



Appeal Decisions

Site visit made on 5 March 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2024

Appeal A Ref: APP/D3640/C/22/3301643

Appeal B Ref: APP/D3640/C/22/3301644

Land at Chobham Car Spares, Clearmount, Chobham, Woking GU24 8TP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Derek Willis of Ripley & Willis, Chobham Car Spares (Appeal A) and Mr John Ripley of Ripley & Willis, Chobham Car Spares (Appeal B) against an enforcement notice issued by Surrey Heath Borough Council.
- The notice was issued on 16 May 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land from the activities described under Lawful Development Certificate for Existing Use (reference 94/0432) to the storage and distribution of scaffolding materials, including the unauthorised erection of metal sheet storage buildings in connection with this use (Site Area 'B'). The material change of use of the land to a commercial used car storage and sales business for visiting members of the public (Site Area A) and the material change of use of the land (Site area C) to open air storage of heavy industrial plant and machinery.
- The requirements of the notice are to:
 - i. Cease the use of the land edged blue and labelled site area 'A' on the site location plan, for used car vehicle sales and storage
 - ii. Cease the use of the land edged and hatched blue, site area labelled 'B' on the site location plan, for the storage and distribution of scaffolding materials.
 - iii. Following completion of step (ii) above, demolish/dismantle and remove from the land all structures located within the site area labelled 'B' from the site.
 - iv. Cease the use of the land edged blue and labelled site area 'C' on the site location plan, for the commercial open air storage of heavy goods vehicles, plant and machinery.
 - v. Following completion of step iv above, remove all associated heavy goods vehicles, plant and machinery from the land.
 - vi. Following completion of steps 'i-v' above, restore the land to the state it was prior to the breach of planning control.
- The period for compliance with the requirements is four months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are allowed and the enforcement notice is corrected and quashed.

Appeal C Ref: APP/D3640/X/21/3271883

Land at Chobham Car Spares, Clearmount, Chobham, Woking GU24 8TP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Derek Willis of Chobham Car Spares Ltd against the decision of Surrey Heath Borough Council.
- The application ref SU/18/0705, dated 3 August 2018, was refused by notice dated 30 September 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is a use for the storage and distribution of scaffolding materials.

Summary Decision: The appeal is allowed in part.

Applications for costs

1. An application for costs was made by Mr Derek Willis and Mr John Ripley of Ripley & Willis, Chobham Car Spares, against Surrey Heath Borough Council. This application is the subject of a separate decision.

The Notice – Appeals A and B

2. The appellants have raised a number of matters in suggesting that the notice is a nullity. Although these have been raised under some of the various grounds of appeal, it is more appropriate to consider these matters before I move on to consider those grounds of appeal.
3. For the notice to be a nullity, it must be defective on its face. I acknowledge that the notice subject of Appeals A and B follows the issue and subsequent withdrawal of a previous enforcement notice for the site. This does not, however, render the current notice defective on its face.
4. The appellants have also referred to issues with regard to the date the enforcement notice was issued. It may well have been the case that the appellants were not served with a copy of the notice until 24 May 2022, some 8 days after the notice was issued. Nevertheless, as the notice is signed and dated, it contains no defect in this regard. Furthermore, the appellants were given sufficient time to make their appeal.
5. Notwithstanding this, the Council has given an explanation for the withdrawal of the previous notice and subsequent issue of the notice subject of these appeals, which was only days apart. The reasons for this are independent of the appeal that was made against the now withdrawn notice. Again, any issue with regard to the background of the notice has not resulted in a defect on the face of the notice. I am unable to assess the background to the issue of the notice. There is a channel for such matters to be considered and that is through the Courts. I do not, therefore, find the notice to be a nullity for the reasons suggested.
6. The appellants also say that the plan attached to the notice is defective as its scale is not 1:1250, as indicated on the plan. They suggest that this is to their

detriment as 'there is no accurate point of reference to determine the size or location of the areas indicated on the plan'.

7. The purpose of the plan is to identify the land to which it relates (i.e. "the Land" identified in part 2 of the notice), which are the parts of the wider edged red site that are the target of the notice. Provided that the plan achieves this with a sufficient degree of certainty, I cannot regard it and, therefore, the notice as defective.
8. With this in mind, whilst the scale of the plan may not be correct when printed at A4, the appellants do not provide evidence to demonstrate that, if the plan were printed at the correct scale, the location of the buildings, structures and areas indicated on it are not accurately shown. Having walked the wider edged red site, I observed its physical features, including the three buildings close to the northernmost boundary and the position of the internal enclosures. I also observed the enclosure around the boundary of the entire site, which includes the land outlined in red on the enforcement notice plan and additional land to the east (I will come to this matter below). Having had regard to the location and relationship between the features I observed, I have no reason to find that the vast majority of these are not identified on the plan with a sufficient degree of accuracy. In particular, on site I was able to easily identify the areas marked as A (Area A) and B (Area B) on the plan. Thus far, I can find no fault with the notice.
9. With regard to the area identified as C (Area C), its boundaries as indicated on the plan are not entirely reflective of the situation I observed on site. There were no enclosures along some of the boundaries of Area C and the use of the land within Area C appeared to be the same as land it adjoins, both to the west and to the east. Indeed, Area C is within a wider area of land that is divided and enclosed by fencing into two separate parcels. Each parcel has its own access from the internal access track running through the wider edged red land. The primary use of both parcels appears to be the same, which is for the storage of plant and machinery, as well as some skips and vehicles, primarily lorries.
10. It is clear that the land identified as Area C does not correspond to the boundary of the area or areas used for the purposes stated. It does not, however, follow that the notice is defective because of this. What is important is that the notice identifies with sufficient certainty the land on which, it appears to the Council, there has been a breach of planning control, in accordance with section 172(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act). As the Notice clearly identifies an area of land on which the Council say that the storage use is taking place, I do not find the notice defective.
11. Whether or not the change of use of all or part of Area C is a breach of planning control is a matter I will consider under the ground (c) appeal. As for the use of the land to the east of Area C, this is a matter for the Council. This land cannot be included within the effect of the enforcement notice or the remit of this appeal. This land falls outside the appeal site, on land that is not the subject of the enforcement notice. To include this land within the effect of the

notice would cause injustice to the appellants as they would not have had the opportunity to make their case in respect of an allegation of a material change of use of this land.

12. In short, although Area C may not extend across the entirety of the land used for the storage purposes alleged, I am satisfied that it is a part of the land to which the notice relates that is used for these purposes. I say this, mindful that the appellants have not made a ground (b) appeal and do not suggest that the material change of use alleged has not occurred. For these reasons, I do not find the notice to be either a nullity or invalid. That said, as I have noted above, the use of Area C includes the storage of vehicles, primarily lorries, and a small number of skips, as well as the plant and machinery referred to in the allegation. The description of the alleged breach of planning control with regard to Area C would, therefore, be more precise if it were to include reference to vehicles and skips. Such a correction would not materially alter the use that the notice alleges and would not cause injustice to the appellants.
13. In addition to the above, I find the reference in the allegation to 'the activities described under Lawful Development Certificate for Existing Use (reference 94/0432)' to be uncertain in identifying the former use of the site. Although often helpful, it is not always necessary for the enforcement notice to refer to the former use. In the interests of precision and clarity, I intend to correct the notice to omit reference to this altogether. For the same reason I also intend to change how Areas A, B and C are referred to in the allegation. Injustice would not be caused to any party by these corrections as they are minor in terms of the effect they will have.

Other Preliminary Matters – Appeals A and B

14. The appellants have commented on the Council's appeal submissions in this case. I have been invited to find these 'notified or invalid', in view of when it is suggested that the Council commenced preparation of them. Even if work to prepare these submissions commenced prior to the making of the appeals that are the subject of this decision, I see no reason to disregard them. They are entirely relevant to the grounds of appeal that have been made against the issue of the notice subject of the appeals before me.
15. The enforcement notice refers to 'the unauthorised erection of metal sheet storage buildings in connection with' the use of Area B. The appellants have made the case that buildings have not been erected and that what is on site is, simply, storage. This is a matter that falls squarely to be considered under a ground (b) appeal, which is that the matters stated in the notice have not occurred.
16. I will, therefore, consider a ground (b) appeal in relation to this matter alone. It has not, however, been necessary for me to seek any further comments on this from the parties as their evidence clearly responds to the matter of whether or not what is on site are buildings.

Preliminary Matters – Appeal C

17. The LDC application form describes the existing use for which the certificate is sought as 'B8 – Storage or distribution'. I assume that this is reference to Class B8 of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). Question 5 of the LDC form asks for a description of the existing uses, building works or activities for which the LDC is sought. In answer to this, there is a lengthy description that only includes reference to activity associated with scaffolding, including 'storage, repair and parking of scaffolding'. This description is similar to that used in the appeal form.
18. I find the description of the use as 'storage, repair and parking of scaffolding' to be an unusual way to describe the activities taking place on the site. There is no suggestion that this use is not the same as that described in the enforcement notice as taking place on Area B. Having regard to my observations on site and the evidence before me, I am satisfied that the enforcement notice provides an accurate description of the use taking place. Accordingly, I will determine Appeal C on the basis of the storage and distribution of scaffolding materials. This is the description of the use that I have used in the header above.
19. Notwithstanding the above, the LDC decision notice refers to both the 'use of site as scaffolding yard' and to an 'associated shelter'. This description appears to go beyond the matters for which the LDC was sought. In view of this, I intend to only consider Appeal C on the basis of the use. This will not include the associated shelter referred to by the Council. The matter of the shelter is, of course, the subject of Appeals A and B.
20. The site location plan submitted with the LDC application is of a large scale and, although not entirely clear, appears to identify all of the land that is the subject of the LDC granted in 1994, hereinafter referred to as the 94 LDC. Although question 5 of the LDC application form asks the applicant to, where appropriate, identify which part of the land each use, building works or activity relates, no plan identifying a smaller part of the land used for the purposes stated has been provided. Accordingly, the application appears on its face to seek an LDC for the use of the whole of the land identified on the site location plan for a scaffolding use. I will, therefore, consider Appeal C on this basis. This does not, however, prevent me from considering Appeal C together with Appeals A and B insofar as they relate to the scaffolding use.
21. Finally, the main issue on Appeal C is whether the Council's decision to refuse to grant a LDC was well founded.

Ground (e) – Appeals A and B

22. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. In making their case under ground (e), the appellants refer to the matter of the plan attached to the notice. This is, however, a matter that is relevant to the validity of the notice, which I have already considered above.

23. Section 172 of the 1990 Act informs of the circumstances under which an enforcement notice may be issued (section 172(1)), on whom the notice shall be served (section 172(2)), and when the service of the notice shall take place (section 172(3)). What the notice must otherwise contain is not specified under section 172. Whilst a notice may be quashed if not served in accordance with section 172, whether or not the notice is valid or a nullity for any other reasons is not a ground (e) matter.
24. I have noted the appellants' reference to the parties on whom the previous notice was issued and those notified of its withdrawal. This is not relevant to the matter of whether or not the notice before me was served correctly. As I have been given no reason to conclude that copies of the enforcement notice before me were not served in accordance with section 172 of the 1990 Act, I conclude that the ground (e) appeals should fail.

Ground (b) – Appeals A and B

25. The appeals on ground (b) are that the matters alleged in the enforcement notice, as I intend to correct it, which appear to the Council to constitute the breach of planning control, have not occurred.
26. The allegation includes the erection of metal sheet storage buildings in connection with the use of Area B. Although the precise location of the buildings is not identified on the plan attached to the notice, the notice is sufficiently clear that they are located within the identified Area B.
27. Section 55 of the 1990 Act defines building operations as including:
- (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
28. Section 336 of the 1990 Act also provides a definition of a building as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. The caselaw referred to by the Council¹ identifies three primary factors that are decisive of what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. None of the factors are necessarily decisive on their own.
29. With regard to the first of the above-mentioned factors, I observed two structures that I understand to be the target of the notice. The first is located adjacent to the southernmost and part of the easternmost boundary of Area B and the second spanned a large portion of the length of Area B's westernmost boundary. They were constructed primarily with the use of scaffolding poles,

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102.

boards, and fixings. Some parts of the structures have a roof of corrugated metal sheeting and some elevations have been fitted with canvas sheeting. Otherwise, the structures were open. The structures are substantial in their size (in both footprint and height), and there is no doubt that they have been constructed on site.

30. I could see no means by which the structures were physically attached to the ground. I observed the vertical scaffolding poles resting on scaffolding boards that had been laid on the ground. Otherwise, there was no obvious indication that the ground had been prepared in any way for the erection of the structures.
31. The structures are primarily used to store scaffolding poles, boards, fixings and other related items. In this regard they have a functional appearance, such that their intended purpose is clearly to facilitate the storage of items associated with the use of this part of the site. The size of the structures indicates a degree of permanence. However, they have a simple means of construction that is clearly evident, they are broadly open structures, and there is an obvious lack of physical attachment to the ground. I also note the Council's observations, that 'the structures have been altered and moved around the site' since they were first observed in May 2018. For these reasons, I cannot conclude that they have caused a physical change of some permanence to the site.
32. Whilst I have described what I observed on site as structures, having regard to all of the above, I find that, on balance, they are not, as a matter of fact and degree, buildings. Rather, they have the character of a storage structure, the primary purpose of which is to facilitate the use of the site by providing a means to store scaffolding items in an organised manner.
33. For these reasons I conclude that the construction of buildings on the land has not occurred. Accordingly, the ground (b) appeals succeed. As a consequence, I shall correct the notice to omit from the allegation the 'unauthorised erection of metal sheet storage buildings in connection with this use'. As there are ground (c) and (f) appeals in respect of the allegation of the use of Area B for the storage and distribution of scaffolding materials and the requirements of the notice associated with this use, I do not at this stage intend to correct the notice insofar as it requires the removal of the structures subject of this ground (b) appeal.

Ground (c) (Appeals A and B) and Appeal C

34. A ground (c) appeal is that the matters alleged in the notice, corrected as I intend, do not constitute a breach of planning control. With regard to Appeal C, the appellants must demonstrate that the use for which the LDC is sought does not constitute development. The burden of proof is on the appellants to prove their case on the balance of probabilities.

The Lawful Use or Uses

35. It is important to establish what comprises the lawful use that is the subject of the 94 LDC, along with the relevant planning unit. Along with certain

operational development, there are a number of uses listed in the 94 LDC. These are as follows:

- The storage and dismantling of motor vehicles, and the storage and sale of spare parts;
- The storage of waste arising;
- The servicing, repair and parking of plant and vehicles;
- The operation of a vehicle recovery business including the parking, servicing, storage and repair of recovery vehicles;
- The parking, servicing & repair of coaches; and
- The use of two buildings for motor body repairs and ancillary parking.

36. Whilst the plan attached to the 94 LDC identifies a number of buildings and indicates what activities took place on certain parts of the site at the time the LDC was granted, the 94 LDC appears to relate to a single planning unit occupying the whole of the land identified on the 94 LDC plan. Indeed, neither party suggest otherwise.
37. The list above includes a variety of uses that would not be regarded as the same use if carried out separately. For example, a sole use for the servicing and repair of vehicles or plant would ordinarily fall within Class B2 of Part B, Schedule 1 of the 1987 Order, whereas Article 3(6) of the 1987 Order identifies 'a scrapyards', or a yard for 'the breaking of motor vehicles' as a use that does not fall within any class of use specified in the 1987 Order.
38. Whilst the Council suggest that the storage and vehicle repair activities were ancillary to the scrap yard use, there is nothing before me to substantiate this. These activities are listed in the 94 LDC together with the scrap yard activities. There is no indication from the certificate that one of the activities listed is ancillary to any other. Having regard to the evidence before me, I find that the use found to be lawful in 1994 was a mixed use of a single planning unit covering the whole of the 94 LDC land and comprising the activities I have listed above, rather than a single use with associated ancillary uses.
39. The appeal site that is the subject of Appeal C appears to relate to the same parcel of land as that subject of the 94 LDC. However, the appeal site that is the subject of Appeals A and B is not the same. Whilst Areas A and B clearly fall within the 94 LDC land, Area C extends into land to the east. I note the appellants' case with regard to how the land to the east of the 94 LDC land has been used. However, I have not been advised that an LDC or planning permission has been granted in respect of this land. Notwithstanding this, neither party would disagree that historically this land to the east was used for the purposes of forestry.

Use or Uses Subject of the Appeals

40. Once the notice is corrected as I intend, it will allege:

- The use of Area A for the commercial storage of used cars and for the sale of used cars to visiting members of the public;
- The use of Area B for the storage and distribution of scaffolding materials; and
- The use of Area C for the storage of heavy industrial plant and machinery, vehicles and skips.

41. Whilst the Council refer at various points to a mixed use of the wider edged red site, what is alleged is three separate uses taking place on separate parts of the wider edged red site.

42. As for Appeal C, I have already clarified the use for which the LDC is sought. I have also noted that the plans submitted with the LDC appeal do not identify Area B, or any other part of the wider site, as the land on which this use is taking place. The LDC is, therefore, sought for the whole of the land identified on the plan submitted with the LDC application, which appears to be the same site as that subject of the 94 LDC.

Main Considerations

43. The main considerations are:

- whether or not the uses have resulted in a change of use of the land when compared to the lawful use; and
- if so, whether or not the change of use is material and, therefore, constitutes development for the purposes of section 55(1) of the 1990 Act.

44. Also in dispute is whether or not the land identified as Area C falls entirely outside of the land to which the 94 LDC relates.

45. Before I consider each use and each site in turn, as a general point it is worth noting that, even if a new planning unit has been created by the uses that are the subject of these appeals, it does not automatically follow that there has been a change of use of the land or that any change of use is material. If there has been a change of use, what is important in determining whether the change is material is whether there has been a change in the definable character of the use of the land, and the planning consequences of the change will be relevant to that assessment.

Used Cars Use – Appeals A and B

46. Area A is wholly within the land to which the 94 LDC relates and so the lawful use of Area A is for the mixed use described in the 94 LDC, as set out above. The allegation, as I intend to correct it, is of a material change of use of Area A to a use for the commercial storage of used cars and for the sale of used cars to visiting members of the public.

47. There is no dispute that Area A is occupied separately from the remainder of the wider site. Whilst it is suggested that there are at least two occupiers of Area A, it is not suggested that each occupy a distinct part of the site. Neither has it been said that one part of Area A is used for vehicle storage whilst the other is used for vehicle sales. I observed an internal fence running almost the length of the site, north to south. Although this broadly divides the site in two, there was an open internal connection between the two areas, towards the rear of the site.
48. In the westernmost portion of Area A I observed a unit in use for what appeared to be a site office and staff room. Within this western part of the site vehicles were broadly parked in two rows with circulation space separating the rows. To the rear of this parking area was a tall marquee type structure and lean-to, within which I observed vehicles being worked on. The easternmost portion of Area A, the larger of the two, appeared only to be occupied by a large number of vehicles. Other than the site office unit and the marquee area, I observed little difference in how each part is used. Indeed, there is no suggestion that there is any difference between the two. Area A is enclosed on all sides and the use going on in this area is both physically and functionally separate from activity on the wider site.
49. None of the vehicles I observed within Area A displayed any pricing information or 'for sale' signs. Furthermore, vehicles did not appear to be parked on the site in the manner of a vehicle sales forecourt. Most vehicles within Area A were parked, such that the area had the character of a vehicle storage area, rather than a vehicle display or vehicle sales area. Nevertheless, the appellants do not dispute that vehicle sales take place at the site with visiting members of the public. Furthermore, most vehicles appeared to have been cleaned and prepared for sale.
50. Based on the evidence before me, I am satisfied that what is alleged in the notice is consistent with my observations, which is of Area A being a separate planning unit within the wider site used for a mixed use for the storage and sale of used vehicles.
51. The mixed use as described in the 94 LDC includes, at various points, reference to the storage or parking of vehicles. I am, therefore, satisfied that this element of the use of Area A is consistent with the lawful mixed use of the site.
52. As for the sale of used cars, the 94 LDC only refers to the 'sale of spare parts', and not to the sale of vehicles. Nevertheless, the appellants refer to the evidence submitted with the 94 LDC application. Whilst there is reference in this to the 'release of vehicles to other parties', the evidence refers in more detail to activity expected on a scrap yard, where customers might often have to undertake some dismantling to obtain a spare part item to purchase.
53. Indeed, other parts of the wider edged red site retain the character of a scrap yard use, which is in contrast to the vehicle sales that take place as part of the Area A use, where visiting members of the public would view and possibly test drive vehicles that have been worked on and prepared for sale as working vehicles. Whilst the trips generated by this current use might be similar to

those expected for a site where motor vehicle spare parts are sold, I am not persuaded that the character of the existing use is comparable to the use found to be lawful in the 94 LDC.

54. Having regard to the above, I am satisfied that there has been a change of use of Area A. Furthermore, having particular regard to the used vehicle sales element of the Area A use, I find as a matter of fact and degree that the character of the use of Area A is, on the balance of probability, materially different to the lawful use of the site.
55. Accordingly, I conclude that there has been a breach of planning control with regard to the material change of use of Area A from the certified lawful use to its current use. The appeals on ground (c) should fail in so far as they relate to Area A.

Scaffolding Use – Appeals A, B and C

56. As with Area A, Area B is wholly within the land to which the 94 LDC relates and so its lawful use is for the mixed use referred to in the 94 LDC. The allegation is of a material change of use of Area B to a use for the storage and distribution of scaffolding materials. Although relating to a wider area, I have clarified that the same description of development is the subject of Appeal C.
57. There is nothing before me to demonstrate that Area B is not occupied separately from the remainder of the wider site and that it is the only part of the wider site used for the purposes stated. Indeed, having viewed Area B and the wider site, there can be no dispute that the scaffolding use is confined to the land identified as Area B on the enforcement notice plan. Area B is enclosed on all sides and, at the time of my visit, was physically separated from the remainder of the site by the fence enclosure and a locked gate. Other than access to and from the enclosed parcel, there is nothing to indicate that the activity in Area B is not physically and functionally separate from activity on the wider site.
58. Having regard to the above, I am satisfied that what is alleged in the notice in relation to the use of Area B is consistent with my observations, which is of Area B being a separate planning unit within the wider site used for the purposes stated. Furthermore, there is nothing before me to demonstrate that this use is or has taken place outside of Area B and on the wider site identified on the LDC plan.
59. Moving on, whilst the use of Area B involves storage and distribution, it does not involve the storage or distribution of any of the items that are listed in the 94 LDC. Furthermore, scaffolding and related items are not mentioned in the evidence relating to the 94 LDC application, which both parties have referred to. The activity on Area B is, therefore, different in so far as it relates to the type of items stored and taken to and from the site. In view of this, I am satisfied that there has been a change of use of Area B.
60. As for the consequence of this change, I observed the scaffolding stored in a manner similar to that of the dismantled cars and spare parts I observed elsewhere on the wider site. Furthermore, there is no suggestion that the site

is visited by members of the public, or that the trips to and from the site are greater than would be the case if Area B were used for its certified lawful purpose. Indeed, both uses would generate vehicle movements and the evidence indicates that the certified lawful use would have generated movements to and from the site of larger commercial vehicles that would be expected with the current scaffolding use.

61. I acknowledge that the current use is more associated with the building industry, rather than the vehicle industry. Nevertheless, I have limited evidence of any difference between the two in terms of the character of the use and any consequences of the change. Other than the difference in the items that are the subject of the existing and the lawful use, I am unable to identify anything that would lead to a conclusion that the character of the current use is, as a matter of fact and degree, materially different to the certified lawful use of the site.
62. On the basis of the evidence before me, I conclude that the change of use of Area B to its current use does not constitute a breach of planning control, on the balance of probability. The appeals on ground (c) should succeed insofar as they relate to Area B. Accordingly, I intend to correct the notice to remove the allegation that relates to Area B, along with the associated requirements.
63. As for Appeal C, my conclusion above means that I have found the use of part of the Appeal C site for the storage and distribution of scaffolding materials to be lawful on the date the LDC application was made. It is, therefore, open to me to issue a certificate in these terms, in accordance with section 191(4) of the 1990 Act. I am satisfied that the plan attached to the enforcement notice adequately identifies the part of the site, the use of which I have found to be lawful. Accordingly, I intend to issue a certificate, making reference to Area B identified on this plan.

Storage – Appeals A and B

64. The allegation, as I intend to correct it, is of a material change of use of Area C to a use for the storage of heavy industrial plant and machinery, vehicles and skips.
65. I have noted above that the boundary of Area C does not correspond to the boundary fences I observed on site. Area C appears to straddle two enclosed parcels of land that are used for the same purpose. The parcels are, therefore, in a single use and are physically and functionally separate from the remainder of the wider site. As such, the two parcels might well form a single planning unit together or two separate units in the same use.
66. There appears to be no dispute that the use of Area C is consistent with the use that is the subject of the 94 LDC. The 94 LDC description includes the storage or parking of plant and vehicles, including recovery vehicles and coaches. I acknowledge that the vast majority of vehicles I observed on site were lorries and the 94 LDC description does not include reference to lorries, machinery or skips. Nevertheless, there is nothing before me to indicate that the character of the use of Area C is materially different to the lawful use

described in the 94 LDC. Accordingly, if it were the case that Area C was entirely within the land that is the subject of the 94 LDC, I would conclude that, whilst a change of use may have occurred, the change is not material, as a matter of fact and degree.

67. However, it is the Council's case that Area C falls entirely outside of the land to which the 94 LDC relates and that the use of this land is a material change from what it considers to be the lawful use as forestry. Contrary to this, the appellants' case with regard to the ground (c) appeals is that a considerable portion of Area C encroaches over the 94 LDC land. For this reason, the appellants suggest that the use of part of Area C for the purposes alleged does not constitute a breach of planning control.
68. I note that the 94 LDC plan identifies buildings 3 and 4. Although this suggests that there were two buildings in this location at the time the LDC was granted, together they appear consistent in shape and position with the building I observed on site in this location, and with the outline of the building indicated in this location on the enforcement notice plan. Using this as a point of reference, I have compared the location of the easternmost boundary of the 94 LDC land with the location of the westernmost boundary of Area C. Having done so, although it is clear that the easternmost portion of Area C is outside of the 94 LDC land, I am unable to conclude the same with regard to the westernmost portion. To put this another way, having regard to the plans before me, even without a reliable scale to those plans, I am not satisfied that the westernmost boundary of Area C aligns with the easternmost boundary of the 94 LDC land, such that I can conclude that no part of Area C is, on the balance of probability, the subject of the 94 LDC. I have nothing from the Council that addresses this point and persuades me otherwise.
69. For the reasons given above, I conclude as a matter of fact and degree that the use of part of Area C for the purposes alleged does not constitute a breach of planning control, on the balance of probability. The appeal on ground (c) must succeed in part insofar as it relates to the use of Area C. Whilst it would be open to me to correct the notice to exclude the portion of Area C that falls within the 94 LDC land, I have not been provided with a plan that would allow me to identify with the necessary degree of certainty the land that should remain the subject of the enforcement notice.
70. In view of the above, I can only exclude Area C and its alleged use from the effect of the notice in its entirety. I am satisfied that such an approach would not cause injustice to either party, particularly having regard to the provisions of section 171B(4) of the 1990 Act, which would allow the Council to issue a further enforcement notice, should it be considered expedient to do so, in respect of the land to the east of the 94 LDC land.

Ground (d) – Appeals A and B

71. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters stated in the notice. In view of my conclusions above with regard to Areas B and C, my consideration of this ground (d) appeal is confined to the use of Area A.
72. In order to succeed on this ground, the appellants must show that on the balance of probability the use of Area A for the purpose alleged had been continuous for a period of ten years beginning with the date of the breach².
73. As I have noted above, Area A is within the land that is the subject of the 94 LDC. I have concluded that the mixed use of Area A for the commercial storage of used cars and for the sale of used cars to visiting members of the public is materially different to the use that was found to be lawful in 1994.
74. The appellants' case as it relates to ground (d) and to the use of Area A is that vehicles have been sold from the land for some considerable time. The suggestion is, therefore, that the current use of Area A is lawful because the mixed use of the land to which the 94 LDC relates (hereinafter referred to as the 94 Land), including the sale of vehicles, had become lawful.
75. Accordingly, the main considerations in this ground (d) appeal are:
- whether or not the mixed use of the site for the purposes listed in the 94 LDC, as well as a use for the sale of vehicles, had been continuous for a period of ten years or more and had, therefore, become lawful prior to the current use of Area A commencing; and
 - if so, whether or not enforcement action could be taken in respect of the use of Area A for the commercial storage and sale of used vehicles.
76. In support of their case, the appellants have provided statutory declarations from a number of individuals who have had involvement with the land over a number of years. In Mr Eric Wilkinson's statutory declaration he says that he has been involved with the land for more than 40 years. He was the previous owner before he sold the land to the appellants; he remained a tenant after that time. He says that all manner of vehicles have been sold in various forms from the site, including 'complete vehicles either running or non running'; that this included 'cars, vans, coaches, minibuses and HGV's'. He says that not all vehicles brought to the site were dismantled and that some were sold for salvage and restoration, whilst others were running and driven away.
77. Mr Wilkinson also says that, since the appellants' purchase of the site in 2002, the land has been used as vehicle overflow storage for Mr Ripley's business and that 'people frequently come to the site to buy vehicles from here to avoid waiting for them to be taken to the main sales lot'. He says something similar in respect of Mr Derek Willis' use of the site, although he refers to the sale of 'HGV commercial vehicles'.

² In accordance with section 171B (2) of the 1990 Act.

78. Both appellants have provided a statutory declaration setting out their use of the site since their purchase of it in 2002. They both refer to the HM Land Registry title no SY175921, which appears to correspond to the 94 Land. Mr Willis says that, since the purchase, the site has been used by him as 'additional/overflow space for his other business' and that he has stored and sold commercial and other vehicles at and from the site since 2002. Similar to this, Mr Ripley says that he has carried out the storage and sale of cars and other vehicles from the site since 2002. Both refer to the continued use of the land for car breaking.
79. Mr Marcin Paciepnik supports the evidence of Mr Willis, stating that he has known and had dealings with him since 2004. He details the types of transactions he has had with Mr Willis at the site, stating that he would inspect vehicles, conclude negotiations and make arrangements to pay for vehicles at the site, and that he would collect the vehicles directly from the site. The appellants' statements with regard to the storage and sale of vehicles from the 94 Land are also corroborated by the statutory declarations of Mr Murphy and Mr Coker.
80. I am mindful of the significant weight that is carried by evidence provided in statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence. I find the evidence given in the statutory declarations to be precise and unambiguous with regard to the use of the 94 Land for the sale of domestic and commercial vehicles, along with other uses, including vehicle storage, vehicle repairs, vehicle dismantling and a scrap yard use. The statutory declarations of other parties corroborate the appellants' claims with regard to how they have used the site since their purchase of it in 2002. Furthermore, I have no evidence to contradict or make the appellants' version of events less than probable.
81. Having regard to the above, it is more likely than not that the mixed use of the 94 Land has change since the certificate was granted in 1994 and that since at least 2002 the mixed use of the site has included the sale of domestic and commercial vehicles. The evidence demonstrates that, on the balance of probability, this use of the site since at least 2002 continued substantially uninterrupted for a period of 10 years or more and was, therefore, lawful prior to the current use of Area A commencing.
82. Notwithstanding the above, I acknowledge that the notice as it relates to Area A targets a use of only part of the 94 Land and that the use alleged comprises only certain elements (i.e. only vehicle sales and storage) of the mixed use I have found to be lawful. However, I have been given no reason to find this activity to have a different character or to have resulted in different planning consequences to the mixed use I have found lawful, such that I could conclude that the commencement of the current use of Area A has resulted in a further material change of use when compared to the mixed use I have found to be lawful.
83. The storage of used domestic vehicles on the land is an activity that has, on the balance of probability, taken place since at least 2002. Furthermore, I have no reason to find that the transactions (sales) that took place on the land

were any different to those that now take place. I note the Council's evidence with regard to the vehicle movements associated with the current use. However, there is nothing before me to demonstrate that vehicle movements to and from the site are any different when compared to those associated with the lawful use I have found.

84. Having regard to all of the above, I conclude that at the time the enforcement notice was issued, no enforcement action could be taken in respect of the use of Area A for the commercial storage of used vehicles and for the sale of used vehicles to visiting members of the public. For this reason, the appeal on ground (d) succeeds.

Conclusions – Appeals A and B

85. For the reasons given above, I conclude that the appeals should succeed. The enforcement notice will be corrected and quashed.
86. In these circumstances, the appeals on ground (f), the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision – Appeals A and B

87. It is directed that the enforcement notice is corrected by the deletion of the entirety of Part 3 and its replacement with the following:

'3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL:

- The material change of use of the land outlined in blue and identified with an 'A' on the attached location plan to a use for the commercial storage of used cars and for the sale of used cars to visiting members of the public;
- The material change of use of the land outlined in blue and identified with a 'B' on the attached location plan to a use for the storage and distribution of scaffolding materials; and
- The material change of use of the land outlined in blue and identified with a 'C' on the attached location plan to a use for the storage of heavy industrial plant and machinery, vehicles and skips.'

88. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Conclusions - Appeal C

89. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the storage and distribution of scaffolding materials was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Formal Decision - Appeal C

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

J Moss

INSPECTOR



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 3 August 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in blue and labelled with a 'B' on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probability, the use of the land for the storage and distribution of scaffolding material does not constitute a material change of use of the land.

Signed

J Moss

Inspector

Date: 8 May 2024

Reference: APP/D3640/X/21/3271883

First Schedule

The use of the land edged and hatched in blue and labelled with a 'B' on the plan attached to this certificate for the storage and distribution of scaffolding materials.

Second Schedule

Land at Chobham Car Spares, Clearmount, Chobham, Woking GU24 8TP, edged and hatched in blue and labelled with a 'B' on the plan attached to this certificate.

NOTES

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

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

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



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 May 2024

by J Moss BSc (Hons) DipTP MRTPI

Land at: Chobham Car Spares, Clearmount, Chobham, Woking GU24 8TP

Reference: APP/D3640/X/21/3271883

Scale: Not to scale

