardstanding is located.

23. Much in the same way, the Council requests an addition to the second allegation to describe the location of the walls, gates and piers enforced against '*to the north of the stable block approximately located between A and B as indicated on the attached plan'*.

24. In both instances the additional wording would bring added clarity to the location of the development enforced against to the benefit of both parties. The

appellants raise no objection. No injustice would arise as the requirements already mention those areas with reference to the plan.

25. The approximate position of the walls, gates and piers is incorrectly marked on the enforcement notice plan. Points 'A' and 'B' should be shown further south. The Council invited me to substitute the plan and the appellants agreed. They were clearly able to identify from the notice which walls, gates and piers were intended, having mounted appeals in relation to each.

26. It then emerged at the site visit that the area of hardstanding is in fact larger than marked on the corrected plan. Before the Inquiry resumed in February 2023, the Council produced a further revised notice plan adding a triangular area of hardstanding below point A. The appellants object to the further revision as it enlarges the area enforced against. The Council argue that the hatched area was indicative only and claim it is inconceivable the appellants may have proffered any different evidence from that already relied upon.

27. I accept that the hatched area is for identification purposes as made clear in the requirements. These refer to the 'approximate location' of the hardstanding on the site plan. Also, absolute precision cannot be guaranteed given the small scale of the map. That said, there is various hardstanding at this site and a LDC granted for part e.g., in front of the stables. This is not a case of the boundary not being quite right, but the omission of an area which was easily identifiable on the ground. From the issued plan it appears to be intentionally excluded.

28. Although the appellants' evidence may very well not have changed, the effect is to expand the area enforced against thereby making the notice more onerous. That in itself causes injustice to the appellants. Counsel for the Council indicated that no injustice would arise to the Council if the new plan was not accepted as another enforcement notice could simply be issued for the triangular area. In the circumstances, I do not accept the further revised plan but will substitute the agreed plan as shown at Appendix 1 to these Decisions with corrected points A and B.

29. The Council also requests re-wording of the second requirement to say: '*Reinstate the areas hatched in black on the attached plan to its former condition by grading the area with topsoil and sow these bare earth areas with grass seed*.' This would be more onerous than the current wording which simply requires reinstatement to the former condition by re-grassing without specifying that reinstatement must be achieved by grading with topsoil. The more prescriptive wording would introduce another measure and thereby give rise to injustice if I made the alteration. For instance, the appellants may have wished to pursue a case under ground (f) had such wording been used at the outset. The second requirement should remain as drafted with a typographical correction to refer to 'area' rather than 'areas', plural.

30. There are other minor typographical errors. The second allegation should say: '*Within* the last 4 years ….' rather than '*With* the last 4 years…' (albeit there was no need for the immunity period to be specified in the allegation if given in the reasons for issue). The time for compliance should say 3 calendar month<u>s</u>, plural. These corrections can be made without injustice to either party.

Notice 3

31. Instead of the allegation in Notice 3 referring to '*the raising of the ground levels',* the Council requests a revision to: *'the importation and deposit of material resulting in the raising of the land levels of the site.'* The appellants object on the basis of it being a new provision.

32. The Council believes that material has been brought onto the site and used to raise land levels. This was not alleged before although the Council may have intended its inclusion because the third requirement is to 'remove all the deposited materials from the Land which were *imported* [my emphasis] in association with the raising the land levels…'

33. As it is, I am not satisfied that 'importation' describes an act of development within the meaning of section 55 of the 1990 Act. Development may arise from the deposit of imported material or the raising of ground levels utilising imported materials. However, there is currently no mention of deposited 'material' in the allegation, only the requirements. It is unclear what type of material this means. It seems to me that it is the raising of the land i.e., an engineering operation which is attacked by the allegation. The Council's request would change the nature of the allegation and seemingly broaden its scope. This has implications for the appellants. Had there been an allegation directed at the deposit of (imported) materials then it might have triggered other arguments under ground (b) or otherwise.

34. The Council further wishes to re-word the requirements. Prior to the Inquiry the Council had suggested deletion of the third requirement to 'permanently remove all of the deposited materials from the Land...' as being superfluous. The Council's position changed at the Inquiry. It now wishes to retain this requirement as it provides for the removal of deposited materials that were imported. The third requirement is also wider in scope than the preceding requirements because it requires removal of deposited materials from the site as a whole rather than reducing the volume of two different areas.

35. As drafted the first and second requirements could be interpreted to allow removal of the specified tonnage from areas 1 and 3, only for it to be deposited elsewhere within the wider site unless the third requirement is retained. On the other hand, if I leave the third requirement as drafted then there is disparity between the allegation and requirements. I raised this point at the Inquiry. Both parties agreed that for clarity and precision, requirements 1 and 2 should be expressed to require removal of the specified tonnage of volume 'within area 1 [and area 3], as shown on the attached plan, from the Land' rather than 'from the Land within area 1 [and area 3]….' To avoid any uncertainty, it would also be better for both requirements 1 and 2 to refer to reinstatement of area 1 and 3 respectively rather than 'this area'.

36. By clarifying requirements 1 and 2 in this way, the third requirement can, and should be, deleted and the allegation remain unchanged. The Council confirmed that should I reach this conclusion and decline to amend the allegation then it remains content that the allegation is comprehensible.

37. In terms of the first requirement, the volume increase identified by Dr Brown for area 1 between August 2014 and June 2016 was 819m^3 if applying the lower 99% confidence figure. The difference between January and June 2016 was

78m^3. Notice 3 has combined these two figures to require permanent removal of 897m^3 (1345.5 tonnes) of volume. In doing so, the Council double counted the 78m^3 which was already included within the total combined figure of 819m^3. This lower figure should have been specified rather than 897m^3. Having raised and agreed the matter with the parties, I shall correct Notice 3 accordingly.

38. I have the same concerns as per Notice 1 over the Council's request to change the fourth requirement to say that reinstatement of the land should be '*by grading each area with topsoil and sow these bare earth areas with grass seed*.' As drafted the first two requirements are to remove the specified volume from the land and restore each area to its previous land-form. The fourth requirement simply requires the restored areas to be grassed. It says nothing about grading with topsoil. The requirements can do no more than require the land to be returned to its former condition prior to the breach. The requested correction is more onerous and other grounds of appeal might have been brought. Injustice would arise to the appellants. The original wording adequately addresses re-instatement, and the text should remain unaltered.

<u>Notice 5</u>

39. Notice 5 is expressed to be issued pursuant to the so called 'second bite' provisions within section 171B(4)(b) of the 1990 Act. The effect of section 171B(4)(b) is to 'stop the clock'. Where it applies, it is necessary to consider whether the development was lawful on the date of the first notice. Therefore, it should describe the development which the Council considers to be unlawful at that date rather than further breaches which may have occurred since. In this instance, there were previously two notices (Notices 2 and 4) both issued on 3 May 2019 which were withdrawn and replaced by Notice 5.

40. Section 171B(4)(b) does not apply if Notice 5 encompasses a wider range of components than the aggregate of those covered by the earlier notices (i.e., Notices 2 and 4).

41. The proof of evidence of Mr Whittaker (for the Council), which is specific to Notice 5, describes additional uses in the form of storage of tyres, storage of reclaimed windows and doors along with uses pertaining to building waste materials. In his proof, Mr Whittaker states that 'the second bite provision in respect of the new mixed use of the site need not apply'. In such circumstances, the second bite provisions <u>do not</u> apply where further primary uses are identified (*Fidler v FSS & Reigate Banstead BC* 2004 EWCA Civ 1295).

42. During the Inquiry the Council produced revised wording for the allegations in Notice 5 in an attempt to bring greater clarity and to make plain that the use of the building as a dwellinghouse is not alleged to form part of the mixed use. The revisions did not address points arising under the second bite provisions.

43. As drafted, Notice 5 does not in fact concern essentially the same breach of planning control as before because of the further unauthorised primary uses alleged within the mixed use. The Council sought to argue that the 'storage of tyres' and the 'storage of reclaimed windows and doors' were captured previously in Notice 4 under the category of 'waste'. The allegation in Notice 4 included a component described as 'storage of timber, building rubble and waste and miscellaneous building materials'. Reference to 'waste' was thus in the context of building waste, which tyres are clearly not.

44. Under cross-examination, Mr Hunt (senior) said that the tenant builders on site stored building materials which included reclaimed windows and doors. Even so, I am not satisfied that building waste does logically extend to reclaimed windows and doors in this case. I am reinforced in that view by the fact that Notice 5 still includes the storage of 'building materials, rubble and waste' as another component of the mixed use. If the Council thought the reclaimed windows and doors were building waste or materials, then there would have been no need to list their storage as another primary use of the land. Indeed, when I asked Mr Whittaker whether the reclaimed windows and doors constituted 'building materials' he said they were not and added that they had been found in different parts of the site.

45. Notice 2 had identified four uses: (i) storage and parking of vehicles and trailers (ii) siting of portacabins (iii) storage of scaffolding supplies and equipment, and (iv) commercial dog walking, and 'each of these uses are individually enclosed on the Land'. The four areas were marked on the accompanying plan. The appellant argues that Notice 2 made it clear that there were four separate uses within different planning units rather than a single mixed use as now alleged.

46. That is not an accurate reflection of how Notice 2 was actually framed. The allegation concerned an 'unauthorised change of use of the Land <u>to a mixed use</u>' [*my emphasis*] comprising the primary uses listed. The 'Land' was defined as the whole site. Therefore, Notice 2 *was* directed at a mixed use albeit the uses were described as 'individually enclosed' and the Council has since identified more primary uses.

47. It was not until day 6 of the Inquiry that the appellant's Counsel raised a further point on Notice 5 when he put to Mr Whittaker that there had been a subtle yet significant change in the way that the use of the building known as 'the Cottage' was described. Notice 4 attacked the 'residential use of the building adjacent to the stables' whereas Notice 5 refers to the 'use of the building adjacent to the stables as a self-contained residential dwelling'. Under cross-examination, Mr Whittaker insisted that they are much the same.

48. The distinction is that Notice 5 recognised the building to be a dwelling whereas Notice 4 did not. With that change in description came a different applicable time limit to secure immunity from enforcement action. Whilst a 10 year limitation applied under section 171B(3) when the residential use was identified as part of a mixed use in Notice 4, it became 4 years under section 171B(2) for the use as a single dwellinghouse in Notice 5. The change in description therefore reduced the period of time the appellant was required to demonstrate under his ground (d) appeal.

49. Both Notices 4 and 5 identified a residential use of the same building. Notice 5 changed the allegation to refer to the building as a separate dwellinghouse. In my judgement, this was a matter capable of being addressed through the second bite provisions.

50. It must also be borne in mind that Notice 2 was withdrawn because it was flawed, being a situation contemplated by section 171B(4)(b) in allowing the re-issue of a notice.

51. The tension comes from the addition of more uses identified by the Council

after Notice 2 and 4 were issued. Either Notice 5 was erroneously issued in reference to section 171B(4)(b) or it should be confined to the components identified in the notices it replaced.

52. In Mr Whittaker's proof of evidence, arguments are advanced for the Council to defend an immunity period (under ground (d)) ending on 3 May 2019 as though the second bite provisions apply. Given the explicit reference in Notice 5 to section 171B(4)(b)), the appellant was made aware of the Council's stance in relying upon the date of the earlier replaced notices. No injustice arises to the appellant if the additional components, over and above those within Notices 2 and 4, are deleted from Notice 5. Counsel for the appellant agreed on day 1 of the Inquiry that Notice 5 could potentially be corrected on that basis.

53. If, on the other hand, the reference to section 171B(4) was deleted and replaced with section 171A(1)(a) so that it was not issued under the second bite provisions, but as a wholly new notice then there would be injustice to the appellants. In that scenario, consideration would be given to the lawfulness of the development as of 30 June 2022, for which the appellant would have had no prior knowledge or opportunity to formulate a case.

54. The appellant had also appealed on ground (b) to argue that the additional component uses have not occurred as part of the mixed use. These grounds would be overcome by correction of the notice to delete the extra components.

55. Apart from the storage of tyres and reclaimed windows and doors already mentioned, there is a new provision at paragraph 3.viii for 'the periodic sorting, transfer and export of previously imported materials'. The processing of waste is a different type of primary use that goes beyond the scope of the previous withdrawn notices. It should be deleted to reflect that this is a notice served under the second bite provisions.

56. Another component of the alleged mixed use identified within paragraph 3.viii) is for 'the importation, deposit and stationing' of assorted empty and full skips containing various mixed inert and non-inert building waste materials….' The deposit of waste may be a material change of use under section 55(3)(b) of the Act but that is not how this provision is framed. I raised my concerns with the parties over whether an act of development is described. As it is, there is partial duplication with paragraph 3.ix) for the 'storage of timber, scrap metal, building materials, rubble and waste' and which is in similar terms to the activity with which the Council was concerned in withdrawn Notice 4. Paragraph 3.viii) should be deleted in totality. The requirement at paragraph 5.(11) to remove the hardstanding remains as facilitating the remaining mixed use.

57. The requirements list the things that must be removed from the land to ensure the mixed use ceases. Scrap metal is not listed despite inclusion in the allegation. This raises possible implications under section 173(11) of the Act, if Notice 5 is upheld, for the unconditional grant of planning permission for the storage of scrap metal once there is compliance with all the requirements. Both parties agreed that 'scrap metal' should be removed from the allegation leaving the Council to re-issue another notice if it considers it expedient.

58. The fifth requirement should refer to the removal of <u>the</u> mobile home rather than 'all mobile home' as the allegation is framed in the singular.

59. No objection is raised by the appellant to a replacement plan produced by the Council on which the approximate location of the building used as a self-contained dwelling is marked in green.

60. As drafted, the '*material change in use of the building adjacent to the stables as a self-contained residential dwelling'* is listed at paragraph 3.x) as though a component of the alleged mixed use, albeit identified in the reasons as subject to a statutory 4-year time limit rather than 10 years applicable to a mixed use. To distinguish between the two, the Council requests that the material change in use of the building adjacent to the stables *to* a self-contained residential dwelling appears as allegation 3(A) rather than 3.x) and the mixed use becomes allegation 3(B).

61. An uncontentious point arising after the site visit is that the northernmost part of the appeal site remains in agricultural use. All the component primary uses of a mixed use should be identified even if they are not required to cease. For that reason, 'agriculture' should be included within the description of the mixed use. No change is needed to the requirements in this regard as an agricultural use would be lawful. The parties agreed.

62. The issue before me is whether the totality of allegations and requirements would remain the same. If not, whether any injustice would arise to any party if the corrections were made.

63. The culmination of the required corrections results in several changes to Notice 5. Even so, I am satisfied that all these corrections can be made without injustice to either party for the reasons outlined.

64. For the avoidance of any doubt, Notice 5 shall be corrected to omit further primary uses beyond those identified by Notices 2 and 4 to achieve compatibility with the second bite provisions. This means deletion of references to the storge of tyres, reclaimed windows and doors, skips and waste processing related activities.

The appeals on ground (b)

65. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests upon the appellants and the test of the evidence is the balance of probabilities.

Notice 3 – ground (b)

66. To succeed on ground (b) against Notice 3, the appellants must demonstrate that the ground levels have not been raised, as alleged. This ground does not concern the accuracy of the quantities of volume to be removed under the requirements. That would be a matter for ground (f), which is not pursued.

67. The appeal site extends beside the River Mole. It is only accessible by going under the bridge for the A3 road and along the track/road next to the river. The appellants maintain that the land has only been maintained and reinstated where the River Mole has flooded rather than the land being raised.

68. A proof of evidence was produced by Dr Brown for the Council who also attended the Inquiry to give sworn testimony. Dr Brown works for Environment Agency Geomatics processing remotely sensed data to produce maps. For these

purposes a variety of instruments mounted on aircraft is utilised including Light Detection and Ranging (‘LIDAR’) in which Dr Brown is experienced since 2000. He is the Environment Agency’s national expert in mapping waste sites using airborne data.

69. The Council’s Enforcement Team commissioned Dr Brown to acquire LIDAR data and aerial photography over the appeal site. In order to estimate volume increase within the site, Dr Brown analysed and compared LIDAR data acquired in August 2014 by Bluesky Limited along with Geomatics archived LIDAR from January 2016 and its new LIDAR acquired in June 2016. His analysis informed Notice 3 to which a LIDAR elevation data map is attached identifying four areas within the appeal site. The notice requires removal of a specified amount of volume from two of those areas.

70. Dr Brown explained that the Environment Agency charters an aircraft. Its own staff operate the LIDAR which fires a single laser beam, the size of a dinnerplate, multiple times to measure the distance between the aircraft and the ground surface. A series of these laser pulses is used in conjunction with “very high accuracy navigation data” to build up dataset. Dr Brown describes LIDAR surveys as more accurate than ground-based GPS due to their high accuracy and fine detail providing a “very accurate picture of the ground beneath the aircraft”.

71. In oral evidence, Dr Brown confirmed LIDAR does not penetrate hard surfaces. Where the lasers hit objects on the ground, such as cars, buildings, and containers those areas are removed from the data. His analysis also excluded heavy vegetation which cannot be penetrated and may give a false reading.

72. The appellants say that Bluesky is owned by Google and challenged Dr Brown under cross examination on the reliability and provenance of the Bluesky data. Whilst Dr Brown had not supplied evidence of provenance, he said that he had produced evidence of the quality of data. This is set out within his methodology on page 7 of his report. It explains how the relative accuracy of the points in the August 2014, January 2016 and June 2016 datasets were checked for differences. When asked in re-examination if it mattered that he had not checked the provenance of the Bluesky data, Dr Brown replied: “I’d say not”. He went on to explain that the specification was “a bit irrelevant” and what was important to understand is how accurate the data is, as addressed in the first three points of his methodology.

73. Working on a precautionary principle, Dr Brown concluded that there had most likely been a total volume increase within Areas A and B[1] of 2832m^3 and a 99% certainty that the volume increase was at least 2701m^3. Dr Brown is “very confident” that the value is higher than 2701m^3 with a 50% chance it could be even higher than 2832m^3.

74. Between January and June 2016, the calculated volume increase for Area A (Area 1) is 87m^3 with 99% confidence level of 78m^3, although some of the volume change was likely to be due to vegetation. Dr Brown clarified orally that there was a “tiny chance of vegetation in the top part of the site”. For Area B (Area 3) the volume increase over the same period is calculated at 2m^3 with 99% confidence level of 1m^3.

[1] Annotated 1 and 3 on the second plan accompanying Notice 3

75. Despite attempts by the appellant's advocate to attack the credibility of the data, the accuracy of the LIDAR data was plainly examined by Dr Brown and adjustments made for differences between the two elevation datasets. Volume increases of less than 0.5m in height were disregarded. The data equates to a probable increase in the region of 4,000 tonnes of material. It would be extraordinary if the technical data and calculations were inaccurate to such an extent for there to have been no increase in ground levels.

76. I find Dr Brown's analysis to be robust and I have no cause to lack confidence in its reliability. Certainly, his tested evidence is far more compelling than an unsupported suggestion that the Bluesky data is unreliable. No technical or expert evidence is produced by the appellants to demonstrate otherwise.

77. The appellants explanation for an increase in volume is that all areas had previously been eroded by flood water. Copy photographs show the swollen river and flooding under the bridge near to the site entrance and erosion of the riverbank. Tree trunks can be seen in the water. Notice 3 requires reinstatement of two areas for which LIDAR evidence is produced. Parts of those areas are near to the riverbank but much of it is not. Whilst flooding has clearly occurred, the photographs do not show floodwater extending across the areas concerned. I find it implausible, in the absence of any substantive supporting evidence, that erosion had occurred due to flooding in those locations and to such an extent to account for the differences in land levels.

78. The appellants deny that the land was raised after their acquisition. That is contradicted by the technical data. Mr Goulding who lives opposite the site also says in his statutory declaration that land raising occurred after the site came under new management in 2015. He describes witnessing a great deal of building waste and rubble transported onto the site in huge tipper trucks and then spread out, raising the levels. As the Hunt family did not buy the site until May 2015, they cannot account for what happened prior to that time.

79. Mr Hunt (junior) explained how a log cabin style mobile home located at the northern end of the site had burnt down in an arson attack in 2020. The rubble from the skirting and brick base were spread around this part of the site. The distribution of rubble is corroborated by Councillor Burley who observed the broken bricks during a site visit in 2019. This post-dates the issue of Notice 3 in May 2019. It does not explain an increase in ground levels prior to that date.

80. Mr Hunt (senior) readily admitted that 20 tonnes of topsoil was imported onto the area used by the dog walking business. In essence, the position taken by the appellants was that this had done no more than replace tonnes of rubbish covered in hawthorn that was removed from the site.

81. It was the sworn evidence of Mr Martin that he had worked clearing the site for 2 to 3 years from 2015 to 2017. He subsequently corrected this to say that he undertook a variety of jobs on the site when asked "by the boys" between 2015 to 2017. The site clearance works were over a period of about 3 months solid in 2015 before the fencing was erected. At the time, Mr Martin had a 13-tonne lorry. Using a 360 machine with a bucket and muncher, he cleared the ground of an assortment of hardcore, wood, plasterboard, metal, and other embedded rubbish covered in brambles. The works covered a large area going down to the river. The waste was loaded onto lorries and "carted off site". Mr Hunt senior produced waste transfer licences covering the period September 2015 to

November 2015, but they do not specify the quantities involved.

82. Mr Martin said he never saw a tipper lorry depositing materials to increase any levels. He thought about 20 tonnes of topsoil had been imported "to cover up anywhere I'd dug the hardcore out". He surmised that more topsoil could not be brought in as it would be washed away by the river, but that is unsupported by any evidence.

83. It was the appellants' position that all the bricks in Area A (Area 1) were those from the brick skirt of a mobile home described as a 'log cabin' that had burnt down. This was the same conclusion drawn by Councillor Burley who visited the site in 2019. Even if this explained some increase in volume, it does not account for a volume increase exceeding $800m^3$ since 2014 within that area.

84. Mr Hunt senior expressed grievance that a photograph produced by the Council to show that the road within the site had been raised, was distorted due to being shot from an angle low down on the river. He maintained that the appellants had only maintained the hardstanding level with the road after flooding. This does not account for the dramatic increase in volume across the two areas identified in Notice 3, and which are not limited to that immediately adjacent to the river.

85. The difficulty for the appellants is that the Council has been able to produce expert evidence supported by technical data which plainly shows an increase in land volume and the appellants have no evidence to counter this.

86. As a matter of fact, I find that the ground levels have been raised and the ground (b) appeals against Notice 3 fail.

Notice 5 – ground (b)

87. It is common ground that there has been a material change of use of the building known as 'the Cottage' to a single dwellinghouse (although the issue of immunity is in dispute). The ground of objection is that at the time the notice was issued there was not a mixed used of the site as a whole, as alleged.

88. The appellant had disputed that tyres were stored on the land as a component of the mixed use. He further claims not to be involved in the importation, deposit, stationing, and storage of empty and full skips containing various mixed inert and non-inert building waste materials. These arguments are overcome by removal of those references in the corrected notice. Following the correction of Notice 5, it is undisputed that the other activities are taking place on the land outlined on the replacement enforcement notice plan.

89. Furthermore, no issue is taken with the Cottage being identified separately both in the corrected description and plan and in terms of a different immunity period from the remainder of the site. It is the drafting of Notice 5 on the basis of a single planning unit that is disputed.

90. To succeed on this ground, it would need to be demonstrated that the mixed use was not taking place, as alleged.

The Planning Unit

91. The appellant argues that Notice 5 is wrong to identify a single planning unit because there are four separate planning units. Mr Whittaker agreed on the

Council's behalf that three compounds have existed since late 2015 or early 2016. One is a separate fenced compound used for bus/coach storage and parking by Lunar Transport. A second fenced compound is occupied by Empire Scaffolding as a scaffolders yard. A third is a commercial dog walking business operating within its own fenced compound, comprising a large field accessed via a fenced-off parking area dedicated to the business. The fourth planning unit, according to the appellant, is the remainder of the appeal site which is accepted to be in mixed use.

92. At the Inquiry, it was also put by the appellant's agent that there is in fact a fifth planning unit being the Cottage.

93. The planning unit is a concept which provides a means of determining the most appropriate physical area against which to assess the materiality of a change of use. The point arising in this appeal, is whether there is in fact a mixed use, as alleged, or primary uses taking place within separate planning units. The appellant argues that the notice is flawed in consequence of the failure to correctly identify the breach and is incapable of correction. In particular, the appellant claims that the failure deprived occupiers of the three compounds of opportunity to pursue an appeal of ground (a).

94. The broad tests for determining the appropriate planning unit are set out in *Burdle v SSE* [1972] 3 All E.R. 240. As a general rule, the most convenient starting point in identifying the planning unit is the whole area in the same occupation or ownership. That is normally the largest unit in which a set of functionally and physically interdependent activities are carried out. It is not a rigid rule and *Burdle* does not set strict tests.

95. The courts have been prepared to accept that a smaller or larger area may be taken as the planning unit. The assessment is a matter of fact and degree.

96. A planning unit in a composite or mixed use is described as an entire unit of occupation where the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to the other. With a composite use, the component activities fluctuate in their intensity from time to time, but the different activities are not confined within physically and distinct units of land. It may also occur that within the single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In that scenario each area used for a different main purpose, together with its incidental activities, should be considered as a separate planning unit.

97. The land enforced against does not need to be the planning unit. In this instance, Notice 5 alleges that there has been a material change in use of the land (excluding the Cottage) to a mixed use. A mixed use is a single mixed use composed of all the primary uses of land taking place within the planning unit. The component activities cannot be de-coupled.

98. The whole site is within the same ownership. It is served by a single access over which the appellants have private rights of way. The access continues over other land within their ownership beneath the bridge for the A3 road. Upon entering the main body of the appeal site there is a hard surfaced yard area which becomes a road of varying width leading through the site.

99. The scaffolders yard is fully enclosed by high timber fencing as is the area described by the appellant as a transport depot or haulage yard. Another area similarly enclosed with high timber fencing is used for parking associated with the commercial dog walking business. From within the parking area access is gained into a large open grassed field extending beside the river which is used for exercising dogs with low level post and wire perimeter fencing. Within the field, and very close to the transport depot compound, there were stored lorry bodies sectioned off by temporary metal fencing. The Council's advocate put it to Dr Murdoch (for the appellant) during cross examination that the field was not solely used for dog walking but also the storage of lorry bodies.

100. Lorry bodies are apparent in the same or similar position in images taken from the A3 bypass bridge and dated April 2018 and May 2019 and in a 2018 aerial photograph. The lorry bodies were not present when an image was captured from the A3 bridge date-stamped August 2016. The appellant disputes the accuracy of the dates without authenticity certificates. Whether they show the same lorry bodies still on site is difficult to tell. Ultimately, it is the purpose to which the lorry bodies were put at the relevant date (i.e., May 2019) that is key. That question was not put to either appellant and so it is not known whether they were used in connection with the dog walking business.

101. It is the high timber fencing enclosing the various areas which Notice 5 requires to be removed. It was the sworn evidence of Mr Hunt (junior) that each of the three businesses has their own tenancy agreement, although not all copies were produced. The Council submits that the Hunt family still retains control over the compounds. To support this stance, the Council pointed to the evidence of Mr Hunt (senior) that they had insisted upon the removal of stored tyres from the transport yard, but this was said to be because such use was not permitted by the lease. Enforcing the terms of a lease, would not in my view impact upon how the site should be construed in terms of the planning unit.

102. As the road continues, it passes by the stable/workshop buildings with a mobile home stationed opposite. It proceeds through high metal gates to go past the Cottage with its own small, enclosed garden. The road proceeds to the area at the rear where a mobile home (described as a 'log cabin') had previously stood prior to burning down on 11 April 2020. All that remains is the concrete base upon which a portacabin now sits with old window frames stacked up behind. The hard surfacing ends abruptly just past this point.

103. There are separate electricity meters for the scaffolder's yard and transport depot whereas the power supply for the Cottage is connected to the meter within the adjoining stable block.

104. The Council alerts me to the circumstances in *Gregory & others v SSE & another* [1990] 60 P&CR 413 where the High Court and Court of Appeal upheld the Inspector's finding that a 17-acre site which had been subdivided into individually owned plots remained a single planning unit. The common parts remained in single ownership and the whole set up was unusable without the roadway. The whole development had plainly been thought out and carried through as a concerted whole with a single common purpose. I acknowledge the comparisons with that case but it also emphasises how the planning unit is a question of fact and degree and a matter of planning judgement.

Conclusions on the Planning Unit

105. There are some factors indicative of a single planning unit, starting with the site remaining in single ownership. All the occupiers rely upon the same access and at least part of the road through the site to the extent needed to access their unit. That is not untypical of a large site where commercial uses are taking place without necessarily forming part of a single planning unit. They are but factors to consider. I am not swayed that the site has been thought through and carried out as a concerted whole. It strikes me that the site has evolved in piecemeal fashion and with a deliberate separation of the three compounds to segregate them from the rest of the site where other activities take place.

106. The scaffolding yard, transport yard and dog walking business are physically separated from each other by fencing and the remainder of the site. They differ functionally. Each of the three enclosed areas are occupied by separate businesses albeit the Hunt family retain ownership. The uses are not ancillary to one another or to any of the other uses taking place within the wider site. There is no connection between the uses.

107. In my judgement, and as a matter of fact and degree, each compound occupied by those three businesses is a separate and distinct planning unit. They were not part of a wider mixed use of the site. Notice 5 should have been directed at a material change in use of each of those three areas, the use of the Cottage, and a mixed use of the remainder.

108. Therefore, I find that the matters alleged have not occurred to the extent that there is not a mixed use of the whole area albeit the primary uses are correctly identified. From the evidence before me, I conclude that the alleged breach of planning control set out in Notice 5 and the plan attached to the notice are incorrect. The appeals succeed on ground (b) to that extent.

109. Success on ground (b) does not automatically mean that the notice must be quashed in circumstances such as this. The notice identified each primary use. There would be no change in that. My findings result in the need to remove the three businesses from the alleged mixed use and identify each as separate primary uses i.e., within their own planning unit.

110. That does not alter the available grounds of appeal. It was asserted that the only reason the appellants did not run a ground (a) appeal was because the deemed planning application derives from the mixed use alleged which has not happened. It was further suggested that the appellants or individual occupiers of the compounds could not pursue a ground (a) appeal other than for the single mixed use alleged.

111. The drafting of Notice 5 did not preclude an appeal on ground (a) for any part of the mixed use. Each primary use was identified. Any of those businesses (or the appellants) could have sought planning permission under ground (a) for the uses enforced against even when expressed as part of a mixed use. Section 177(1) allows permission to be granted for part only of a development on a deemed planning application and so the businesses were not deprived of the option of seeking permission had they so wished. Corrections to Notice 5 would not change the option that had already existed, but not taken, to appeal on ground (a).

112. Both appellants brought evidence to argue for the other primary uses (besides those within the three compounds) regardless of whether they are part of a mixed use. The appellant is not disadvantaged by the required corrections.

113. It is agreed that the three compounds were only created in or about 2016. Insufficient time had elapsed to raise any possibility of a successful ground (d) appeal for any of those uses. Indeed, the appellant made plain that no ground (d) appeal is pursued for the three compounds. From his own evidence, immunity for those individual components had not been achieved. By removing them from the mixed use, it does not affect the case made by the appellants for the remaining mixed use or the applicable immunity period (as so argued). No injustice arises to the appellant in this regard. There is no suggestion that any other ground, besides ground (a), might have been pursued.

114. To correct Notice 5 to reflect the uses within different planning units would involve yet more changes to a notice already subject to various corrections. However, the notice would not be so different in substance and the test remains whether injustice would arise to either party. I am satisfied that no injustice would arise by correction of the notice and plan to identify the scaffolders' yard, transport depot and dog walking business as separate primary uses (not forming part of a mixed use) and with a requirement that each use must cease. I shall exercise my powers under section 176(1) of the 1990 Act accordingly.

115. The grounds of appeal that follow shall be considered on the basis of the corrected enforcement notice.

116. The usual sequence would be to consider next the appeal on ground (d). Both the LDC appeal and ground (d) concern immunity against enforcement action but over different periods of time. There are differences in the uses applied for although there is overlap and duplication in evidence. I will address the LDC appeal first as it concerns an earlier period of time, followed by ground (d). Logically, there will be no need to consider the grounds of appeal for any development for which lawfulness is established and a LDC should be issued.

Appeal A - LDC

117. The main issue is whether the Council's decision to refuse to grant a LDC for part of the development applied for was well-founded. For a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts rests on the appellant, and the test of the evidence is the balance of probabilities. The planning merits of what is applied for cannot be taken into account.

118. For the purposes of section 191, lawful development is existing development against which no enforcement action may be taken and where no enforcement notice is in force (section 191(2)). An enforcement notice is not 'in force' where, as in this case, an enforcement appeal is outstanding.

119. In the case of applications for existing use, the national Planning Practice Guidance[2] provides 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.

[2] At paragraph 006 of the Lawful Development Certificates chapter

120. Thus, the onus is on the appellant in the first instance to produce sufficiently precise and unambiguous evidence, even if it is uncorroborated.

121. The first issue to be established is the applicable time limit. For the purposes of the LDC appeal, consideration must be given as to whether the development applied for would have been lawful at the time of the application i.e., on 4 November 2017. The application is made in respect of uses and operations and the immunity period differs for each.

122. Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which operations are substantially completed (section 171B(1)).

123. Pursuant to section 171B(2) where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

124. In the case of any other material change of use amounting to a breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach (section 171B(3)).

125. For the purposes of section 171B(2), there are two questions to be addressed. Firstly, the date of the breach or when the change of use took place. Secondly, whether the use continued throughout the requisite period.

126. In terms of the uses, the Council contends that the application must fail if the appellant is correct on Notice 5 and there is more than one planning unit. This is because the LDC application was brought on the basis of composite uses across a single planning unit and the mix of uses claimed did not persist throughout the period November 2007 to November 2017.

127. The appellant accepts that the three compounds created on land covered by the LDC application are not immune from enforcement action. The point taken is that the planning unit may now have shrunk with the creation of the three compounds, but the landowner is entitled to revert to the last lawful uses, being those claimed. The appellant maintains that the uses sought in the LDC application had crystallised by operation of law at least by 4 November 2013 and the last lawful uses are protected by section 57(4) of the 1990 Act and/or the *Mansi* principle.

128. During cross-examination of the Council's planning witness, the appellant's advocate distinguished between three periods in time: (1) the 1960's to 1997 (described as 'the pre-Bryce period'); (2) 1997 to 2015 ('the Bryce period'); and (3) 2015 onwards ('the Hunt period').

The Cottage

129. The 'residential use of the dwelling' concerns the material change in use of an existing building to use as a single dwellinghouse. For accuracy and the avoidance of doubt, the description applied by the Council should be amended to reflect this, as agreed by the parties. The building was described in evidence as 'the Cottage'. I use the same terminology to avoid confusion with other

residential use being sought. In doing so, no inferences should be drawn that this is any way acknowledges that a lawful residential must exist.

130. The applicable immunity period is 4 years under section 171B(2).

131. For the purposes of the LDC appeal, the appellant must demonstrate that there was a change of use of the building to use as a single dwellinghouse on or before 4 November 2013 and that such use continued for at least 4 years without material interruption so as to be immune from enforcement action at the time of the LDC application on 4 November 2017.

132. Mr Richard Hunt, junior, purchased the appeal site with his brother, Rishi, on 13 May 2015 as verified by the registered land title from H.M. Land Registry.

133. The Cottage is very small. An external door nearest to the neighbouring workshop leads straight into a narrow cloakroom. There is a handbasin with cabinet beneath and toilet with a distinctive old-fashioned long pull chain. An internal door leads into a small living area which currently has a sofa and large television on a cabinet. The kitchen is located behind. It is fitted with modern units, an integrated oven and hob with extractor hood, and a sink/drainer. The floor is tiled. An enclosed shower cubicle is in one corner of the kitchen. Stairs off the living area lead up to a galley landing accommodating a bed.

134. The appellant finds it significant that the 2016 Notice did not allege that any of the buildings on the site were unauthorised including the Cottage or its residential use. The appellant says it is reasonable to infer that those developments were excluded because the Council considered they had become immune from enforcement through the passage of time and could not therefore be subject to enforcement measures. I do not draw the same inference. It cannot be presumed that a development is lawful simply because it was not enforced against earlier.

135. In determining the date of change of use of the building to a dwellinghouse, regard should be had to when the building provided viable facilities for living and when the use actually commenced albeit neither factor is determinative. All the evidence must be looked at in the round rather than placing too much reliance upon actual use. Commencement of a residential use will not automatically give rise to a change of use. Conversely, a building does not necessarily need to be actively occupied at all times in order to conclude that there has been a change of use. However, there must be continuity of use throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time.

136. As set out in *Swale Borough Council v SSE* [2005] EWCA Civ 1568 there is a difference between an established dwellinghouse, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse, and where there is no established use. To be immune from enforcement action under s171B(2), the use of a building as a dwellinghouse must be 'affirmatively established' over the 4-year period.

137. The appellant relies upon a series of witness statements each headed up as an 'Affidavit of Truth'. Only one (for Mrs Bryce) says it is sworn under oath before a Solicitor who has counter-signed and given the date but even then, Mrs Bryce has not sworn the content to be true. The others have been signed

and counter-signed by a Solicitor. The appellant says that the criticism of the format is overstated. However, none are properly executed affidavits (or statutory declarations) and they do not carry the same weight. As unsworn statements made in the presence of a Solicitor without any statement of truth, they do not have the force of sworn evidence. Of course, the content is not to be disregarded; it is a question of assessing the collective quality/strength of evidence overall and whether there is any contradictory evidence.

138. Mr and Mrs Egan confirm in a statement of 20 October 2017 that they lived in a house overlooking Alba Stables between 1984 to 2005. They say there was always a 1 bedroom cottage along with two mobile homes on the site. Whilst they were "fully aware that Alba Stables was being used as living accommodation", they do not explicitly say that the Cottage was in use as a dwellinghouse over any period of time.

139. The local farrier, Mr Gregory, says in his statement of 25 November 2016 that he attended Alba Stables many times over the past 20 years. Despite mentioning a 1-bedroom cottage on the site, he is silent about its use. Ms Mckay says in her statement of 9 November 2016 that "the previous owner used to live on the property in a small cottage…" but does not give dates.

140. Mr and Mrs Bryce owned Alba Stables from around 1997 until the sale to the Hunt family on 13 May 2015. Mrs Bryce confirmed in her statement made on 19 October 2017 that they had two mobile homes on the site from 2003. Their son lived in one mobile home "and the other one was used by myself and my husband along with the 1 bedroom cottage that has been on the site for over 20 years." Mrs Bryce does not actually say that they used the Cottage as a dwelling, or if they did, if it was throughout the 20 years or part of the time.

141. Mr Martin produced a proof of evidence for the Inquiry, having previously made an 'Affidavit of Truth' in November 2016. He gave sworn evidence at the Inquiry. Mr Martin has been familiar with the appeal site since 1963 when he lived a 2-minute walk away. He was very friendly with Mr Bryce, the previous owner, over a 20-year period. Mr Martin clarified that this was from the 1990's and thought it was 2007 when he first went to the site with Mr Bryce.

142. In his Affidavit of Truth, Mr Martin states that "Mr Bryce lived in the small cottage on the site next to the stables", although he did not specify a period of time. His oral evidence was that he was "sure" Mr Bryce lived in the Cottage from 2007 until 2012. He would take Mr Bryce fish and chips 2-3 nights per week and walk him home from the pub about 3-4 times per week. Mr Bryce was "living there frequently" although Mr Martin saw Mrs Bryce at the site more after 2012 and they "seemed to be more together towards 2015".

143. The Council points out that the Bryce's were registered for Council Tax at another property nearby in an attempt to cast doubt on the likelihood of Mr Bryce living in the Cottage. Council Tax is not conclusive of who lives in a property. There is no requirement for a building to be occupied as a principal place of residence for it to become used as a dwelling provided there is continuity in use. A marital home elsewhere is not determinative. The Inquiry heard how there were personal reasons why Mr Bryce occupied the Cottage.

144. Furthermore, it would not be untypical for there to be a failure to register a property for Council Tax purposes as soon as residential occupation begins. It

does not necessarily mean that use as a dwelling was not taking place.

145. Jamie West confirms in his statement that he "moved into the 1 bedroom Cottage at Alba Stables" on 13 May 2015, being the same day that the Hunt family bought the site. The appellant had hoped that Mr West would attend the Inquiry when it resumed virtually but he did not do so. His evidence was therefore not clarified or tested. His account might have been enlightening given other evidence that unfolded.

146. The main body of the building has a dual pitched roof whereas the kitchen and bathroom on either side have lower mono pitch roofs. Both appear to be extensions. In a photograph exhibited by Mrs Bryce and marked as 28 October 2002 the Cottage building appeared to be a barn among overgrown vegetation. It cannot be discerned if the side additions were present due to trees on one side and an open barn to the other.

147. Much emphasis was placed by the Council at the Inquiry on a photograph taken by officers at 11.22 on 20 November 2015[3]. The photograph shows 'the Cottage' as a timber structure with steps leading up to a solid door at the side closest to the stables. A timber balustrade surrounds a small area besides the western elevation where a single window and another door (with a porthole) face the road. A tree trunk is close to this door. Foliage and sky can be seen through the gap between the tree trunk and edge of the building.

148. When a photograph was taken from a similar angle at 11.39 on 12 February 2019, the sloped roof and top of a window of a side extension can be seen in the same gap behind a newly built brick wall. This part of the building is a fitted kitchen, as shown on the floorplan accompanying the LDC application. The Council relies on these two photographs to demonstrate that the kitchen extension was added at some unspecified point between November 2015 and February 2019.

149. The appellant maintains that it was far too late for the Council to argue that the Cottage lacked basic facilities for use as a dwelling having not previously flagged these points prior to the Inquiry. However, the photographs were already in evidence and the Council had clearly not realised there was a disparity in the images earlier. Nonetheless, the issue is relevant to my considerations and should not be ignored. The appellant still had plenty of notice and time to respond during the Inquiry (which sat over a 4-month period) and his advocate took the opportunity to do so.

150. In evidence, Mr Hunt (senior) said that the previous owner built an extension for the bathroom and the Hunts had only renewed the roof. They had never extended the kitchen part of the building. Under cross examination Mr Hunt insisted that the kitchen existed when the November 2015 photograph was taken even though this part of the building is not visible. He could not explain how the kitchen could exist and yet not be seen in the photograph with a gap apparent where it now stands.

151. During my site visit I noted that this rearmost section of the building is stepped back from the main elevation but not by much. If it existed at the time of the 20 November 2015 photograph, then it would surely have been apparent.

[3] According to the time and date printed on the photograph

There is no suggestion that the date is wrong on the photograph. The only plausible explanation is that the kitchen was a later addition.

152. In his proof of evidence, Mr Martin refers to how: "On occasions Mrs Bryce would offer me a cup of tea when I turned up and I can remember drinking tea with them in the Cottage." In his oral testimony Mr Martin said he "only saw the wife once" at the site and he only went into the Cottage "once or twice". He later mentioned usually having a cup of tea outside on the decking beneath the tree rather than going inside. Nevertheless, Mr Martin had confirmed in his proof that the floor plan was accurate and recalled entering the house into the living room with the kitchen to the left and stairs to the right.

153. When taken during cross-examination to the Council's photograph of the Cottage from 20 November 2015, Mr Martin accepted that there was nothing to the left of the door. He then confirmed only ever entering the Cottage via the light framed door, which was in fact the door straight into the cloakroom. Mr Martin responded that there was a toilet there and he had "probably" stood in the cloakroom. Memories fade and Mr Martin was clearly confused in his recollections as this directly contradicts his written proof. Given the inconsistencies, it limits the weight that I can give to his testimony.

154. The appellant disputes the provenance of the Google street-view images taken from the A5 bridge. One is marked as captured May 2012 where the toilet extension is not present. In another image taken from a similar angle dated October 2014, the toilet extension has appeared. Without a certificate of authentication, the appellant's advocate suggested that the images are unreliable and have quite often been found to be wrong.

155. On the face of it, the street-view images do call into question the existence of the toilet extension in May 2012. As the dates have not been verified, I treat the images with caution. The only witness of fact who gave tested evidence of this period of time was Mr Martin. He was sure a toilet existed. His evidence was somewhat inconsistent and unclear on dates which gives cause for concern. The point is not critical in light of other firmer evidence on the kitchen extension and so I note the possible inconsistency without attributing weight either way.

156. The kitchen was shown on the existing floor layout plan and existing block plan dated July 2017 which accompanied the LDC application made in November of that year. Both plans are mentioned in the reasons for issue of the LDC for 'the erection of a building'.

157. Upon issue of the LDC the lawfulness of the building as shown on both plans is conclusively presumed by virtue of section 191(6). That is the position for the operations which includes a building with a kitchen and w.c. The onus would be on the Council to revoke this part of the LDC if it considers it to be wrong. It has not done so thus far. Nevertheless, uses and operations are different things and the LDC appeal concerns the use.

158. The appellant's advocate argued forcefully that the credibility of witnesses who referred to a kitchen cannot be called into question in light of the presumption within 191(6) including the presence of a kitchen. I do not agree. It is the lawfulness of the operations which is conclusively presumed so that enforcement action cannot be taken to require removal of the building or any part thereof. It does not necessarily mean that a kitchen was actually there

throughout the preceding 4 years.

159. Moreover, it does not flow automatically from the LDC that the building was used as a single dwelling or that other evidence cannot be looked at in making that determination. If there is further evidence to indicate that those witnesses were mistaken or wrong and the building cannot have been used in the manner claimed, then to my mind that evidence properly falls to be considered.

160. There is no definition of the term 'dwellinghouse' in the 1990 Act. It was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who use it the facilities required for day-to-day private domestic existence.

161. The principles derived from '*Gravesham*' assist in establishing whether the building was a dwellinghouse during the relevant period. That is a question of fact. Logically, if the building did not afford the basic facilities characterised by a dwellinghouse then it could not be used as such.

162. On the other hand, an answer in the affirmative does not suffice to establish whether the Cottage was *used* as a single dwellinghouse. That is reinforced in *London Borough of Islington v SSHCLG and Maxwell Estates Ltd* [2019] EWHC 2691 (Admin). Justice Lang refers to the single test being whether there has been a continuous breach by use as a dwelling, such that the planning authority could have enforced against the breach.

163. Thus, even if a building has the characteristics or is described as a dwelling, the actual use to which it is put must still be assessed. Occupation is not development for the purposes of section 55 of the 1990 Act, only the use of land. It is not enough for Mr Bryce to have occupied the Cottage to demonstrate its use as a single dwellinghouse. Had it been in such use, it is perhaps surprising that no utility bills of any sort have been produced but it is the evidence that has been submitted that falls for consideration rather than what might have been helpful.

164. Despite what witnesses have said, the evidence points firmly to the kitchen extension being added after November 2015. From Mr Martin's account, Mr Bryce stayed in the building when he did not wish to return to the marital home. People have different expectations of living accommodation but there would at least need to be basic cooking facilities.

165. I can only conclude that the building lacked adequate cooking facilities needed for day-to-day private domestic existence because the kitchen was simply not there until some point after 20 November 2015. None of the witnesses were able to confirm that cooking facilities existed beforehand. Mr Martin thought there was a kitchen, but his evidence was unreliable on dates and layout. The Cottage could not have been used as a dwellinghouse until such facilities were added.

166. When Alba Stables was marketed for sale on behalf of the Bryce's in 2015, the sales particulars made no mention of residential accommodation. Had it existed, the Council suggests that the asking price would have been much higher. The estate agent explains in a letter dated 8 November 2017 that at the time of sale there had been "a bedsit/one bed flat which had been converted from a former log cabin". Reference was not made to "formal accommodation"

because it would have placed the agents in breach of trading standards given the absence of planning consent. In view of this explanation, I read nothing into the way the site was marketed.

167. Nevertheless, it does not alter my findings that the Council could not have taken enforcement action against the use of the Cottage as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling until the kitchen was added after November 2015. The onus was on the appellant to show that the Cottage was equipped to facilitate use as a dwellinghouse. Even if kitchen facilities had existed, there is still insufficient clear evidence of a continuous residential use over any complete 4-year period when the witness evidence is so vague and lacking in any real detail.

168. I find that the appellant has failed to discharge the burden of proof to demonstrate that the Cottage was in use as a dwellinghouse for a period of 4 continuous years prior to the date of the LDC application on 4 November 2017.

Stationing of a caravan for human habitation

169. As stated above, whilst the LDC application was made on the basis of the stationing of caravans, plural, this was subsequently amended to one caravan. The appellant submits that even though there has been more than one caravan occupied on site, he seeks a LDC for the residential use of one only. This would then allow the residential use to continue of the caravan currently sited opposite the stable block.

170. Under section 171B(3), the appellant must demonstrate that there was material change of use of the land involving the stationing of a caravan for human habitation at least 10 years prior to the application which continued without material interruption or further material change in use for at least 10 years thereafter. Thus, the material change of use must have occurred no later than 4 November 2007.

171. Mr Hunt (senior) described the events leading to the acquisition of the site from Mr and Mrs Bryce in 2015. At that time, there were two mobile homes on the site - one to the north of the stables, the other to the south. The one to the south was particularly distinctive because it had a tree growing out of it.

172. For a LDC to be issued, it does not need to have been the same caravan throughout the requisite period or stationed in the same position as long as there was no material gap in time to break continuity of use.

173. Mrs Bryce says in her 'Affidavit of Truth' that there were two mobile homes on site and their son lived in one. She goes on to say: "We moved the mobile homes back on site in 2003." Mrs Bryce does not elaborate upon the period of time in which her son lived in the caravan. Whilst Mrs Bryce says that she and her husband 'used' the mobile home, she does not state the purpose of use. The appended photographs of Mrs Bryce and her husband said to be taken inside a mobile home in 2000 do not provide any clarity on their use. They also pre-date the time the mobile homes were moved back on site.

174. Ms Cooper leased land opposite the site between 1988-1999. She refers to two mobile homes at the very back of the property, one of which was lived in by Mrs Bryce's son. Ms Mckay and Mr Connor similarly refer to the owner's son living in one of two mobile homes. Mr and Mrs Egan lived opposite between

1984 and 2005. They refer to the Cottage and two mobile homes and say the site was used for 'private accommodation'. No-one explicitly specifies the period of time the son lived in the mobile home or elaborates further.

175. Mr Martin said that he saw the Bryce's son around the site once or twice a week. He thought the son was living in the caravan but replied "I don't know" when asked in cross examination why he thought that. It was only when led in re-examination that Mr Martin agreed it was because there were lights on in the caravan. Having been led to give this response, I take his first answer as the most credible.

176. Whether the son still lived in the caravan despite a tree growing through the structure is also lacking in clarity. For the caravan to be in such condition suggests that it was not habitable at all times. It poses the question how a tree could have become established if the caravan was inhabited.

177. Ultimately, it is unclear on the evidence when the Bryce's son lived in the mobile home and whether his residential use was continuous over a 10-year period to be immune from enforcement action. There is consistency among witnesses that two mobile homes were on the site over many years. Indeed, Mrs Bryce refers to two mobile homes and this is confirmed by various others. Both appellants and Mr Martin also refer to one mobile home being replaced by another (the log cabin) that burnt down in 2020. However, none of this demonstrates that the land was actually used for the stationing of one mobile home for human habitation for a continuous period of 10 years or more by the time of the 2017 application.

Storage of building materials

178. Dr Murdoch, for the appellant, confirmed that the storage of building materials is not claimed for any area within the compounds i.e., those used as a scaffolder's yard, transport depot or dog walking business. This part of the LDC concerns the storage of building materials on the hardstanding outside the stables and elsewhere. When I asked for clarification of the type of building materials claimed to be stored, Dr Murdoch advised that it was timber, sand, concrete blocks and scaffolding planks as used by Mr Bryce as a small builder.

179. Again, a 10-year immunity period applies ending no later than the date of the LDC application on 4 November 2017.

180. Mrs Bryce says in her statement that when they purchased the site in 1997 her husband used the site as a builders' yard. He also manufactured and stored unique garden furniture from two of the buildings from 2004 to 2015. The LDC application was not expressed as being sought for a builder's yard or the manufacture and storage of furniture. Nonetheless, I accept that the storage of building materials is something that would ordinarily occur in a builders' yard.

181. Mr and Mrs Egan confirm that Mr Bryce "used the Farm as a Builders Yard where he used to store his building materials…". Ms Mckay similarly refers to Mr Bryce using the site as a builders' yard. Ms Cooper says he stored building materials "all over the site in various locations", without giving further details.

182. The Council submits that the storage of building materials during Mr Bryce's ownership was merely ancillary to his use of the workshops rather than a primary use of the land. That may be so. Ultimately there is an absence of clear

and precise details of what was stored, when and where. The evidence of Mr Martin at the Inquiry was similarly generalised. Generic references to a builders' yard or building materials being stored does not suffice without clear information on dates and continuity of such use. None of the photographs show an ongoing use for the storage of building materials.

183. I cannot be satisfied on the information available that the site was used for the storage of building materials as a primary use of land for a continuous 10-year period to be immune from enforcement action at the time of the LDC application.

Parking and storage of vehicles

184. It is well established law that the parking and storage of vehicles are not the same for planning purposes (*Crawley Borough Council v Hickmet Ltd* [1998] 75 P&CR 55). They are distinct and separate uses. When this was put to Dr Murdoch under cross-examination, he replied: "In that case, they're parked." He refused to go as far as saying that the LDC application should be amended to strike out the 'storage' of vehicles because witnesses do refer to 'storage'. Even so, it presents a difficulty for me in establishing whether those witnesses understood the distinction between parked and stored vehicles.

185. Ms Reynolds says that Mr Bryce used to let local haulage companies "park" their lorries on the site. Quite what the arrangements were is unclear. Ms Mckay says that her partner used to park his lorry at the site on a regular basis although she does not say how often this was or the period concerned. Ms Cooper says in her statement that Mr Bryce rented out parts of the site to local companies based in Cobham for "storing" their vehicles. Mrs Bryce also refers to storing vehicles and lorries. The position is so uncertain it limits the weight that I can give to references by witnesses to parked and stored vehicles.

186. In oral evidence, Mr Martin explained that he worked in the transport and demolition industry and Mr Bryce allowed him to park his truck on hardstanding at Alba Stables from 2007. He produced a photograph of the truck said to be taken on the site. His answers changed between 2012 and 2015 as to the end date. Not only does this not cover a full 10 years, the parking of a single truck on this substantial site would not to my mind have constituted a material change in the use of the land. It would be *de minimis*.

187. There are other photographs with vehicles shown. They include photographs appended by Mrs Bryce of an isolated truck said to be taken in 2008 and vehicles beneath the bridge in 2013. All the photographs are only snapshots in time and whether vehicles are stored or parked cannot be gleaned. Even if they are parked, it is uncertain if they are merely ancillary to another primary use e.g., use of the workshops. The appellant accepts that some parking/storage would have been ancillary to the workshop uses. It is submitted that a LDC should still be issued for ancillary uses that are secondary to any 'composite' uses I find to be lawful.

188. Given the uncertainties in the evidence, I cannot be satisfied that the parking and/or storage of vehicles had taken place as a primary use of land for a continuous 10-year period to be immune from enforcement action. Nor can I be satisfied that such use was ancillary to a lawful primary use given my findings above notwithstanding that the application was not made on that basis.

The hardstanding

189. The creation of areas of hardstanding amounts to engineering operations under section 55 of the 1990 Act. The parties agree that the relevant immunity period is 4 years under section 171B(1). Therefore, for a LDC to be issued for those operations, the appellants must demonstrate that the hardstanding was substantially completed by no later than 4 November 2013.

190. Unfortunately, the LDC issued by the Council did not identify with reference to a plan which areas of hardstanding were certified as lawful. Instead, reliance must be placed on the description of 'hardstanding leading to and around the workshop and stables (in part)', which is not wholly clear. Mr Whittaker for the Council produced a marked-up plan indicating that the LDC had been issued for the road under the A3 into the site, a rectangular area of hardstanding around the small cluster of workshop buildings and a road extending north.

191. With the Council's agreement, I accepted the late submission of a plan from the appellant to illustrate the area over which the LDC is sought for the hardstanding. This shows the area in totality, part of which has already been certified as lawful. Whilst there is some overlap with the hardstanding enforced against in Notice 3, the areas are not the same. No LDC is sought for the hardstanding laid within the three compounds or within the triangular area that the Council tried to add to the plan for Notice 3. The application does include hardstanding extending south of the workshops and an area to the north where a mobile home once stood. In essence, the application is not confined to the road or workshops forecourt.

192. Those who made 'Affidavits of Truth' refer to hardstanding, a road or drive at the site but they do not attach plans to help identify where this was laid. Ms Mckay lived in Cobham for 13 years from 1987. She says that all the roadways that currently exist have always been there, but she does not mention hardstanding. Mr Martin says the roads have been there over 40 years but Ms Cooper states that since owning the site, Mr Hunt has covered part of the hardstanding with tarmac, thereby indicating more recent works.

193. The difficulty for the appellant in seeking a LDC for more expansive hardstanding is that the areas are green in colour in the aerial photograph from August 2013 indicating growth of some sort. Although the quality of images is not ideal, this appears to still be the case in 2014 and 2015. Overgrowth can potentially cover hardstanding but that is unlikely to be the explanation for the additional areas not being apparent given the marked transformation of defined hardstanding evident in September 2018.

194. Mrs Bryce refers in her 2017 statement to there always being a hardstanding road from the main entrance to the very rear of the site. Her photographs from February 2008 and May 2010 do not show the same extent of hardstanding as now claimed. This indicates that the road she mentions has been added to.

195. Quite simply, there is insufficient clear evidence that the additional hardstanding claimed was substantially complete for 4 years or more at the time of the LDC application to have gained immunity from enforcement action.

Conclusions on the LDC

196. The appellant has failed to discharge the burden of proof to demonstrate on the balance of probabilities that the uses and operations applied for were immune from enforcement action at the time of the LDC application. In arriving at this conclusion I have considered the totality of evidence before the Inquiry.

Notice 1 - ground (d)

197. The appellants confirmed at the Inquiry that the ground (d) appeal against Notice 1 concerns the hardstanding. The ground of appeal does not include the hardstanding within the three compounds, or the walls, gates and piers and the notice will take effect with regard to these operations.

198. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action. The onus is on the appellants in the ground (d) appeals to produce sufficient evidence to meet the balance of probabilities test.

199. There is a different immunity period for the hardstanding under the ground (d) appeal for Notice 1 than already considered in the LDC appeal. Rather than a relevant date of 4 November 2013, success on ground (d) requires the appellants to demonstrate that the operations for the formation of the hardstanding were substantially completed by 3 May 2015.

200. As previously identified, Notice 1 attacks a larger area of hardstanding than that identified in the LDC application. The appellants' own evidence from Ms Cooper is that Mr Hunt added tarmac on top of hardstanding since owning the site i.e., after 3 May 2015. Whether this refers to the compounds only is unclear. In their sworn testimony both Mr Hunt senior and junior insisted that the extent of the hardstanding road was already present upon their acquisition and that works to the road had merely been reinstatement following flooding.

201. However, there is evidence to the contrary. As already stated, the extent of hardstanding is not apparent in the aerial photographs for 2013, 2014 or 8 October 2015. There was an appreciable change by the time of the September 2018 aerial image with far more hardstanding visible. This clearly indicates that the works were ongoing after 3 May 2015.

202. On the balance of probabilities, I find that substantial completion had not occurred by 3 May 2015 for it to be too late for enforcement action. The ground (d) appeals do not succeed.

Notice 5 – ground (d)

203. Having established that section 171B(4)(b) applies to Notice 5 as corrected, the immunity period is calculated with reference to the date of issue of the withdrawn notices that it replaces (Notices 2 and 4) i.e., 3 May 2019.

204. Counsel for the appellant sought to argue on the last of the Inquiry that the date should in fact be taken as November 2022 to reflect the time that the Council requested changes to Notice 5 during the Inquiry. I find no favour with that argument at all. The date of issue of an enforcement notice does not change with amendments to its terms or alter the applicable date arising by operation of section 171B(4)(b).

205. The immunity period need not necessarily be that immediately preceding 3 May 2019 so long as there has not been reversion to the original use or another change of use in the intervening period. The appellant must be able to establish that the local planning authority could have taken enforcement action against the breach at any time during the relevant period.

The Cottage

206. The appellant must show that the change of use of the building adjacent to the stables to a self-contained residential dwelling occurred at least 4 years prior to 3 May 2019 (i.e., no later than 3 May 2015) and continued without material interruption for a period of 4 years after the date of such change.

207. A series of assured shorthold tenancies are produced by the appellant. The tenancy for David Bryce (unrelated to the previous owners) of 1 July 2018 names the property as the '*dwelling known as The Cabin Chalet, The Small cottage*'. A later tenancy for Mr Concannon post-dates the relevant period (being dated 1 August 2019) but it is notable because it describes the property as '*The Cottage (Building 2)*'. It is unexplained why two buildings became registered for Council Tax. Building 1 was registered from 1 April 2017 to 31 January 2018 whereas Building 2 was registered for periods between 1 June 2017 and 1 February 2019. It adds uncertainty as to which building/s were in residential use, the continuity, and to which the 2018 tenancy relates.

208. Mr West states that he commenced occupation of the Cottage when the Hunt family acquired the site on 13 May 2015. Therefore, he cannot demonstrate a full 4 years' use prior to 3 May 2019. As it is, the evidence relied upon by the appellant is contradicted by the photograph of 20 November 2015 in which the kitchen extension is not present. As explained above in relation to the LDC appeal, this photograph casts significant doubt that the Cottage had the facilities required for day-to-day living in order for the Cottage to actually be used as a dwelling until some point after that date.

209. For the reasons given previously, the witness evidence prior to the Hunt period is also so vague and imprecise that it does not suffice to demonstrate any 4-year period of continuous use of the Cottage as a dwelling in breach of planning control. The ground (d) appeal fails for the Cottage.

The mixed use

210. A mixed use is a single mixed use composed of all the primary uses of land taking place within the planning unit. The component activities cannot be de-coupled. Where there is a mixed use, a 10 year immunity period applies under section 171B(3). The appellant must show that the whole mixed use had continued without material interruption for 10 years. Notably, a material change of use would occur with the addition of a new primary use, starting the immunity period afresh with each addition.

211. Therefore, the change in use to a mixed use of agriculture, the siting of a mobile home used for human habitation, the siting of storage containers and portacabins for commercial storage and the storage of timber, building materials, rubble and waste, must have occurred no later than 3 May 2009 and continued throughout the 10 years thereafter for immunity to be achieved.

212. Having regard to my analysis of individual components in the LDC appeal, the appellant is confronted with similar evidential problems. There is no cogent evidence that the single mixed use had begun by 3 May 2009 and continued for 10 years after the date of such change.

213. The same evidence is relied upon by the appellant as per the LDC in terms of the use of a mobile home for human habitation. The appellant asserts the evidence is clear and consistent that at least one mobile home was occupied and continued to be so at all material times. In fact, the evidence is unclear and vague over periods of occupation of any mobile home. It is not sufficiently precise. The person best able to provide an account was Mrs Bryce but her 'Affidavit of Truth' did not specify dates when her son lived in a mobile home on the site. No occupant of a mobile home has provided any form of evidence of their residential use. The evidence falls considerably short of demonstrating a continued use throughout a 10-year period when the mixed use was taking place. This alone is enough to defeat a claim of immunity for the mixed use.

214. As it is, the appellant advances little evidence to support the contention that the storage of timber, building materials, rubble and waste occurred as a primary use throughout the requisite 10-year period as part of the mixed use. Witnesses referring to Mr Bryce using some part of the site as a builders' yard does not tell me that he stored the materials specified in the notice. Mr Hunt junior says that the majority of the yard was being used for the storage of building materials but this does not account for the period prior to May 2015.

215. Furthermore, no evidence is advanced that the containers or portacabins were used during the Hunt period or by their predecessors for commercial storage. The appellant says that storage containers and portacabins were always part of the LDC application. Witnesses refer to containers under the bridge which can also been seen in photographs. However, it is the use of the containers and portacabins for commercial storage throughout the 10-year period which is relevant. Details are lacking in this regard.

216. Sworn evidence was given by Mr Hunt senior and junior but their personal knowledge does not span a 10-year period.

217. In summary, the appellant has not shown that the mixed use occurred no later than 3 May 2009 and continued after the change for 10 years without material interruption so as to be immune from enforcement action. The ground (d) appeal fails for the mixed use of the site.

Notices 1,3 & 5 - ground (g)

218. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.

219. The effect of the appeals is to stop the clock. The notices only take effect on the date of this appeal decision, which is when the compliance period starts. A compliance period of 2 years was originally sought across all three enforcement notices instead of the 3 months afforded in each. This was subsequently revised during cross-examination of Dr Murdoch.

220. The ground (g) appeal for Notice 1 relates to the hardstanding only for which a compliance period of 6 months is now sought by the appellants. For Notice 3, the appellants request 12 months to reduce the raised ground levels. For the

change of use in Notice 5, the appellant also suggests 12 months.

221. The Council considers that 3 months is fair, proportionate and reasonable and refers to its power by virtue of s173A(1)(b) to extend the compliance period, if the appellants had genuine difficulty in complying. That is a discretionary power and does not circumvent the need for the period to be reasonable in the first instance.

222. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm arising from it, as identified in the reasons for issuing each notice. In line with the advice at paragraph 58 of the Nation Planning Policy Framework, effective enforcement is important to maintain public confidence in the planning system.

223. No justification has been given as to why 6 months is required for removal of the hardstanding. The Inquiry heard how Mr Hunt senior is in the building trade and there is no reason on the face of it why compliance could not reasonably be achieved within the specified 3 calendar months.

224. Reducing the ground levels would involve considerable groundworks. Again, no explanation is given as to why 12 months would be needed.

225. The Cottage is tenanted but no particulars are provided of the occupants or their circumstances. Clearly, notice will need to be served to terminate the tenancy and secure possession. Similarly, there is also residential use of the one mobile home on site. However, no case is made by the appellants to explain why more time is needed or justified and it is not for me to speculate.

226. Without reasoned explanation supporting the ground (g) appeals, I can only conclude that the periods of time afforded by each notice is reasonable. The ground (g) appeals fail.

Formal Decisions

Appeal A - LDC

227. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of:(i) the creation of areas of hardstanding (not already certified as lawful) (ii) the residential use of the dwellinghouse (iii) the stationing of a caravan for the purposes of human habitation (iv) the storage of building materials, and (v) the parking and storage of vehicles, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act, as amended.

228. The appeal is dismissed.

Appeals B & C – Notice 1

229. It is directed that the enforcement notice (Notice 1) be corrected by:

- substituting the plan annexed to the notice with the plan at Appendix 1 to these Decisions.

- adding the words '*the approximate location and layout of which is hatched in black on the attached site plan'* to the end of the first allegation in paragraph 3.
- deleting the word '*With*' at the start of the second allegation in paragraph 3 and replacing it with the word '*Within'*.
- adding the words '*to the north of the stable block, approximately located between A and B as indicated on the attached plan*' to the end of the second allegation within paragraph 3.
- deleting the 's' in '*areas'* in paragraph 5.(2).
- adding '*S*' to the end of '*MONTH*' in paragraph 6.

230. Subject to these corrections, the enforcement notice (Notice 1) is upheld, and the appeals are dismissed.

Appeals D & E – Notice 3

231. It is directed that the enforcement notice (Notice 3) be corrected by:

- deleting the words in paragraph 5.(1) and substituting: '*Permanently remove 819m^3 of volume within area 1, as shown on the attached plan, from the Land and restore area 1 to its previous land form*.'
- deleting the text in paragraph 5.(2) after the word '*volume*' and substituting '*within area 3, as shown on the attached plan, from the Land and restore area 3 to its previous land form*.'
- deleting paragraph 5.(3) and making consequential amendments so that paragraph 5.(4) is re-numbered as new 5.(3) and '*steps (1)-(3)*' referred to therein become '*steps (1)-(2)*'.

232. Subject to these corrections, the enforcement notice (Notice 3) is upheld, and the appeals are dismissed.

Appeal F – Notice 5

233. It is directed that the enforcement notice (Notice 5) be corrected by:

- substituting the plan annexed to the notice with the plan at Appendix 2 to these Decisions.
- deleting paragraph 3. and substituting:

  '*Without planning permission:*

  (A) the material change in use of the building adjacent to the stables (marked green on the attached plan) as a self-contained residential dwelling.

  (B) the material change in use of the areas numbered 1 and 4 on the attached plan as a scaffolders yard with associated office.

  (C) the material change in use of the area numbered 2 on the attached plan for the storage and parking of vehicles, trailers, diggers, plant and lorry bodies;

(D) the material change in use of the areas numbered 3 and 5 on the attached plan for commercial dog walking and associated car parking;

(E) the material change in use of the land (excluding the area marked green, and numbered 1 to 5 on the attached plan) to a mixed use comprising:-

i) Agriculture;

ii) The siting of a mobile home used for human habitation;

iii) The siting of storage containers and portacabins for commercial storage;

iv) The storage of timber, building materials, rubble and waste.'

- deleting the word '*all*' from paragraph 5.5 and substituting '*the*'.
- deleting paragraphs 5.7, 5.8 and 5.10.
- deleting the words in brackets in paragraph 5.11 and substituting '*(as shown hatched on the attached site plan)'.*
- inserting a new requirement in paragraph 5. to '*Permanently cease the use of the Land as a scaffolders yard'*.
- inserting a new requirement in paragraph 5. to '*Permanently cease the use of the Land for the storage and parking of vehicles, trailers, diggers, plant and lorry bodies'.*
- inserting a new requirement in paragraph 5. to '*Permanently cease the use of the Land for commercial dog walking and associated car parking'.*

234. Subject to these corrections, the enforcement notice (Notice 5) is upheld, and the appeal is dismissed.

KR Saward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Alan Masters	Counsel, instructed by Dr. Angus Murdoch
He called:	
Richard Hunt (senior)	Appellant
Ken Martin	
Councillor Burley	Borough Councillor
Richard Hunt (junior)	Appellant
Dr. Angus Murdoch BA(Hons) MA MSc PhD MRTPI	Chartered Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Stemp	Counsel, instructed by Head of Legal Services
He called:	
Dr Kyle Brown Bsc (Hons) Ph.D	Environment Agency Geomatics
Neill Whittaker Bsc (Hons) MA MRTPI	Senior Planning Associate, Ivy Legal Limited

DOCUMENTS submitted at the Inquiry

1	Full form of Appendix 2 to Richard Hunt (senior) proof of evidence (planning contravention reply dated 3 December 2015 with waste transfer notices)
2	Opening statement for the Council
3	Council’s revised wording for the allegation in Notice 5
4	Revised plan for Notice 5 identifying the location of the building adjacent to the stables
5	Copy photograph produced by Mr Martin
6	Appellants’ 27 page bundle (including Licence Agreement to Global Scaffolding Limited and Goods Vehicle Operator’s Licences)
7	Missing Appendix 4 to Richard Hunt (junior) proof of evidence (copy tenancy agreement to David Bryce dated 19 June 2018)
8	Second revised plan for Notice 1
9	Plan marked to show area of hardstanding for which the LDC is sought
10	Council’s closing statement
11	Appellant’s closing statement

Appendix 1

The Planning Inspectorate

Plan – Notice 1

This is the replacement plan to Notice 1 referred to in my decision dated: 09 May 2023

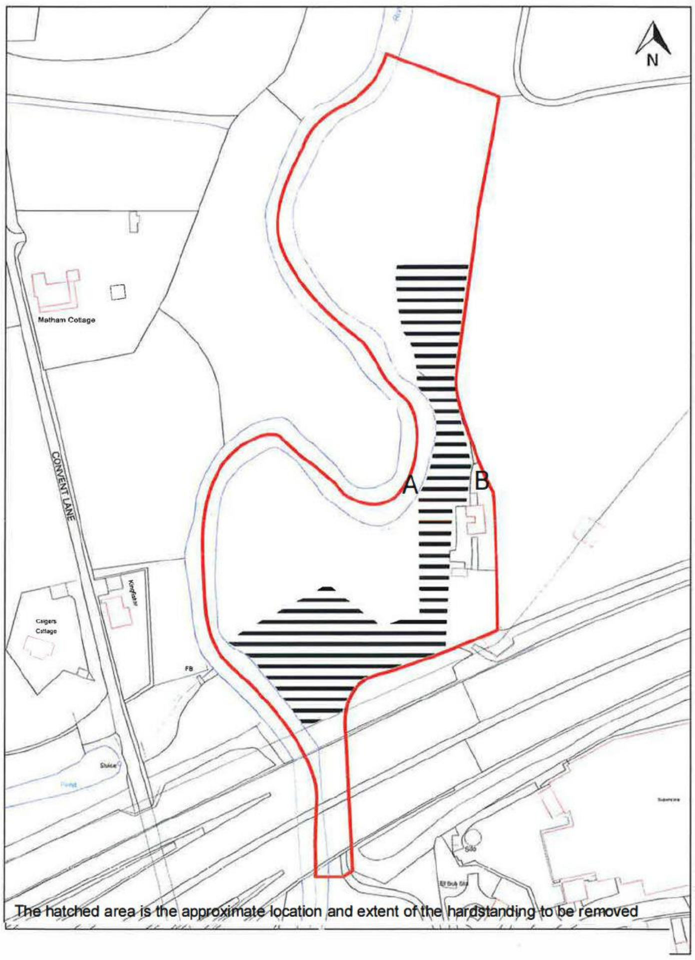
by K R Saward Solicitor

Land at Alba Stables (aka Alma Stables, Hunts Farm & Stables), Bridge Way, Cobham, Surrey KT11 1HW

References: APP/K3605/C/19/3230212 & 3230213

Scale: **DO NOT SCALE**

Site Plan



Site Address : Alba Stables, Bridge Way, Cobham, KT11 1HW

Elmbridge Borough Council

Civic Centre, High Street, Esher, Surrey, KT10 9SD

Scale 1:2000

Appendix 2

The Planning Inspectorate

Plan – Notice 5

This is the replacement plan to Notice 5 referred to in my decision dated: 09 May 2023

by K R Saward Solicitor

Land at Alba Stables (aka Alma Stables, Hunts Farm & Stables), Bridge Way, Cobham, Surrey KT11 1HW

Reference: APP/K3605/C/22/3303872

Scale: **DO NOT SCALE**