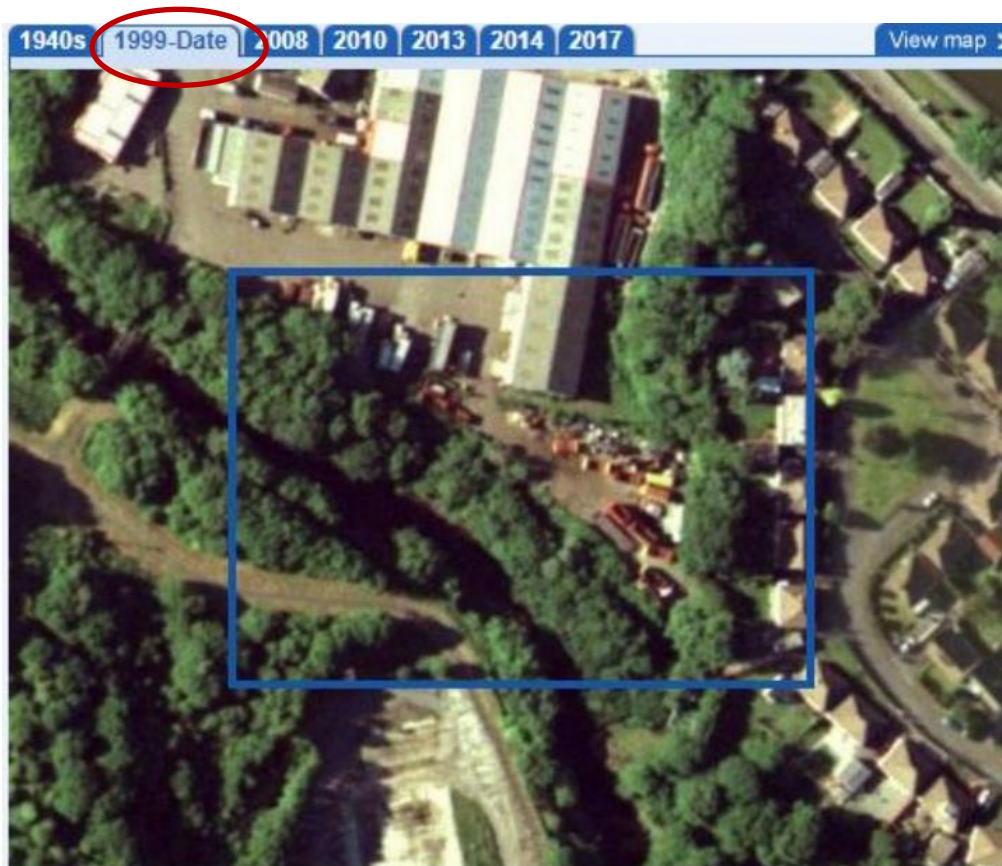


PLANNING STATEMENT AND JUSTIFICATION REPORT

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING USE) FOR
STORAGE (B8), PARKING OF VEHICLES AND HARD SURFACED
AREAS (STARTING IN 1990'S AND OPERATING TODAY – OVER
THE REQUIRED 10 YEARS)

THE YARD, LAND SOUTH OF UNIT 7, EFI INDUSTRIAL ESTATE,
BRECON ROAD, MERTHYR TYDFIL, CF47 8RB

8th March 2022



*Aerial photograph taken in 1999 from www.getmapping.com and
shown in Appendix C of the application site and its clear vehicles
and operations on site*



The Planning Studio, Hayston Bridge
Johnston, Haverfordwest
Pembrokeshire SA62 3HJ
01437 891 817
07515 851 704
andrew@haystonplanning.co.uk
www.planningpembrokeshire.co.uk

HAYS/1474

Head of Planning
Merthyr Tydfil County Borough Council
Town Planning (Development Control)
Unit 5 Triangle Business Park
Pentrebach
Merthyr Tydfil
CF48 4TQ.

HAYSTON DEVELOPMENTS & PLANNING LTD is making this application on behalf of Mr Chris Marshall.

1.0 INTRODUCTION

1.1 The application is made pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended). Documents submitted in support of this application include:-

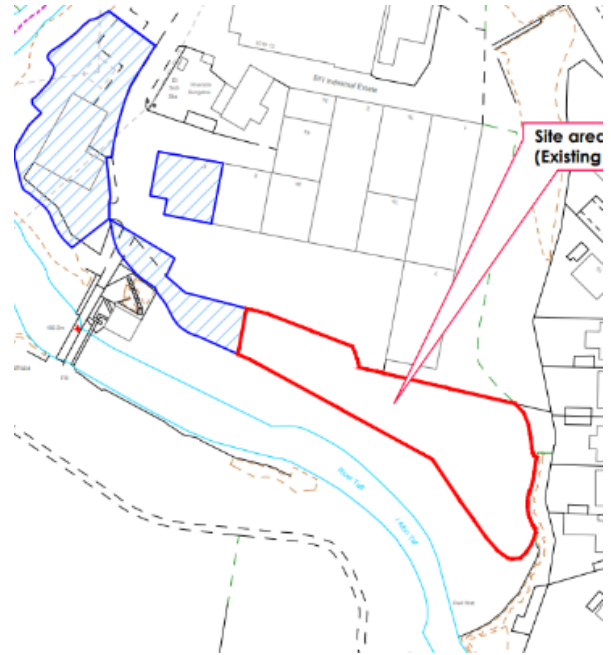
- **Planning Statement and Justification Report** (this document)
- **Application Form and associated certificate of ownership**
- **Drawing 01** - Expanded Location Plan @ Scales A3 - 1:1250
- **Drawing 02** – Location and Block Plans @ Scales - 1:1250 and 1: 500
- **Drawing 03** – Aerial Photographs Dated 2008
- **Drawing 04** – Photomontage
- **Drawing 05**– Photomontage
- **Drawing 06**– Photomontage
- **Appendix A** - Witness statement by Mr Chris Marshall
- **Appendix B** – Five letters from adjacent business owners
- **Appendix C** – Historic Aerial Photos dated from the 1990's (1999 onwards)
- **Application fee** – £460-00

1.2 The application relates to the use of land for a period in excess of 10 years as a storage area, the parking of vehicles and the creation of hard surface area (identified in red on Drawings 01 and 02). The activity clearly started in the 1990's and has operated for over the required 10 years, with different levels of activity. This site has not been abandoned and the use identified in this application is operating at the time of this submission.

2.0 SITE LOCATION AND PLANNING HISTORY

2.1 The application site relates to an area of land situated on the southern side of the EFI Industrial Estate, which is located some 1.5 kms to the north of the centre of Merthyr Tydfil. It is a long-established industrial estate near Cyfarthfa Castle and Park.

2.2 The site is broadly triangular in shape and measures approximately 0.335 ha. The majority of the site consists of a combination of disturbed ground with scalping and rubble material and hardstanding areas, with overgrown vegetation along its boundaries. The site is generally level and has historically been used for vehicle parking and open storage for industrial purposes and is clearly operating today.



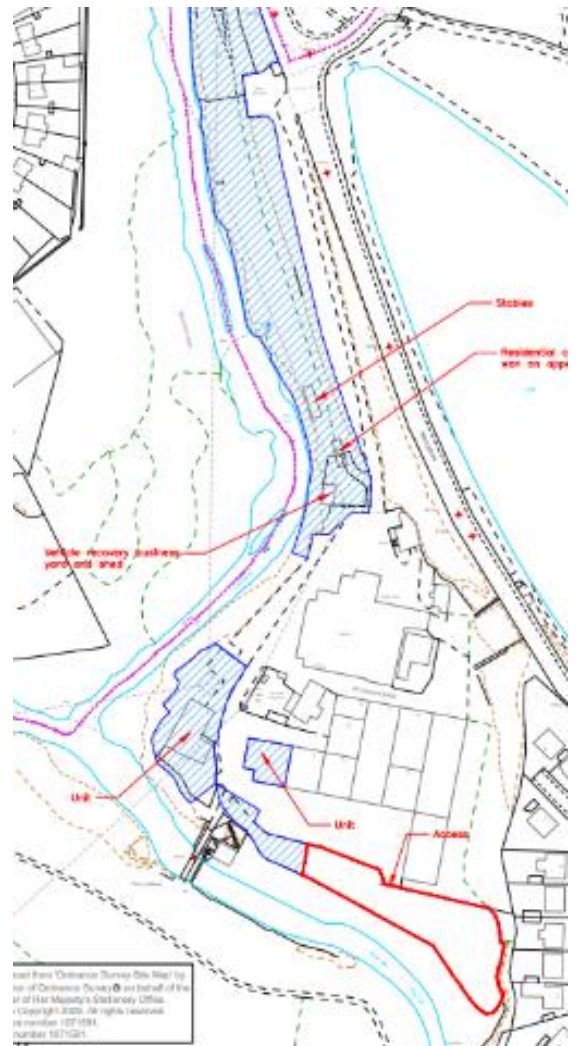
Above: Scan of Drawing 02 location plan

Below: Scan of Drawing 01 Expanded location plan

2.3 The site is bounded to the north by established EFI industrial units and a hardstand area, which is used as a vehicle parking area and the storage of some shipping containers. There are various industrial uses on site. To the east of the site is a sheer embankment and exposed rock face with residential properties above that form part of Pandy Close. Some photographs of the current use and appearance of the site are provided below.

2.4 Whilst the immediate area to the north is largely industrial in nature, there are two residential properties Riverside Bungalow, now known as Aartal and a mobile homes. The mobile home is occupied by the applicant and his family, which is located within a strip of land with some associated outbuildings to the north-west of the current application site adjacent to the main vehicular access road into the industrial estate. This mobile home was allowed on appeal in November 2016 (Ref APP/U6925/A/3151450).

2.5 To the west and south of the application site is a woodland area along a steep embankment which slopes down to the River Taf. To the west is the Pont Y Cafnau Bridge (being a Grade II Listed Building and Scheduled Ancient Monument (SAM) which provides a link across the watercourse to the Taff Trail. Below the bridge and set into



the embankment of the River Taff are the remains of a former hydroelectric station.

2.6 The application site is located within the Cyfarthfa Conservation Area and is in close proximity to the Cyfarthfa Park and Gardens to the north (some 200 metres away). Within the vicinity are also archaeological remains of Blast Furnaces, which are SAMs, the nearest being within 15 metres of the site on the opposite side of the River Taf.

2.7 The site and industrial estate is reached via a long internal access road from the north, which joins the Brecon Road (A4054) close to its junction with the Gurnos Road. The access road slopes down from the Brecon Road, running through an area of mature trees either side. A right of way extends from Brecon Road through the industrial estate linking to the Taf Trail on the other side of the river from the site.

2.8 The applicant has had a material interest in the current application site together with land associated with his mobile home and adjacent industrial units (shown within the areas outlined in blue on Drawing 02) since 2013. He has used the application site for business purposes including the open storage of machinery, storage containers and parking vehicles associated with his business since 2013. He bought the site in 2020 and uses it today for parking and storage. However, being local he is aware of its use by previous owners for over 15 years and has known it being an actual yard. As such, he identified it as being a suitable and useful site for his other businesses and units at EFI Industrial Estate.



Photographs of the application site taken in December 2021

3.0 THE CASE FOR THE APPLICANT

3.1 The purpose of this application is to establish the fact that the use of and for storage and the parking of vehicles does not have planning permission and, as the development has taken place for a period in excess of 10 years before the date of this submission (Section 171B (3) refers), they remain immune from enforcement action. The operation development entailing the provision of the hardstanding area across the site took place in excess of 4 years before the date of this submission (Section 172 B (2) refers).

3.2 The judgment in *Gabbittas v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason not to grant a LDC, provided the Appellant's evidence is sufficiently precise and unambiguous. Annex 8 of Welsh Office Circular 24/97 states that the relevant test of the submitted evidence is the 'balance of probability'. The Courts have established that the applicant is not required to demonstrate proof 'beyond reasonable doubt' and that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted.

3.3 In making the assessment of this application the following matters need to be addressed:

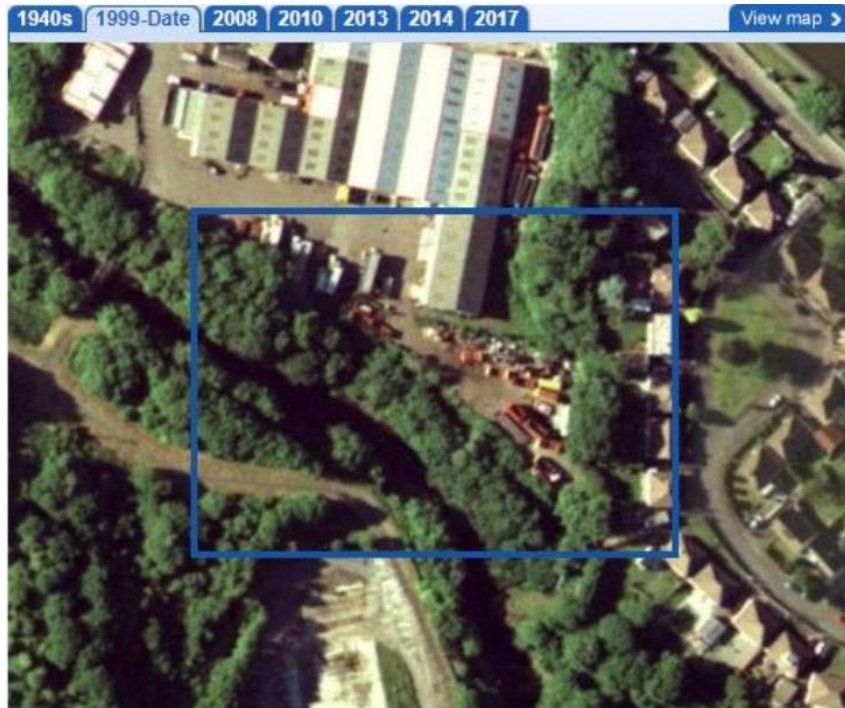
- Does the proposal comprise operational development and / or change of use?
- Is there sufficient precise and unambiguous evidence that the use of the land for the storage and parking of vehicles has taken place continually over the last 10 years? Or indeed, a 10 year period in the last 20 plus years, as long as there has been no wilful abandonment.

Operational development

3.4 Under Section 55 of the TCPA 1990 as amended "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. It has been established in planning case law that the laying of hardcore on land falls within the definition of operational development. Its use thereafter is a matter of fact and degree whether a material change of use has taken place and will be discussed below.

3.5 The earliest evidence obtained relates to a number of aerial photographs taken between 1999 and 2000 (Drawing 03 and Appendix C). The 1999 image show an area, representing a right-angled triangle, to the south of Unit 7 on the EFI Industrial Estate, covered in hardcore with trees and vegetation long the eastern and southwest facing boundaries. Hypothetically, using this as baseline, this triangular area appears to have been extended along the southern and eastern boundary with the vegetation cleared with an extended hard surface area created in the 2000 image. The 2008 image (Drawing 05) indicates this additional land has been resurfaced in materials to match those immediately to the south of the main buildings on the EFI Industrial Estate. As a period of 9 years had elapsed since the baseline image was taken therefore, by virtue of Section 172 B 2, this operational development that had taken place remains immune from any enforcement action.

3.6 The 1999 aerial photo shows a significant number of vehicles / storage units on the application site as shown below.



3.7 The applicant has also got hold of some other aerial photos in this period (3 in total) which show the use of the yard with a similar level of use and these are shown in **Appendix C**. One of these photos is shown below with clear levels of extensive use.





Scan of Drawing 03 showing the 2008 aerial photo from www.getmapping.com



Scan of photographs of the site from Drawings 04 and 05 from 2020

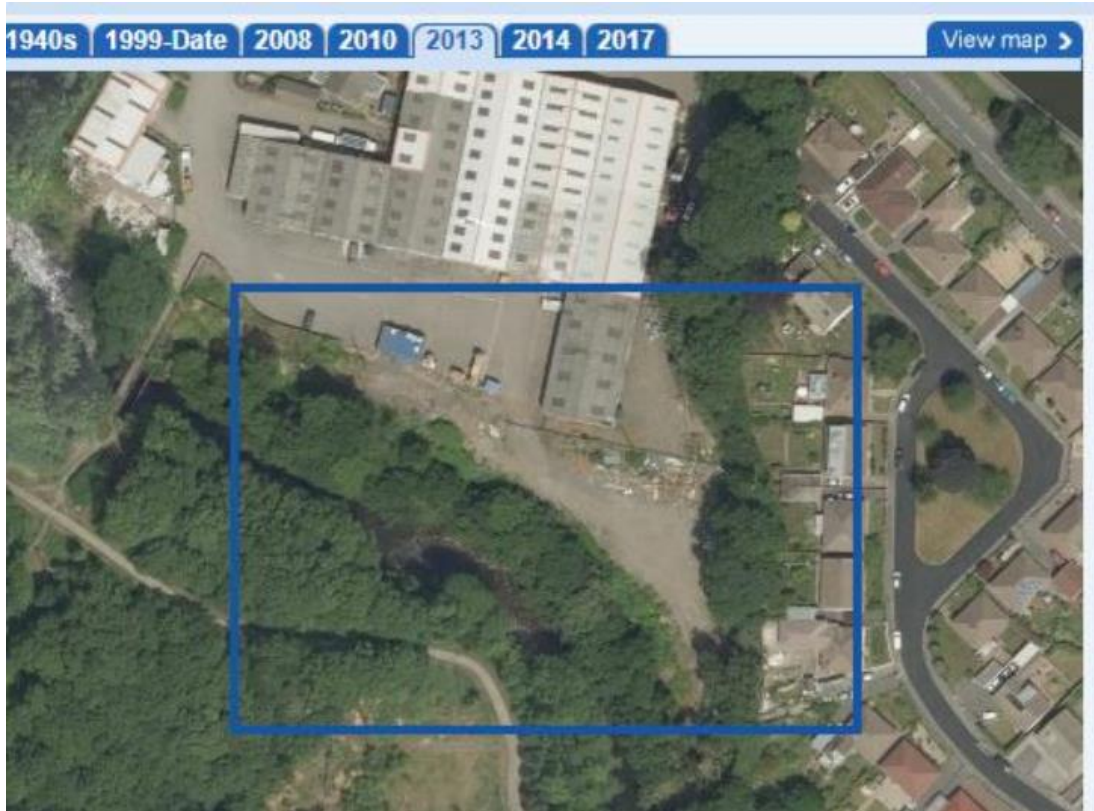


Scan of photographs of the site from Drawings 04 and 05 from 2020

3.8 The two images taken in 2010 and 2013 (from **Appendix C**) do not appear to indicate the original hard surfaced area had been extended in any direction.



Scan of Appendix C showing the 2010 aerial photo from www.getmapping.com



Scan of Appendix C showing the 2013 aerial photo from www.getmapping.com

3.9 In 2011 the applicant took control of the application site and the two images taken in 2014 and 2017 (see **Appendix C**) do show the hard surfacing beyond the original southern boundary had been extended further south. Again, by virtue of Section 172 B 2, this operational development remains immune from any enforcement action. The hard surfaced area shown in these two images remains in place at the time of submitting this application.



Scan of Appendix C showing the 2014 aerial photo from www.getmapping.com



Scan of Appendix C showing the 2017 aerial photos from www.getmapping.com

Material Change of Use

3.10 As referred to in the applicant's witness statement he purchased the application site as it clearly had been used as an area for the storage and parking of vehicles. Following discussions with several occupiers of the units on the EFI Industrial Estate this use had been operating for a number of years without any communication with the Planning Authority. The 1999, 2000 and 2008 aerial images also show that containers had also been stored on the land. This use clearly falls within Use Class B8 (Storage and Distribution) of the TCPA Uses Classes Order 1987. This use has been operating from at least 1999 for a continuous period to date. There may have been periods during this time when the use of the land has been less intense for economic reasons however, there has never been any intention to wilfully abandon the use by the applicant or any other party.

3.11 The length of the period in which the application site has been used for the storage and parking of vehicles and storage containers is verified in the five witness statements in **Appendix B** together with the applicant's own witness statement in **Appendix A**. The letter from IJF Engineering Ltd, based on the EFI Industrial Estate, states The Yard adjacent to Unit 7 has been used for several businesses over the last 15 years including as a lorry yard and for the parking of cars. The letter from Excel Hydraulics Ltd, also based in the EFI Industrial Estate, confirms the application site has been used as haulage yard, yard for parking cars, vans and other vehicles for at least 17 years. This company does hydraulic repairs and is well known to the applicant who uses their services. The letter from Austin & Co Ltd is based in Ebbw Vale. The owner of this company is also familiar with the application site and is aware it has been used for more than 10 years as a haulage yard, the storage of cars, vans and other vehicles. This company recovers

cars and other vehicles associated with the applicant's business. Finally, two businesses, Mercury Glass and D P Haulage based at the EFI Industrial Site give further knowledge of the continuous site use.

3.12 Further evidence of the industrial use of the site is mentioned in a delegated report prepared in relation to a planning application (Ref P/21/0261) for a live/work dwelling on part of the current application site. Following the publicity exercise for this application one member of the public raised objections to the proposal based on an observation that the activities on the site have included the crushing of vehicles. This statement is not corroborated by any other evidence and may therefore have been an infrequent event over a short period of time. The Officers delegated report indicates the site *'appears to already form part of the industrial estate by virtue of its open environment and hard-core surface material that is present.... It can be seen from aerial photographs that at various times the site has been used for the parking of vehicles, siting of storage containers and waste material, which has subsequently been cleared up. In addition, it is evident that over time the existing vegetation alongside the embankment of the River Taff has been removed to create a larger plateau'*. An officer's delegated report from October 2018 on application P/18/0310 shows the *"site consists of a combination of discarded ground with rubble material and hardstanding area"*. These comments corroborate the evidence in the historical aerial photos and witness statement and letters contained in **Appendix A and B** in that the land has been used for storage and parking purposes and, overtime, the hard surfacing has been extended. This operational development was carried out more than four years ago and is therefore immune from enforcement proceedings. The report goes on to mention the relevant planning policies for the area, including the application site, whereby B8 and B2 uses are appropriate. In determining COL applications, local or national planning policies carry no weight in the determination of such applications as determination is based on factual and corroborated evidence submitted. It should be noted the applicant does not have a licence to process any waste material and, consequently, has no intention to apply for one. He does, however, have a licence transport waste to an authorised processing unit.

3.13 At this point attention is drawn to Para 8.12 of Circular 10/97 states *'In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge. The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use is lawful.'* A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use is lawful.'

Period of Immunity

3.14 It is clear in planning law that unauthorised operational development, changes of use and breaches of conditions are immune from enforcement action if specific periods of time have elapsed since the breach first took place. These periods are set out in section 171B of the 1990

Act and refer to four years in the case of operational development and ten years in respect of other changes of use and breaches of conditions.

3.15 The evidence put forward in the aerial photos (**Appendix C**) and the witness statement and letters in **Appendix A and B** is sufficiently clear and unambiguous to demonstrate, on the balance of probability that the operational development described in 3.5 to 3.7 above has taken place in excess of four years prior to this submission and is therefore immune from enforcement action by reason of Section 171B (2) of the Act. In fact, the majority of the site surfacing probably took place prior to 1999.

3.16 The evidence referred to in paragraphs 3.9 above clearly has been used for a period in excess of 10 years continually as a yard for the storage and parking of vehicles. Whilst this is unauthorised however, with the passage of time, the use is associated with applicant's business premises and previous owners. It is therefore immune from enforcement action by reason of S 171B (3) of the Act.

Background Case Law

3.17 A relevant case is *Panton & Farmer v Secretary of State for the Environment, Transport and the Regions* (1999). Panton provided the basic steps for calculation of the ten year period in cases of material changes of use. It must be identified when the unauthorised material change of use occurred, determine whether a period of ten years has since elapsed and if the breach may be lawful provided it is not lost by operation of law in one of three ways; **abandonment, formation of a new planning unit or a further material change of use**. Whilst this case related to the use of land for a residential caravan the circumstances remain exactly the same as the use of land has not been abandoned in any way, the planning unit has not changed significantly over the last 10 years and no further uses have been introduced. The use rights have accrued over at least a 22-year period and accordingly, an LDC is justified.

3.18. A further case of interest is when an inspector issued an LDC confirming that the use of land had lawfully been used for the siting of a residential caravan. In assessing the period over which the residential use had subsisted he noted that **the caravan had been occupied from 1963 to 1999**. Applying the tests laid down in *Panton and Farmer v SOS and Vale of White Horse D.C.* 1999, this use had not been lost through any changes in the planning unit or through abandonment, he decided. Although the caravan **had not been occupied since 1999** since its physical condition was poor, there **had not been any intention to abandon the use, he determined**. The cutting off of water and electricity supplies did not render the caravan uninhabitable, he held, and the appellant swore on oath that it was always her intention to return after it had been refurbished and modernized. In his view the use rights which had accrued over 36 years had not been lost and accordingly an LDC was justified (*Wealden 7/1/2008 DCS No.100-052-387*).’ (***Source Development Control Practice on-line February 2014***).’

3.19 This shows any periods of a small use is irrelevant if 10 years of continuous use is achieved and shown in evidence (i.e. aerial photographs and witness statements / letter), based on the balance of probability.

4.0 CONCLUSION

4.1 By virtue of S 191 (1) the material change of use for the siting of the use of the land for the storage and parking of vehicles and containers first took place prior to 1999 and has appeared to continue to as such every year since for a period in excess of ten years prior to the date of this submission. The above evidence together with aerial photos (**Appendix C**) and the witness statement and letters in **Appendix A and B** prove, on the balance of probability, that all the development referred to took place in excess of ten years before the date of the submission of this application: Furthermore the operational development to surface the site with a mixture of hard substances took place in excess of 4 years ago and is similarly immune from enforcement action by virtue of Sec. 171 B (2) of the Act.

4.2 The evidence contained in this application is sufficiently precise and unambiguous and therefore satisfies the test that the development referred to has taken place for a period in excess of 10 years and 4 years respectively before the date of the submission of this application. The use has not been abandoned and continues to date, the planning unit has not significantly changed and no other uses have been introduced during the relevant ten year period. The LPA has to accept the use and issue the Certificate as it sees fit from the evidenced provided and summarised.

REPORT PREPARED BY
CHRIS WILLIAMS DTP MRTPI
SENIOR PLANNER

REPORT REVIEWED BY
ANDREW VAUGHAN-HARRIES BSC (HONS) DTP MRTPI
DIRECTOR/PRINCIPAL PLANNER



RTPI

mediation of space · making of place

Appendices