
Appeal Decisions

Site visit made on 2 July 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 11 August 2025

Appeal A Ref: APP/Q3630/C/24/3352653

Land at Hamilton Nursery and/or Willow Farm Nursery, Lyne Crossing Road, Chertsey KT16 0AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Stephen Smallldridge against an enforcement notice issued by Runnymede Borough Council.
 - The enforcement notice was issued on 10 April 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building.
 - The requirements of the notice are:
 - 1) Demolish the building, and
 - 2) Remove all resultant waste and material from the Land.
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/Q3630/X/25/3360379

Hamilton Nursery, Lyne Crossing Road, Chertsey KT16 0AT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Steve Smallldridge against the decision of Runnymede Borough Council.
 - The application Ref: RU.24/1451, dated 29 October 2024, was refused by notice dated 9 January 2025.
 - 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 use of the land for B8 Storage and Distribution.
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Summary Decisions: Appeal A is dismissed and the Enforcement Notice is upheld. Appeal B is dismissed.

Application for costs

1. In relation to Appeal B only, an application for costs was made by Mr and Mrs Steve Smallbridge against Runnymede Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. The appeal site is known variously as Hamilton Nursery and/or Willow Farm Nursery. I have taken the address in the header above from the Enforcement Notice (Appeal A) and the Council's formal Decision Notice (Appeal B), although I am satisfied that the appeals both relate to the same site.
3. For the purposes of these appeals, the appellant divides the Hamilton Nursery site into two halves, labelled Area A and Area B. The former is the northern part of the site. On 22 August 2024, the Council granted a LDC for, amongst other things, the use of Area A for B8 Storage & Distribution (Council Ref: RU.24/0078) .
4. There was originally a third appeal relating to the same site travelling with these appeals (APP/Q3630/X/25/3360381). However, that appeal was subsequently withdrawn.

Appeal A: the appeal on ground (b)

5. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
6. The breach of planning control alleged in the notice is, without planning permission, the erection of a building. No more, and no less. The breach of planning control alleged makes no reference to the use of the building, or of the wider site. To that extent, the reliance of the appellant on the principle of the planning unit expounded in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 is misplaced.
7. The salient point is that the building alleged in the notice has clearly been erected. The appellant does not dispute that. Consequently, on the balance of probability, the breach of planning control alleged in the notice has occurred. Accordingly, the appeal on ground (b) fails.

Appeal A: the appeal on ground (a) and the deemed planning application

8. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The site is within the Green Belt. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
 - whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan
 - the effect on the openness of the Green Belt, and
 - if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the development plan

9. Paragraph 154 of the National Planning Policy Framework (Framework) indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. One of the exceptions listed in Paragraph 154 of the Framework is (g) the limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.
10. In the context of this appeal, consideration of the exception at Paragraph 154(g) of the Framework raises two questions: has the building been erected on previously developed land, and the effect of that building on the openness of the Green Belt. The construction of that paragraph is such that if the building is found not to have been constructed on previously developed land in the first instance, then the other factors set out in that paragraph do not fall to be considered.
11. Annex 2: Glossary of the Framework defines Previously Developed Land (PDL) as land which has been *lawfully* developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (emphasis added). Annex 2 indicates that PDL also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been *lawfully* developed (emphasis added).
12. There is no evidence before me that the building is sited on land that was lawfully developed, including as a large area of hardstanding. The Council indicate that there was no building on the land previously, such that the building on site now is not a replacement building. The appellant does not dispute that. The aerial photograph taken in May 2018 also confirms this, the building subject to the enforcement notice having been erected in or around April 2020. This same photograph also shows that the land was not laid to hardstanding at that time. Consequently, on the balance of probability, I conclude that the land on which the building is sited is not PDL. The building therefore does not qualify as being not inappropriate development in the Green Belt through the exception at Paragraph 154(g) of the Framework.
13. Having found that the land on which the building is sited is not PDL, there is no need for me to consider whether the development would cause substantial harm to the openness of the Green Belt in relation to Paragraph 154(g) of the Framework. I do, however, consider the impact of the development on the openness of the Green Belt below.
14. The appellant also refers to the appeal site as being 'grey belt' land. For the purposes of decision-making, 'grey belt' is defined at Annex 2: Glossary of the Framework as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143.
15. I have already found that, on the balance of probability, the land on which the building subject to the Enforcement Notice is sited is not PDL. The land therefore does not qualify as 'grey belt' on that basis. The appeal site lies

within an area of countryside between Chertsey to the south-east and Virginia Water to the north-west. Notwithstanding that the appeal site is not within a strategic or narrow gap, it strongly assists in preventing those neighbouring towns merging into one another and to that extent accords with Paragraph 143(b) of the Framework. I therefore conclude that the land does not qualify as 'grey belt' on that basis either.

16. I therefore conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt for the purposes of Paragraph 154 of the Framework, as well as Policy EE17 of the Runnymede Local Plan (Local Plan) insofar as it relates to the limited infilling or partial or complete redevelopment of previously developed land.
17. Paragraph 153 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This paragraph goes on to indicate that 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Effect on the openness of the Green Belt

18. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect.
19. The Council explain that the building subject to the enforcement notice has an overall height of some 4/5 metres and has a footprint of 170m². It did not replace a previous building on the land. Consequently, in spatial terms, the building has a substantial effect on the openness of the Green Belt in spatial terms.
20. In visual terms, I concur with the appellant that the assessment must be made in the context of the surroundings in which the building sits. In this respect, the building subject to the Enforcement Notice stands next to a smaller building which, I understand, the Council accepts is now lawful. The wider site is generally flat but, beyond the southern end, there is a substantial earth bank with a line of trees beyond. There are trees and other vegetation along the eastern and western boundaries of the site. Within the site itself, there are also presently a number of storage containers, parked vehicles and mounds of gravel/stone chippings.
21. Cumulatively, the earth bank and the trees/vegetation on or beyond the site boundary severely limit the extent to which the building subject to the Enforcement Notice is visible from outside of the appeal site. Nonetheless, the site itself is within the Green Belt. Notwithstanding the adjoining building, the storage containers, parked vehicles and mounds of gravel/stone chippings that are on the site itself, by reason of its size and design the building subject to the Enforcement Notice has a significant effect on openness of the Green Belt in visual terms.

Other considerations

22. The appellant contends that the site is serving a critical and in much needed service to the business sector. There are currently circa 20 plus businesses that occupy space at Hamiltons Nursery that employ between 2 people and 14

staff respectfully, equating to a total number of around 140 employees that rely on the facilities of Hamiltons Nursery. It is not clear from the evidence before me that the building is used by every business that operates from the site or, if not all of them, how many of those businesses use the building.

23. The appellant does explain that the building is occupied by Crown Ices, a family-run business that has been involved in the industry for over for 30 years. The company currently operate a fleet of 8 vans and employ a total 12 staff. At the time of my site visit, there were three vans parked in the building, with two more parked directly outside. The appellant explains that this internal storage is required to ensure that the fibreglass structure of the vans is not compromised, and the clean and professional appearance is maintained. In a letter dated 25 September 2024, the Director of Crown Ices explains the consequences for his business should he have to relocate from the building.
24. I recognise that the business operating out the building contributes to the local economy and, to the extent that ice cream vans are part of a long-standing tradition, provides a cultural service to the community. In that respect, the development accords with policies aimed at promoting economic growth in the development plan and the Framework. The difficulty is that this contribution has not been quantified in any way. Accordingly, this is a material consideration to which I attach only moderate weight.
25. The appellant has referred to numerous appeal decisions relating to development within the Green Belt, including a recent decision in relation to a site at Chapel Lane, Great Barr, Walsall (APP/V4630/W/24/3347424). The latter was determined in February 2025, and therefore after the changes made to the Framework in December 2024. The Decision accordingly makes reference to Grey Belt and the application of the 'Golden Rules' set out in the Framework.
26. The problem with submitting appeal decisions relating to development in the Green Belt is that, perhaps more than with any other issue, the effect of development on the openness of the Green Belt is highly site and case specific. Consequently, apart from the rehearsing some of the key principles involved, the appeal decisions submitted by the appellant do not greatly assist me. Accordingly, I attach minimal weight to those appeal decisions for present purposes and have determined this appeal on its own merits.

Green Belt balancing exercise and conclusion on the ground (a) appeal

27. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development, including harm to its openness. These harms are intrinsic to the development subject to the enforcement notice and could not be overcome by the imposition of suitably worded conditions.
28. Against this, I attach moderate weight to the benefit that results economy in terms of the contribution made by the business operating out the building. I attach only minimal weight to the appeal decisions to which the appellant refers.
29. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist. Paragraph

153 of the Framework confirms that inappropriate development should not be approved in the absence of very special circumstances.

30. For the reasons set out above, the breach of planning control alleged in the notice is also contrary Policy EE17 of the Local Plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
31. I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

Appeal A: the appeal on ground (g)

32. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice.
33. The appellant requests that the period for compliance is extended to 24 months. The appellant's case on this ground of appeal is only briefly stated. The appellant explains that this extension of compliance period is required to afford the business the best opportunity to find suitable and viable alternative premises, but provides no information beyond that as to what this might involve. In his own letter dated 25 September 2024, the Director of Crown Ices also briefly outlines the challenges in finding an alternative site for his business but does not go into detail as to what would be involved.
34. An appellant is entitled to anticipate success on other grounds of appeal, and is therefore not expected to begin looking for alternative sites prior to the appeal being determined. Nevertheless, the appellant has not demonstrated through evidence that there might be difficulties in finding a suitable and viable alternative. For example, I have not been provided with the parameters for any site search in terms of the type of premises required and/or the extent of the geographical area that any site search may cover. Absent that evidence, I have no indication of the difficulties that the occupier of the building might face in finding a suitable and viable alternative site.
35. Against that, the protection of the Green Belt is a long-standing objective of national planning policy and is an objective to which the Framework attaches considerable importance. The protection of the Green Belt is also a key objective of policies in the development plan for the area. It follows that expeditious compliance with the Enforcement Notice would be in the public interest.
36. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending that period of compliance. I am, therefore, not persuaded that there is need to extend the period for compliance with the notice to any extent and am satisfied the period of compliance of six months stated in the notice is a proportionate response to the breach of planning control that has occurred.
37. Accordingly, the appeal on ground (g) fails.

Appeal A: Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

39. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
40. The use for which a certificate of lawful use or development is sought is use of the land for B8 Storage and Distribution. The question before me is therefore not whether there has been a material change of use of the land, but whether the use for land (referred to by the appellant as Area B) is now lawful. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if:
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of an Enforcement Notice then in force.
41. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, as amended by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). The use of land becomes immune from enforcement (and therefore lawful) if no action is taken within a period 10 years.
42. For the purposes of an appeal made under Section 195 of the 1990 Act, following the refusal of an application made pursuant to Section 191 of the 1990 Act, the period of ten years is measured from the date on which the application was submitted. In order for this appeal to succeed, the appellant must demonstrate that on the balance of probability the use of the land for B8 Storage and Distribution has been carried on continuously and without interruption since 29 October 2014.

The evidence in support of the LDC

43. The appellant's evidence in this respect is largely in the form of Statutory Declarations. I am satisfied that all of the Statutory Declarations submitted by the appellant fully accord with the provisions of the Statutory Declarations Act 1835, and accordingly afford them due weight.
44. The Statutory Declaration made by Mr Stephen Smalldridge (the appellant in this case) is extensive, running to some 42 pages. In it, Mr Smalldridge begins by explaining that he understood that the Enforcement Notice upheld on appeal in February 2007 (APP/Q3630/C/05/2004614) prevented the storage of items associated with the use of the land for landscaping and ground works business. He was advised in a letter dated 13 November 2009 from the Enforcement Team Leader at the Council that the notice had been complied with. Mr Smalldridge received legal advice that the storage of items not associated with the use of the land for landscaping and ground works business would not be caught by the notice.
45. The next section of Mr Smalldridge's Statutory Declaration comprises a series of aerial photographs. Only those photographs taken after 29 October 2014 are directly relevant to this appeal.
46. The first aerial photograph that is relevant is dated 4 June 2015¹. In his Statutory Declaration, Mr Smalldridge indicates that the items stored at that time included electrical cables, framing, satellite equipment, components of a substation and lorry bodies. What is apparent from the photograph is that large parts of the site are not being used for storage at that time.
47. The next photograph was taken on 25 March 2017. In his Statutory Declaration, Mr Smalldridge indicates that the items stored at that time included film props, ramps, a tower, electrical cables, satellite equipment, components of a substation and skips. The difficulty is that the photograph is not of sufficiently high resolution for that to be discerned from the image itself. What is again apparent, however, is large parts of the site are not being used for storage at that time.
48. The aerial photograph taken on 29 June 2019 shows that, some two years later, things had moved on considerably. By that date, most of Area B was being used for storage of various items, including the deposition of what appears to be builder's materials. In his Statutory Declaration, Mr Smalldridge describes that as "Hamilton's maintenance materials". No further information is provided as to what those materials were actually used for. Absent that information, it is difficult to escape the conclusion that they were used in connection with a landscaping and ground works business. If that was the case, then that use would contravene the requirements of an enforcement notice then in force and the use for which the LDC is sought would not be lawful pursuant to Section 191(2)(b) of the 1990 Act.
49. The aerial photograph taken on 5 April 2020 also shows that most of Area B was being used for storage of various items at that time. The items being stored, according to Mr Smalldridge, include film props, stunt equipment, equestrian facilities equipment, show jumps, steel work and beams, skips, lorry bodies and water drums. The photograph is again not of sufficiently high

¹ Mr Smalldridge's Statutory Declaration indicates that the photograph is dated 4 June 2013, but the time bar on the photograph itself clearly reads June 2015.

resolution for those items to be discerned from the image itself. What can be discerned, however, is that a significant proportion of the site is being used to store "Hamilton's maintenance materials", to which the comments above equally apply.

50. The aerial photograph taken on 30 March 2021 shows virtually all of Area B being used for storage, for much the same range of items as previously. This includes the "Hamilton's maintenance materials", which by now occupy a substantial area in the centre of the site and a smaller area at the south-west corner of the site.
51. The final image in the series was taken on an unspecified date in March 2022. The resolution of this is extremely poor, such that it is not possible to identify from the photograph the exact area(s) that is being used for storage. In his Statutory Declaration, Mr Smalldridge explains that the by now familiar range of items are being stored on the site. This again includes the "Hamilton's maintenance materials", which appear to occupy broadly the same area in the centre of the site, albeit and the smaller area at the south-west corner of the site does not appear to being used for this purpose at that time.
52. The next section of Mr Smalldridge's Statutory Declaration (Annexe 1) provides the annual accounts for Hamiltons Nursery for the period between 2013 and 2014. The difficulty with this evidence is that the invoices do not distinguish between the parts of the site referred to as Area A and Area B. This appeal only relates to Area B. The LDC granted by the Council in August 2024 was partly for B8 Storage & Distribution use in Area A. Consequently, it is impossible to know from the evidence that has been provided whether those accounts relate to Storage & Distribution at Area A or Area B. For that reason, the accounts that have been provided have very limited evidential value.
53. The final section of Mr Smalldridge's Statutory Declaration (Annexe 2) provides a selection of invoices for the storage of items at the site. This evidence suffers from the same defect as Annexe 1 in that, whilst they clearly state 'Hamilton's Nursery' on the header, the invoices only refer to the yard in general terms: for example, using terms such as 'Rent for yard'. Consequently, it is impossible to know whether these invoices relate to Area A or Area B. In some cases, such as the invoice to the JM Partnership dated 22 September 2017, the invoice simply states the amount that is owed without specifying what is being charged for. For these reasons, the accounts that have been provided again have very limited evidential value.
54. I also note that there is only one invoice dating to the early part of the relevant period, this being the invoice to ADDS Construction Ltd dated 18 February 2015. Chronologically, the next invoice provided is that to the JM Partnership dated 22 September 2017, a gap in excess of two years.
55. The Statutory Declaration made by Mr Ross Smalldridge seeks to corroborate that of his father, and explains that the site has been used for Storage & Distribution from 2010 to the date on which his Statutory Declaration was made in January 2024. However, the plan attached to Mr Ross Smalldridge's Statutory Declaration shows the whole of Hamilton Nursery, including both Area A and Area B. But in his Statutory Declaration, Mr Ross Smalldridge does not differentiate between the two in describing the use for Storage & Distribution.

56. The Statutory Declaration from Mr Jim Preston explains that he is the owner and occupier of Lynne Hill Farm, which directly adjoins the appeal site to the west, and at which he has resided for some 33 years. It is Mr Preston's evidence that Area B has been used for open storage and secure container storage throughout that time. No further information on the precise location or extent of that open storage/secure container storage is provided.
57. In his Statutory Declaration, Mr Lee Lyons explains that he operates a mobile tyre fitting service within the M25/London area. He goes on to explain that he needed secure storage for his stock of new tyres which is easily accessible for emergency call outs although, on my reading of Mr Lee's Statutory Declaration, this took the form of a secure container located in the northern part of the wider site and not in Area B. It therefore appears that the use of Area B by Mr Lee was confined to a small part of that land for the storage of some part-worn tyres that he traded between tyre garages and sold to retail customers via his tyre fitting service. No further information on the precise location or extent of the use is provided.
58. The Statutory Declaration from Mr Jonathan Olliffe explains that he operates a skip hire business in and around the local area. From March 2011 onwards, Mr Olliffe stored empty and surplus skips in Area B. He explains that this was never in the same spot within the yard area, and explains that he was always allowed to spread out or occupy whatever space was available at the time. Mr Olliffe is very clear in his Statutory Declaration that he only used Area B at Hamilton Nursery for the storage of empty skips and never operated a waste transfer business from there.
59. In his Statutory Declaration, Mr Steve Griffin explains that in September 2010 he entered into an agreement with Mr Stephen Smalldridge to use a portion of Area B to store ramps, ropes and rigging in the open. That arrangement was ongoing on the date of his Statutory Declaration, being 28 November 2023, and therefore for a period approaching thirteen years at that time.
60. The Statutory Declaration made by Mr Charles Knight indicates that he lived in one of two static caravans on the northern part of the site for a period of 12 years from November 2011 onwards, and therefore across the whole of the relevant period. He recalls that the land referred to by the appellant as Area B was used by various individuals and businesses as an open storage yard throughout the 12-year period that he lived in the caravan. No further detail is provided.
61. From July 2018 onwards, the other static caravan was occupied by a Mr James Fox. In his Statutory Declaration, Mr Fox explains that from 2011 onwards he used part of Area B to store structural timbers in relation to his carpentry business. Mr Fox does not go on to explain whether his carpentry business operated from the site itself or from another location. On the evidence that is before me, I therefore cannot discount the possibility that the storage of the structural timbers was ancillary to a primary use (Mr Fox's carpentry business) as opposed to being a primary use of the land for B8 Storage and Distribution in its own right.

Analysis of the evidence

62. The appellant's primary position is that Area A and Area B collectively form a single planning unit, the primary use of which is B8 Storage and Distribution.

63. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
64. The whole of Hamilton Nursery is owned by Mr Smalldridge, albeit several businesses operate from it. I am therefore satisfied that the whole site is one unit of occupation.
65. The LDC granted by the Council on 22 August 2024 (Ref: RU.24/0078) was for a composite use that included Storage and Distribution, specifically:
- Composite use for storage and distribution (enclosed single storey container storage with open storage up to a height of 3m) to the front of the site (Parcel A), and as dormant horticulture to the rear of the site (Parcel B), on the land edged red on Plan 1 (Hamilton Nursery).*
66. Section 191(6) of the 1990 Act provides that the lawfulness of any use, operation or failure to comply with condition for which an LDC is in force 'shall be conclusively presumed'. It follows that in this case the lawful use of Area B (Parcel B as described in the LDC) as dormant horticulture is conclusively presumed following the grant of the LDC on 22 August 2024. As a result, the lawful use of Area B cannot be solely for B8 Storage and Distribution: at most, it could only be a mixed use that included (dormant) horticulture.
67. The corollary is the Hamilton Nursery site is not, as a matter of fact and degree, a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary: in other words, category a) in *Burdle*. Rather, as a matter of fact and degree, following the grant of the LDC in August 2024 the site is more likely to fall within category c) in *Burdle*, namely the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes (Area A for B8 Storage & Distribution and Area B for dormant horticulture). In this respect, although Area A and Area B are not physically separated and are contiguous, there is no meaningful evidence before me that they are functionally linked.
68. As such, pursuant to the judgment in *Burdle*, Area B ought to be considered as a separate planning unit. It is therefore necessary for me to determine whether the evidence now shows that Area B is, as a matter of fact and degree, in a mixed use comprising B8 Storage & Distribution and dormant horticulture as the primary uses.
69. The aerial photograph taken in June 2015 reveals that large parts of Area B were not being used for storage and distribution at that time. Based on that

photograph, it would therefore be incorrect to say that, as a matter of fact and degree, the whole of Area B was being used for B8 storage and distribution on that date. I fully recognise that these aerial photographs are only a snapshot in time, but there is nothing elsewhere in the evidence (for example, accounts and invoices) that leads me to the view that the use of Area B on 4 June 2015 is in any way atypical of the use of the land at that time.

70. I fully recognise that by 2017 the use of Area B for B8 storage and distribution had become more extensive, and that by April 2020 most of Area B was being used for storage and distribution. However, it is settled case law that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. On the evidence before me, I am not persuaded on the balance of probability that the local planning authority could have taken enforcement action in the early part of the relevant period on the basis, that in part, the use for storage and distribution was not taking place across the whole of the site prior to 2017. The corollary is that the use for which the LDC is sought has not been taking place continuously for ten years, such that it was not lawful (as part of a mixed use) on the date on which the application was made.
71. Finally, there is further consideration here. The Enforcement Notice upheld on appeal in February 2007 related to the use of the land in connection with a landscaping and groundwork business (APP/Q3630/C/05/2004614). The requirements of the notice, as varied by the Inspector, included removing all vehicles, plant, machinery and materials associated with the use of the land for landscaping and ground works business
72. The lawfulness of the use for which the LDC is sought is therefore further complicated by other uses that may or may not have been taking place on the site at that time (i.e. from 2017 onwards). I am referring here primarily to "Hamilton's maintenance materials", which occupied an increasingly large proportion of Area B from 2017 onwards. No further information is provided as to what those materials were actually used for.
73. Absent that information, it is difficult to escape the conclusion that "Hamilton's maintenance materials" were used in connection with a landscaping and/or ground works business. The appellant has advanced no other explanation as to why large quantities of builder's materials were stored on the land, there being no obvious requirement for landscaping/groundworks on the appeal site itself that would require that amount of material.
74. If that was the case, then that use would contravene the requirements of an enforcement notice then in force. It follows that the use for which the LDC is sought would not be lawful pursuant to Section 191(2)(b) of the 1990 Act. The appellant's evidence is not sufficiently precise and unambiguous to enable me to discount that possibility.
75. Section 191(4) of the 1990 Act allows the Secretary of State or an Inspector to modify the description of the existing use, operation or other matter. Had new evidence before me shown that the use for which the LDC is sought was itself lawful on the date on which the application, I could have modified the description of the use for which the LDC was sought to a mixed use that included (dormant) horticulture.

76. However, I find that on the balance of probability the evidence does not show that the use for B8 Storage and Distribution has been taking place continuously across the whole of the site for a period of ten years prior to the date on which the LDC application was made. Accordingly, the lawful use of Area B remains that shown to be conclusively presumed by the LDC granted on 22 August 2024, that use being (dormant) horticulture.
77. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. However, I find that the appellant's evidence is not sufficiently precise and unambiguous on its own to show, on the balance of probability, that the use for which the LDC is sought has been carried on continuously over the whole of the site for a period of ten years prior to the date on which the application was made. The appellant has therefore not discharged the burden that falls upon him.
78. I have also considered whether I could grant an LDC for B8 Storage & Distribution on part(s) of the site, with the remainder conclusively presumed to be in lawful use as (dormant) horticulture. However, the evidence provided by the appellant is similarly not sufficient precise and unambiguous to enable me to identify specific parts of Area B where, on the balance of probability, the use for B8 storage and distribution took place continuously throughout the relevant ten-year period. Consequently, I have not pursued that any further.

Appeal B: Conclusion

79. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land for B8 Storage and Distribution at Hamilton Nursery, Lyne Crossing Road, Chertsey KT16 0AT is 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.

Formal Decisions

Appeal A Ref: APP/Q3630/C/24/3352653

80. The appeal is dismissed and the enforcement notice is upheld

Appeal B Ref: APP/Q3630/X/25/3360379

81. The appeal is dismissed.

Paul Freer
INSPECTOR