

APPENDIX 1

SECTION '2' – Applications meriting special consideration

Application No : 18/00103/ELUD

Ward:
Kelsey And Eden Park

Address : Land At Junction With South Eden Park Road And Bucknall Way Beckenham
Objections: Yes

OS Grid Ref: E: 537930 N: 168386

Applicant : Joseph Dayani on behalf of Clery

Description of Development:

Use of land for the storage of cars or for the parking of cars or as a car park in associated with car dealerships. Lawful Development Certificate (Existing).
ADDITIONAL INFORMATION RECEIVED 03/06/19

Key designations:

Smoke Control Multiple

Proposal

A Lawful Development Certificate is sought with regards to an existing use of an area of land. The applicant submits that the land has been used for a period of 10 years for the storage of cars, the parking of cars or as a car park associated with car dealerships. The application was received on the 9th January 2018.

The applicant has provided corroborating information comprising:

- The red line plan submitted with the application identifies the site as comprising the entirety of the wedge shaped space defined below. It is noted that some of the statutory declarations include a site plan which outlines this same land in blue with a smaller area of red line hatching along North Drive itself.
- Statutory Declarations
- Covering letter from agents.

This letter confirms that the application site is shown edged red on the site location plan. The content is summarised:

In July 2001 the applicant registered as the freeholder of the application site.

In 2003 car dealerships operated by the Masters Group and the Chinese Garage near to the application site each need additional space for storing and parking cars.

The applicant agreed that the two garages could park and store "a few" cars on the private roadway known as North Drive without payment. In 2005 this agreement was varied so that both garages could park and store "as many cars as they could fit" onto the greater part of North Drive in return for making licence payments to the applicant. This part of the site is referred to as the "Chinese Garage area" in the evidence submitted with the application.

On 29th August 2006 the Council served an Enforcement Notice on the applicant. The notice alleged a breach of planning control, described:

"Without planning permission, the material change of use of the land from a private access road to use for the storage of motor vehicles associated with a car dealership."

By appeal decision dated 17/4/2007 the appeal against this enforcement notice was allowed, with the notice quashed and the granting of temporary planning permission until 31/12/07 for the parking of vehicles on the carriageway of North Drive, to a maximum of 33 cars. The formal decision allowed the appeal, granting planning permission for the land on the enforcement notice (the red line site plan of this current application) subject to conditions:

1. The use shall be discontinued and all motor vehicles associated with the use removed from the site on or before the 31st December 2007
2. The use hereby permitted shall take place only on the carriageway of the private access drive, and south of the southernmost gate thereon
3. Not more than 33 motor vehicles shall be stored or parked on the land at any one time.

In May 2007 it was agreed by the land owner that Mr Bird and Mr Goode, who operated a different car sales business, could park and store vehicles on any part of the application site apart from the Chinese Garage area. The applicant agreed to widen the private footpath running through the application site from the security gate to the Chinese Garage area and alongside the line of trees next to North Drive. This was originally 2m wide. (In June 2017 the applicant widened this former footpath to a total of approx. 6m). This work was partly undertaken by using aggregate that had been left on the site by Thames Water who had temporarily used part of the site as a works compound. Road planings were placed on top of this sub-base. The applicant states that this operational development became lawful as from June 2011 or thereabouts.

The supporting statement refers to the parking and storing of vehicles from 9th June 2007 on the part of the application site licensed to Mr Goode and Mr Bird for that purpose, stating that this part included the northerly part of North Drive, the hard surface area created by the works "and from time to time the grass area beyond."

Between January and March 2012 the Council notified the applicant that the storage of motor vehicles had continued beyond the expiry of the temporary

planning permission. This was not denied. The statement confirms that a licence was signed (corresponding with the verbal agreement of 2005) on 30/8/13 and 2/9/13 for the Chinese Garage to use the "Chinese Garage land" for parking. This licence remains in place to govern the parking of cars by the Chinese Garage.

Additional information was received on 30/5/19:

More detailed plan of the application site (no. 15124 S103 J)

Second Stat. Declaration of Gary Goode:

Expands on first Stat. Dec. and states that from about September 2007 he and Mr Bird have generally had a minimum of 40 cars with a maximum of 60 stored at the site. The applicant has stated that Mr Bird and Mr Goode could use the grassed area of the site on occasions when they ran out of parking space, with no restriction as to which parts of the grassed area could be used. There is no physical division of the grassed area. From about 2007 with the exception of the recession/financial crash of 2008/2009 there have been occasions when where they have had to park some of them on the grassed area including where Masters have used some of the space allocated to Mr Goode and Mr Bird (by agreement) and they have had to store some of their vehicles on the grass. The grassed area has also been used for access to and from their vehicle parking. The stat. dec. states: "On some occasions, during that period, when we have had a particularly large number of vehicles in stock and also when the Chinese Garage/Masters Group has requested to park some of their cars within the hardstanding area allocated to us, we have stored or parked some of our vehicles on the grassed area near North Drive and the widened footpath.

Second Stat. Declaration of Peter Browne

Confirms that there has never been any point in time during the 14 years since 2005 when Bromley Kia and other dealerships have not had a significant number of cars parked on the part of the application site allocated to them because of lack of space at their showrooms. Concurs with Mr Goode and Bird with regards to the informal arrangement between the parties that at times Mr Goode and Mr Bird will allow use by the Chinese Garage/Masters Group to use their space adjacent to the access drive while Mr Goode and Mr Bird will use the grassed area as allowed by the applicant.

Second Stat. Declaration of Christopher Bird

Tallies with the 2nd Stat. Declaration of Gary Goode (business partner)

Also submitted:

- Copy of Judgement in the case of *Burdle and Another v SoS for Environment and Another* (1972)
- Copy of Judgement in case of *Westminster City Council v (1) SSCLG and (2) Julian Cordani* (2013)

- The Judgement in the case of R (oao KP JR Management Limited) v London Borough of Richmond upon Thames (2018)
- Detailed cover letter - summary:
 - The Chinese Garage area of the site (the southerly stretch of North Drive) has been used continuously for parking and storing vehicles by the Chinese Garage since at least 2005 up to and including the date of the application. *This includes the period where the use was operating under the permission granted on appeal under reference APP/G5180/C/06/2026981 (17th April - date of decision, 31st December 2007 - expiry of temporary permission).*
 - The northern stretch of North Drive from the South Eden Park entrance up to the Chinese Garage area, the hard surface storage area and additional roadway have been used continuously by Mr Bird and Mr Goode since about 9/6/07 up to and including the date of the application.
 - The statement asserts that the application site is a single planning unit, it is both physically and functionally a single unit of use and occupation and it was treated as a single planning unit when the Notice was served in 2006.
 - During the period from 1/1/08 up to 31/12/17 the Council could have served an enforcement notice had it chosen to do so. The applicant's agent states that the use is therefore now immune from enforcement action.

Location and Key Constraints

The application site is wedge-shaped. It lies to the north of the residential development at Bucknall Way. It is bounded to the north east and east by residential dwellings fronting Wickham Way. To the north west is South Eden Park Road and the site terminates in a point at the roundabout junction of Bucknall Way and South Eden Park Road.

The site is generally grassed/overgrown with vegetation. The red line site includes the roadway of North Drive which leads from South Eden Park Road to Bucknall Way, following the curved outer edge of the red line site.

The site is designated as Urban Open Space.

Historically, the red line site as a whole formed part of the former medical research facility/laboratories. At some point it was severed. The statement of common ground in respect of the recent planning appeals associated with the residential development of the site referred to the site as being "fenced off and used only intermittently for commercial purposes since its disposal in 1999 by the Council to the applicants." The private access drive was referred to in the SoCG as forming originally the main entrance into the Glaxo Wellcome Research Laboratories site.

Comments from Local Residents and Groups

Nearby owners/occupiers were notified of the application and responses received some of which referred to the planning merits of a proposed change of use rather than the facts relating to the use of the site (these latter representations can be summarised as follows):

- Correspondent moved to a property opposite the land in October 2013. In 2013 there were cars parked on the perimeter road only (leading to the rear of the Langley Tennis Club). Sometime in 2014/2015 construction began on an extension to the Tennis Club and an area of the site was partially cleared with JCBs and a hard surface laid to accommodate parked cars. Since then, the site has been subject to dumping of building materials and waste, undermining the environmental quality of the open space which is however still home to badgers, bats and owls.
- Correspondent moved to Wickham Way in 1990 then to a property opposite the UOS in 2010. From 2010 cars were only parked on North Drive Road (old cars and vans). Then since 2015 JCBs and more old cars, vans and building rubbish have been stored on the open grassland, along with there being commercial bonfires.
- There has been a significant increase in the number of vehicles being parked on the land in the last months leading to the submission of the application
- It is incorrect that the land in question has been used as a car park of for parking cars for the past four years. The area has been recently used for this purpose with many old and disused cars increasingly parked there over the past year, the numbers of which have increased considerably lately
- Photographs from July and September 2016 have been provided
- Correspondent has lived locally for nearly 20 years and it is only in the last couple of years that any significant number of cars have been parked on the area. When an area was bulldozed and additional space created following the Tennis Club extension was when the numbers increased to any large degree. The recent machine clearance of the area has led to a loss of wildlife habitat
- Submissions of 11/2/18 refers to a recent increase in activity on the site
- Submission of 16/9/19 states there are almost always quite a few cars parked on North Drive, but cars not seen parked on the grass land which appears a waste land used for the occasional bonfire
- There have been breaks in the use, followed by a significant recent increase.
- Can confirm that the owner of the site has used part of the land for the storage/parking of cars in association with a number of dealerships for the best part of 10 years or more. The use has been uninterrupted.

Policy Context

This application seeks a certificate to confirm that the existing use of the land or activity would be lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

The certificate shall specify the land to which it relates, describe the use/operations/other matter in question, give the reason for determining the use etc. as lawful and specify the date of application.

In applying for a certificate of lawful development for an existing use, there is a need to demonstrate that, on the balance of probability, the use/development as described has subsisted for at least 10 years.

The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence of their own, or from other, to contract or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's own evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate "on the balance of probability."

It is for the applicant to demonstrate that, on the balance of probabilities, the material change of use has existing for a period in excess of 10 years beginning with the date of the breach, without any enforcement action being taken and continued actively throughout the following 10 year period. There can be no 'dormant' periods in the 10 year period. The applicant must show when the change of use first occurred and demonstrate that it continued actively throughout the relevant period. While short periods of inactivity can be regarded as part of a continuing use, longer periods cannot.

The application has been submitted with reference to case law as listed above.

In referring to the Judgement of Bridge J. in the Burdle case, the judgement that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount both physically and functionally in substance to a separate planning unit is noted.

Planning History

The site has a long planning history relating to the historic use as part of the wider GSK/Wellcome medical research laboratories (now defunct). No planning permission granting an alternative lawful use for the site has been granted since 1999 save for the residential development referred to below, which has not to date been implemented.

The recent relevant planning history relating to the specific application site is summarised as follows:

APP/G5180/C/06/2026981 (Land at Jacanda Lodge, North Drive, Beckenham, BR3 3XQ). (Council reference H(DC)TCB/DC/05/01014).

Appeal against enforcement notice ALLOWED and notice quashed.

16/02613/OUT

Residential development comprising of 105 units with a mixture of 4 bedroom houses and one, two and three bedroom apartments together with concierges office and associated basement car parking (OUTLINE APPLICATION)

REFUSED. ALLOWED AT APPEAL

17/00757/OUT

Residential development comprising 15 four storey townhouses and 52 apartments in three and four storey blocks to provide a total of 67 residential units together with concierges office and basement car parking (OUTLINE APPLICATION).

REFUSED. ALLOWED AT APPEAL

18/04519/DET

Details of appearance, landscaping and scale pursuant to outline permission DC/16/02613/OUT allowed at appeal on 22.03.2018 for the residential development comprising of 105 units with a mixture of 4 bedroom houses and one, two and three bedroom apartments together with concierges office and associated basement car parking.

APPROVED

19/01543/FULL1

Residential development comprising erection of 6 x four storey buildings consisting of 10 four bedroom houses and 133 x one, two and three bedroom apartments together with concierges office. Construction of basement car park with 204 spaces. Central landscaped area with 10 visitor spaces cycle parking for 286 and refuse stores.

PERMISSION SUBJECT TO LEGAL AGREEMENT

Considerations

The chronology as provided by the applicant can be summarised:

- 31st July 2001 - Property registered by Clery Property Holdings Limited (Clery)
- 2003 - Applicant approached by Masters Group, VW dealership on Wickham Road and owners of the Chinese Garage regarding the use of the land for the storage of a few cars
- 2005 - applicant realised that while the arrangement had related to "a few cars" in fact there were many more than this. New arrangement reached with Stan Spalding of Masters Group that they could use that part of North Drive and the tarmac shoulder next to it between the security gate and the far end of North Drive on plan shown on P2 of exhibit JD1 for the parking of

"as many vehicles as they could fit onto this area" in return for monthly payment. No written agreement at the time.

- Autumn 2005 - Spring 2007 - Thames Water get agreement from applicant that they could use part of the application site (approx. 70m x 40m) shown on plan in JD1 for operational land. Put down hardstanding. Did not remove at end of operational use
- 2005 - 2013 (when VW dealership had closed) Cars continued to be parked on the land.
- 29th August 2006 - LBB served enforcement notice alleging material change of use of the application site from "private access road to use of the storage of motor vehicles associated with a car dealership."
- 17th April 2007 - appeal against enforcement notice allowed. Notice quashed. Temporary permission granted for the deemed planning application - for use of the site shown on the enforcement notice plan, subject to conditions.
- May/June 2007 - applicant approached by Messrs Bird and Goode re potential parking on the land. Instructed by applicant that they could use "certain parts of the application site" - the part of North Drive between the entrance at South Eden Park Road and the security gate marking the entrance to the Chinese Garage area. Applicant agreed to widen the existing footpath running on other side of line of trees to allow parking there.
- 9th June 2007 - by this date the works to widen the footpath had been completed and from this date Mr Goode and Mr Bird started parking their cars there - permitted by applicant to park as many cars as they could there. The agreement continues.
- 31st December 2007 - use of land continued despite the expiry of the temporary permission granted at appeal. Parking was not limited to North Drive and the number of cars was often substantially in excess of 33.
- 27th January 2012 - LBB wrote to Clery regarding the continued use of the site.
- 30th March 2012 - LBB wrote to Clery regarding the continued use of the site.
- 2013 - Applicant asked for written agreement with senior manager of the Chinese Garage, Peter Browne. The written agreement specifies which part of the land can be used - refers to the private roadway, the bellmouth, requires no obstruction to pedestrians, not to be used by any other person, no alteration or addition to North Drive.

- The later information (second statutory declarations) refers to the occasional use of part of the grassed area for car parking with no dates provided.

If it is acknowledged that part of the site may have been used consistently for more than 10 years, it falls to consider whether this means that the whole of the site is a single planning unit where the activities operating on one part of the site would then be capable of operation over the red line site as a whole.

Part of the site has been used for more than 10 years for the parking of motor vehicles, although the evidence submitted, aerial photographs available to the Council and provided by neighbouring residents and information provided by neighbouring residents, along with site visits indicate that such use has been in practice limited to a distinct area of land towards the eastern periphery of the site (North Drive) rather than taking place over the site as a whole.

The appellant's agent states that the entirety of the site forms the "planning unit" and that the conditions imposed by the Inspector had no effect or relevance following the expiry of the temporary permission and that in any case, the conditions were never complied with.

While it does appear from the photographic evidence supplied by the applicant that a larger area within the site as a whole than was granted by the Inspector may have been used for the storage and parking of motor vehicles (i.e. the widened drive), and the statutory declarations provided along with correspondence received from neighbouring residents appears to support this, it falls to consider whether the case has been made that "on the balance of probability" the red line site as a whole has been used as such or that the site should be seen as a single planning unit.

The application includes significant reference to the judgement of Lord Widgery C. J., *Willis and Bridge JJ in Burdle and Another v. Secretary of State for the Environment and Another*.

For the purposes of the assessment of the application it may be helpful to summarised the judgement's findings before interrogating how the applicant's submission and any other information would relate to this judgement, which is key to consideration of the 'planning unit.'

Burdle's assessment of the criteria to determine a planning unit may be summarised:

- First

Whenever it is possible to recognise a single main purpose of the occupier's use of his land where secondary activities or uses are incidental or ancillary, the whole unit should be considered.

- Second

Equally, where it is not possible to state that one use or activity is ancillary to another i.e. in the case of a composite use where component activities vary in their intensity from time to time but are not confined within "separately and physically distinct" areas of land.

- Third

Within a single unit of occupation it may happen that two or more "physically separate and distinct" areas are occupied for substantially unrelated and differing purposes. In this case each area used for a different main purpose should be considered as a separate planning unit.

In the case of the red lined application site, it is acknowledged that the land is in the applicant's ownership in its entirety.

It falls to consider, taking into account the planning history of the site, the information provided by the applicant and in response to neighbour notification along with information available to the local planning authority (including planning history and satellite images) whether the whole unit of occupation/ownership should be considered as a single planning unit, in which case the activities which have subsisted for at least 10 years would be considered lawful by established use over the entire area of land encircled in the red line plan.

There is a physical difference between the grassed area and the area of the widened driveway in terms of the surfacing and utility of the separate areas for the purposes of car storage.

The site was described by the appeal Inspector in respect of the enforcement appeal in 2007 (ref. APP/G5180/C/06/2026981):

"The area covered by the enforcement notice is in the main a grassed area originally a private open space associated with the entrance to the then extant Wellcome/Glaxo Smith Kline Research Laboratories to the south west. Along its northern and eastern margins curves a private gated access roadway, that was the entrance to the Laboratories and is now defunct for that purpose and blocked off at the southern boundary beyond which is a new residential redevelopment of part of the Laboratory site. It is upon this marginal access roadway strip of the appeal site that the storage of motor vehicles takes place. There were agreed to be 33 present at the time of my inspection. There is no indication that car storage use has taken place or is sought for the grassed open space."

The green hatched area on the submitted site plan provided by the applicant was referred to in the recent appeal decision in relation to the residential development of the site:

"It is essentially flat land albeit raised above the adjacent road level by about 2-3 feet. Most of it comprises rough open grassland although that part of it close to its northern and eastern boundaries include hard surfaced areas that used to be the main vehicular and pedestrian access routes into the former Glaxo Wellcome site (North Drive and the adjacent footpath). A variety of cars are parked on these hard

surfaced parts of the site, including new cars from the Kia dealership in the Chinese Garage."

Later, the Inspector wrote:

"The appellant argues that less than full weight should be given to the conflict with these development plan policies for a number of reasons that I shall address in turn. It maintains that the whole of the site benefits from lawful use for the storage of cars and that this is a 'fall-back' justifying the proposed development because the site is no longer open. However the appellant submitted an application for a Certificate of Lawful Use or Development the day before the Inquiry commenced and it is the outcome of that application process that will determine whether such a lawful use exists. I see no need to pre-empt that process. Even if such a lawful use can be proven I saw no evidence that the site would be likely to be used in its entirety for storing cars and so I question whether such a use would in fact constitute a 'fall-back' in terms of the likelihood of it actually occurring. I also agree with the Council that the proposed development would have a greater impact on the openness of the site than such a use."

The enforcement appeal Inspector appeared to acknowledge a distinction between the grassed area and the area in which at the time vehicles were being parked, referring to the raised height of the land relative to the road level and noting the operation at that time which was limited it appears to the hard surfaced parts of the site. The Inspector noted in 2007 that "there is no indication that car storage use has taken place on or is sought for the grassed open space."

The assessment of there being distinct and separate parts of the site was further noted within the appeal decision in respect of the residential development which referred to the use of the land and the physical characteristics of different parts of the application site.

The information provided by neighbouring residents in response to the Council's neighbour notification includes:

Email dated 23/1/2018

"I noticed the continually increasing number of used and new cars parked on the tarmac of North Drive but I have never seen cars parked on the land in question. I would have been going into that area at least once or twice each month and I walk past the outer perimeter regularly." The letter continues to state that the correspondent visited the site with an enforcement officer recently (to the application submission) and noticed 3 or 4 vehicles parked on the field.

Email dated 23/1/18

"Although cars are often parked on North Drive itself, they are not parked to the best of my knowledge on the land you refer to. It certainly isn't used as a car park. It's pretty much empty, and has been since we've been here, apart from a bonfire or two."

Other letters received in response to the notification are available on the file, including from the former site manager of the Park Langley Club who states that the owner of the site used part of the land for the storage and parking of cars in association with car dealerships for the best part of 10 years or more.

Drone stills have been provided by a local resident dated 3/7/16 and 3/9/16 showing the driveway with parked cars along its length. There is no indication that motor vehicles are parked upon the rough scrub/grassed area.

Satellite images of the site dating from 2013 and 2016 show in 2013 that a line of trees separated the drive from the grass. This line of trees is still shown in the 2016 image, but a hardstanding strip was formed on the other side of the line of trees.

The number of vehicles stored on the site is referred to within the documents submitted with the application as:

Statutory Declaration of Peter Browne Bromley Kia (Chinese Garage)(red hatched area on plan 15124 S103 J):

During peak times approx. 120 vehicles have been parked on the stretch of private roadway known as North Drive.

Statutory Declarations of Gary Goode and Christopher Bird (yellow hatched area, to the west of the treeline):

The documents state that there have been occasions where they had the need to park some of their vehicles on the grassed area, as a matter of convenience upon the grassed area near the hardstanding, although the agreement with Mr Dayani means they were entitled to park vehicles on any part of the grassed area. Since 2007 to the present (30/5/19) they have from time to time run out of spaces on the hardstanding and have parked on the grassed area, and also from time to time have accommodated the Chinese Garage/Masters group cars on the yellow hatched area leading to them parking the cars associated with their own business on the grassed area. The declaration of Gary Goode specifically states with regards to the number of vehicles at para. 6 "from about September 2007 to date we have generally had a minimum of approximately 40 vehicles at a time parked or stored on the application site and the maximum has been about 60 at a time up until the end of 2017."

From time to time there may have been some degree of overspill from the hardstanding area formed of and adjacent to the original access drive, but it does not follow that where there was overspill this would have led to vehicles traversing the overgrown grassed area to the outer margins of the red line site nor that this has operated regularly or permanently such that would establish the use of the grassed area for the parking of motor vehicles. The use of the remainder of the grassed area is less clear with that part of the site having been left predominantly open and evidence of some miscellaneous activities taking place over the years including use as a Thames Water compound and more recently some occasional storage of old cars, vans and building rubbish and for bonfires.

While they might as part of their agreement have been entitled to park anywhere they chose, the physical condition of the grassed area and the operator's own assessment of the number of vehicles stored would tend to suggest that the occasional overspill may in practice have been limited to parts of the grassed area closest to the hardstanding. This assessment is supported by satellite images of the site over the relevant period, none of which indicate that cars were at the time of capture in any numbers parked over the site as a whole.

It is agreed that part of the red line site has been used for the storage of motor vehicles associated with car dealerships for the relevant period, as was likewise found by the Inspector in the enforcement appeal decision. It is not however considered that the entirety of the land would comprise a single planning unit over which that operation could and was operated.

While the Council's enforcement notice referred to the site as a whole, with the red line plan being consistent with that submitted in this current application, the subsequent appeal decision clearly limited the activities to the part of the site upon which the unauthorised use had been operating.

This analysis is supported by the applicant's own submission which includes drawing S103J which illustrates the private legal and physical distinction between the component parts of the site (i.e. the different parts of the site associated with different businesses, the physical characteristics of the different parts of the site). The submitted statutory declarations emphasise that there is no physical distinction i.e. wall or fence or other structure separating one part of the application from another or one part of the grassed area from another.

However, on the basis of all the information provided as well as the condition of the site and the satellite images of the site dating from 2013, 2014 and 2016 it is firstly considered that there was during the relevant period some physical separation resulting from the ground surface between the component areas and functional separation in terms of actual uses within the site, and secondly that while Mr Goode and Mr Bird may have been permitted by the landowner to use the grassed area for their operation, the evidence provided is inconclusive and does not support the conclusion that they have used the red line area consistently or more often than not as such for the relevant period.

This application does not seek a determination on the lawful use of the grassed area of the site, rather asserting that this would be as a single planning unit, the storage of motor vehicles encompassing all the land encircled by the red line site.

Conclusion

On the basis of the information provided within the application, the Council's own records and information provided by neighbouring residents, the planning history and images of the site, the Local Planning Authority is persuaded that the use of the hardstanding areas and a small adjacent part of the grassed area for the storage of vehicles has gone on for a period of at least 10 years.

The submitted drawing 15124 S103 J defines different parts of the site, annotated to indicate the separate parking areas (Goode/Bird and Chinese Garage).



Extract from 15124 S103 J – whole image available on file (in colour)

However, it is not considered on the basis of the application submission and all other evidence that on the balance of probabilities the use has extended across the entirety of the site.

While the site as a whole may be in terms of its ownership a single unit of occupation (with agreements granted then to separate businesses), the third Burdle 'test' is of particular relevance, referring as it does to the potential within a single unit of occupation for two or more physically/functionally separate and distinct areas to be defined. The Council is not persuaded that the grassed area within the red line application site has been consistently/continuously used for the

storage/parking of motor vehicles although it does appear that a small proportion of the grassed area immediately adjacent to the accessway as defined on the plans may have been more consistently used in this manner.

It is not considered that the case has been made that on the balance of probabilities the use described within the application has operated for a period of 10 years over the whole of the land encircled in red on the site plan. It is considered that while the land on and adjacent to the accessway may have been used for the storage of vehicles for a period of 10 years, this operation did not relate to the entirety of the red line site.

It is therefore recommended that the lawful development certificate be granted with modification to refer to the smaller area in which it is accepted that the use has subsisted for a period of more than 10 years. A starting point may be the drawing 15124 S103 J and the areas marked in yellow and red (and the white area between these two strips), but it is recommended that the application be deferred to allow for consultation with the applicant regarding the precise dimensions of the area to be certified as lawful and the application thereafter to be delegated to the Assistant Director of Planning.

RECOMMENDATION

1. THAT THE AREA TO BE CERTIFIED AS LAWFUL BE MODIFIED REDUCED TO SHOW THE AREA SHOWN COLOURED YELLOW, RED AND WHITE ON THE SUBMITTED DRAWING 15124 S103 J

2. THAT CONSULTATION BE CARRIED OUT WITH THE APPLICANT TO ESTABLISH WHETHER A LIMITED ADDITIONAL AREA ADJACENT TO THE A AREA SHOWN COLOURED YELLOW, RED AND WHITE ON THE SUBMITTED DRAWING 15124 S103 J CAN BE INCLUDED TO REFLECT OVERSPILL PARKING

3. THAT THE APPLICATION BE THEREAFTER DETERMINED BY THE ASSISTANT DIRECTOR OF PLANNING AFTER CONSULTATION WITH THE CHAIRMAN