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## Appeal Decision

Inquiry held on 13 January 2026 and 20 January 2026 (virtual)

Site visit made on 14 January 2026

by **R Curnow MA(TCP), BSC(Hons), CMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 March 2026

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**Appeal Ref: APP/B3600/X/25/3372337**

**Land at Hathersham Lane, Smallfield, Surrey, RH6 9JG**

- 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 Andy Needham against the decision of Surrey County Council.
  - The application ref TA2024/613, dated 21 May 2024, was refused by notice dated 4 March 2025.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ('the Act').
  - The use for which a certificate of lawful use or development is sought is Aggregates recycling facility, including the importation and processing of Construction, Demolition and Excavation waste with ancillary scrap metal processing as a product of waste processing and separation within land area shown on drawing 0207 (A2) WBH0207 Map of convergence 3.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. All of the oral evidence I heard was given under Oath, this was given in the Council's offices on 13 January 2026. Closing arguments were heard in a virtual meeting on 20 January 2026.

### Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

### Reasons

#### *The Appeal Site*

4. The small site lies in the open countryside, a short distance to the northwest of the settlement of Smallfield. The larger settlement of Horley lies about 2.6kms to the southwest. It is bounded to the east by the M23, to the west by a rural road, Hathersham Lane, to the north by an emergency access to the M23 from that lane, and, to the south, by fields. The site entrance is on the emergency access road. I refer to the appeal site as the south yard.
5. To the north of the emergency access road lies a considerably larger area of land in commercial use. This, is accessed via Hathersham Lane. I saw that this was divided into three areas, with similar activities to that which is applied for here being undertaken on its northernmost two areas. I refer to the land to the north of the emergency access road collectively as the north yard.

### *Legal Framework*

6. Amongst other things, section 191(1) of the Act sets out that If any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority. S191(2) states that a use will be lawful 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 any enforcement notice then in force.
7. As I was not told of any enforcement notice in force in respect of the site, nor was any argument made that planning permission was not required for the use for which a certificate is sought, (which I refer to as the 'certificate use'), I have to assess whether the period in which enforcement action could be taken had expired on the date that the application was made.
8. Using the time limits for taking enforcement action, set out in s171B of the Act, the relevant period in this case is 10 years. Given the date of the application, the use would, therefore, have had to have commenced by 21 May 2014 ('the relevant date'). Established case law confirms that the use should have been undertaken continuously for those ten years.
9. The onus lies with the Appellant to make his case. Should the Council not have any evidence to counter that brought forward by the Appellant, his evidence should be sufficiently precise and unambiguous.
10. Both Mr Needham, the site's owner, and Mr Fuller, whose business operates from the site, had produced two versions of their statutory declarations ('SDs'). They both spoke to those dated 15 December 2025 at the Inquiry.
11. For the Council, Ms Rayner submitted a SD and a Proof of Evidence. She spoke to these, and was cross-examined on them at the Inquiry. Both Messrs Warner and Maxwell of the Council submitted a SD but did not speak at the Inquiry.
12. Mrs Ryan, the Clerk to Burstow Parish Council, spoke to photographs she submitted at the Inquiry, and was cross-examined.
13. I give the greatest weight in my assessment to the evidence that was given orally and tested by cross-examination ('x-x'). That given in a SD but not so tested attracts less weight.

### *The Claimed Use – Commencement and Duration*

14. As Mr Needham did not purchase the two yards until January 2015, he did not provide any direct evidence relating to the commencement of the certificate use by or before the relevant date. He says this was already occurring at the time of his purchase. In respect of the commencement of the certificate use, the case was reliant on Mr Fuller's evidence.
15. Mr Fuller's evidence is that he had operated from the appeal site since 2012. Initially, this was with his father, trading as 'Smallfield Recycling Limited'. This went on to 2014 when his father went to the north yard and Mr Fuller incorporated his company as 'Fuller Grab Hire Limited'.

16. Attached as Exhibit MPF3 to Mr Fuller's SD is a letter from the previous owner of the two yards, a Mr Rumble. The letter was addressed for the attention of "Paul and Matt, M.FULLER GRAB HIRE" and dated 24 April 2014; which is to say, under a month prior to the relevant date. It relates to the use of the South Paddock, which it was agreed in the Inquiry is the appeal site.
17. The letter is described in the SD as "setting out the terms of the use of the appeal site". In it, Mr Rumble said he was happy to provide short-term assistance to the addressees by allowing them to use the South Paddock. It provides a list of conditions for the use of the land, to be agreed by the addressees.
18. Mr Fuller's position on the letter changed under x-x. By that time, in contradiction to his SD position, he claimed that the letter was addressed to his father and related to his use of the North Yard. This is not what the letter says. It was clearly addressed to both P and M Fuller, and Fuller Grab Hire, Mr Fuller's company, is specifically mentioned.
19. From the tense in which the letter is written, it relates to the future use of the land by the addressees. I find that it means that the Appellant was not using the appeal site in 2012-2013 as claimed. On the balance of probability, from the evidence before me, it was being used by Mr Rumble for a materially different use to the certificate use. Therefore, the letter does not take the Appellant's case forward.
20. That the letter pre-dates the relevant date, does not necessarily mean that the certificate use of the appeal site had not commenced by that date. There was a calendar month between the date of the letter and the relevant date in which the use might be commenced. The letter from Mr Rumble sets out the Addressees' need for an "immediate move" to the site and, on balance of probability, I find that this occurred and the certificate use commenced before the relevant date.
21. In reaching this position, I have taken account of what an agent to Messrs Needham and Fuller had said in correspondence with the Council, for example in a letter dated 5 June 2020. He said that Mr Fuller moved onto the site in 2017. I have already found that this was not the case on the balance of probability. Mr Needham said that this was an error by the agent, who he later replaced. Furthermore, the use of the appeal site described in those submissions was not complete, as they make no mention of a scrap metal business use run from the site. This is a matter to which I shall return later, but this omission shows why only limited weight should be afforded to this evidence.
22. On 7 August 2014 planning consent<sup>1</sup> was granted by Tandridge District Council for the 'Change of use from agricultural and horticultural storage and supplies to a combined use to include the existing use and the storage of scaffolding equipment and plant. Erection of 2.4 metre security fence around perimeter' on the northern and southern yards. That permission did not allow for the certificate use.
23. The use of the north yard for all or some of those purposes occurred, as evidenced through Mr Needham's use of the north yard for his scaffold business until 2018. However, the evidence from both Mr Fuller and Mr Needham was that the former continuously ran the certificate use from the south yard throughout, and beyond, the period from 2014 to 2018. I found their evidence, given in response to robust but fair questioning, to be precise and unambiguous on this matter.

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<sup>1</sup> Tandridge District Council reference TA/2014/767

24. As the certificate use was materially different from the use undertaken by Mr Rumble, the use of the south yard for this purpose cannot have accorded with either the existing use of the land nor the scaffolding storage use referred to in the 2014 planning permission. Thus, the appeal site was not amalgamated into a mixed use of the north and south yards that might have affected the continuous use of the land claimed by Mr Fuller.
25. Whilst retaining ownership of the two yards, Mr Needham moved his scaffolding business off the north yard in 2018. Mr Fuller expanded onto both yards; he says this was around “mid 2018”, whilst Mr Fuller gives the date for this as “In or around 4 May 2018”.
26. However, the evidence shows that the combined land was put to a single use, and that was the certificate use. Therefore, despite there having been an amalgamation of the two areas of land in terms of its operator, the use of the appeal site did not materially change. The continuous use of the land for which a certificate is sought was unaffected.
27. Following established case law at that time I find that the appeal site was a single and discreet planning unit being put to a single primary use.
28. A number of Environmental Permit Compliance Assessment Reports (‘CAR’) were submitted relating to the two yards, produced by the Environment Agency (‘EA’).
29. A photograph of the south yard, on the CAR dated 9 September 2015, is described as showing that “soil is being accepted/treated” in that yard. There is no mention of CDE waste related activities on the land. The photograph does show several piles of what appears to be soil on the yard, along with a large sorting machine. Under one of the conveyor arms that takes material away from the machine is a small pile of the soil I refer to. Under another conveyor arm is a pile of what appears to be aggregate and concrete. From this photograph it is difficult to discern whether the soil on the site was delivered to the site and subsequently processed or was derived from the processing of CDE waste.
30. To my mind, the Council’s case on these CARs is undermined by not having asked the EA to attend the Inquiry. Thus, the evidence could have been thoroughly interrogated. Such matters as where EA staff were when making observations could have been addressed. I was told by Mr Fuller that they were on the road and/or at the gate to the north yard. From the former, views into the site are restricted and, from the latter, the site is not visible. Overall, in the circumstances, I find that this evidence does not outweigh that given by Messrs Needham and Fuller.
31. Mrs Ryan said she saw “a big pile of soil” in 2018. One of the photographs that she submitted, dated 12 December 2018, shows part of a pile on the site, adjacent to a drainage ditch. To her credit, when she opined that the pile was not CDE waste but “soil with a bit of hardcore”, Mrs Ryan acknowledged that she was not an expert in the matter. I cannot conclude one way or another given that only a small part of the pile is shown in the image.
32. I find similarly in respect of the two images of the site submitted in Mr Warner’s evidence, attached as Appendix PW 1, as I do with those from the 9 September 2015 CAR. They are taken from outside the site and show only a small part of it. One photograph shows a pile of what appears to be soil, whilst the other is taken

into the light and is indistinct. If this is soil, how it arose is not evidenced and, in his SD Mr Warner states that “No inspection of the appeal site was undertaken” [at that time] and “nor did I personally have any further communication with regards to the then use of the appeal site”.

33. A number of satellite images, dating from before and during the relevant period, were submitted to the Inquiry. Both parties claim that they substantiate their positions. However, I find it is impossible to draw firm conclusions from both these and the ‘Google Street View’ images attached to the SDs from Messrs Needham and Fuller, marked as ASN2 and MPF2, respectively. I find similarly in respect of the Council’s claim that the photographs submitted by Mrs Ryan, the Clerk to Burstow Parish Council, show the land being used for overflow storage from the northern yard.
34. On the balance of probability, I find that the certificate use of the land continued in the manner that Mr Needham claims until 2020. The success of the business fluctuated throughout the period to 2020, as a result of wider economic pressures. Consequently, the amount of material in the yard relating to his CDE activities also fluctuated.
35. The Covid-19 pandemic adversely affected Mr Fuller’s business and led to a reduction in its operations. He approached Mr Needham for permission to sub-let the south yard to another company, PJ Brown (Civil Engineering) Limited. Mr Fuller says this began on 16 September 2020, which sits comfortably with Mr Needham’s recollection that this was “around Autumn 2020”. Copies of invoices presented to that company from this time support these claims.
36. I was given little in the way of detail in respect of Brown’s operations at the south yard. In his SD Mr Fuller said that it was “also a Construction, Demolition and Excavation waste processing firm” and, in his SD, Mr Needham said that this business “resembled” that of Mr Fuller. Under x-x, Mr Fuller stressed that the two businesses were “exactly the same”. For its part, the Council had little to say about the Brown’s period. It suggested this marked a return to more soil processing operations, but no substantive evidence of this was presented. Overall, I find that the evidence given in relation to Brown’s use of the site to have been precise and unambiguous and I find that Browns used the site both for the period and in the manner claimed.
37. During a downturn in what I will call his core business, in 2020, Mr Fuller broadened the range of his activities on the land through the introduction of a scrap metal enterprise. This entailed both going out to collect scrap metal and buying scrap delivered to the site.
38. A photograph taken during a site visit by Officers of the Council and Tandridge District Council on 24 August 2020, shows a considerable pile of scrap metal on the land. This is clearly different in form and appearance from the metal arising from his certificate use. Mr Fuller said that metal arising from that use was mostly rebar from inside concrete, as well as such items as manhole covers that at times were included in incoming loads of CDE waste from development sites.
39. Another photograph from that visit shows a structure that appears to be built from scaffold poles with a roof, within which there appears to be two shipping containers and some form of site office. Above one of the bays formed by this structure is a sign reading ‘Non Ferrous’, which is clearly related to the scrap metal use. There

are also two large metal skips that I take to be the “bulkiers” that Mr Fuller referred to for moving scrap metal.

40. Although these two photographs do not show the whole of the land, they cover much of it, probably the majority of it. Mr Fuller’s asserted that he ran both businesses simultaneously, though there is little evidence that this was the case. He suggested that CDE activities were taking place just out of shot, to the left, in the first photograph of Appendix J to the Council’s Proof of Evidence. If this were the case, it would only have involved a small part of this small site.
41. Mr Fuller stated that the business was undertaken for 6-7 months. This enterprise was described as being *de minimis* in the Appellant’s closing statement. This is not borne out by the evidence. I find this to have been a significant period where the use of the appeal site materially changed.
42. Mr Needham, despite telling the Inquiry that he either visited the appeal site or passed it on a weekly basis, makes no mention of the scrap use in his SD.
43. Whether or not Mr Fuller’s certificate use continued during this period is, to a large degree, immaterial. I find that what occurred on the site during this time was materially different from the use that is the subject of the certificate application. The land was either put to a mixed use of the scrap metal and certificate uses, or it was in a single use for the collection, sorting and onward distribution of scrap metal. Whichever it was, there was a material change of use of the land from the certificate use alone. As such, during this period, the Council could not have enforced against the use of the land for the purposes sought in the certificate application. This material change of use broke the continuity of the certificate use.
44. My findings on the commencement and duration of Mr Fuller’s certificate use of the land were reached on the balance of probability. Even were I to have been incorrect in those findings, the material change of use of the south yard for 6-7 months was a definitive break in the continuous nature of the use of the yard. There was insufficient time thereafter to gain immunity from enforcement action. Therefore, given this hiatus in the continuous nature of the CDE use, there is no need to look at the period between this break and the date of the application.

## Conclusion

45. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of Aggregates recycling facility, including the importation and processing of Construction, Demolition and Excavation waste with ancillary scrap metal processing as a product of waste processing and separation within land area shown on drawing 0207 (A2) WBH0207 Map of convergence 3 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.

*R Curnow*                      INSPECTOR

## APPEARANCES

**For the Appellant:**

Stephen Whale	Counsel, Landmark Chambers
Andrew Needham	Appellant
Matthew Fuller	Witness

**For Surrey County Council (SCC):**

John Pugh-Smith	Counsel, 39 Essex Chambers (Instructed by SCC)
Katie Rayner	Principal Planning Officer SCC

**Third Party**

Jeannie Ryan	Clerk to Burstow Parish Council (supporting SCC)
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**DOCUMENTS**

- 1 Appellant Opening Statement
- 2 SCC Opening Statement
- 3 Plan showing the appeal site and the North Yard
- 4 File Note submitted by SCC showing a T9 Exemptions
- 5 File of photographs submitted by Jeannie Ryan
- 6 SCC Closing Statement
- 7 Appellant Closing Statement

Decision of the Deputy Traffic Commissioner – Submitted, but not referred to in evidence