

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 12 November 2014

Report of: David Malcolm – Principal Planning Manager

Title: White Moss Quarry, Barthomley
Certificate of Existing Lawful Use for the parking
and storage of vehicles machinery and equipment

1.0 Purpose of Report

1.1 For members of Strategic Planning Board to consider a Certificate of Lawful Use or Development (CLEUD) at White Moss Quarry, Barthomley

2.0 Decision Required

2.1 To confirm the decision to issue a negative Certificate of Existing Lawful Use for the parking and storage of vehicles, machinery and equipment for White Moss Quarry, Bathomley.

3.0 Background

3.1 Members may recall that a CLEUD was submitted in October 2011 for the use of an area of land for the parking and storage of vehicles, machinery and equipment at White Moss Quarry, Barthomley. The land is known locally as Triangular Field and indicated on the attached plan.

3.2 Following the decision from the Local Government Ombudsman in April 2013 which was critical of the process in determining the Certificate the Council was advised that it should take independent professional advice about the options available and if the CLEUD could be revoked, consideration should be given to that option. After due consideration, the CLEUD was formally revoked on 17 January 2014.

3.3 Once revoked the CLEUD remained to be reassessed by an independent planning lawyer. This report therefore considers the application afresh, outlines the application and the assessment of the submitted information.

4.0 Assessment

4.1 The full independent assessment is attached as Appendix 1. The conclusion of the assessment is detailed below.

4.2 There was a material change of use of the site amounting to development and this required planning permission. Thus the main issue for the determination of the application is whether the use is immune from enforcement action.

- 4.3 The Applicant's own evidence as to the claimed lawful use is neither precise nor unambiguous given a number of inconsistencies. These inconsistencies refer to the comments made in an earlier application concerning the date that the use commenced which conflict with those dates in the Statutory Declaration on this application. Similarly in more recent correspondence there has been inconsistency in whether there has been any storage of ancillary equipment or machinery on the site or not. In addition, despite being offered the opportunity to provide any additional evidence to support the re-determination application, the applicant has chosen not to do so beyond relying on matters that were before the Council as part of the revocation process.
- 4.4 Additionally, evidence has been forthcoming from local residents, which suggests that the change of use of the Site did occur until 2005. Evidence from aerial photographs generally supports this contention. Furthermore evidence from other sources suggests that the use of the Site ceased at various points after 2005.
- 4.5 In light of all the available evidence, whilst the application is to be determined on the balance of probabilities, it is not considered that the applicant has demonstrated to this standard that the use claimed is immune from enforcement action. As a consequence the application fails to meet the requirements of section 191(2)(a) and, in accordance with section 191(4), should be refused.
- 4.6 It is therefore recommended that the application be refused for the following reason:

The Applicant has failed to demonstrate, on the balance of probabilities that the use of land known as Triangle Field, Butterson Lane, Barthomley, Crewe, as outlined in red on the attached plan, for the parking and storage / parking of vehicles, machinery and equipment is immune from enforcement action on the basis of it having been used for in excess of ten years prior to the date of the application. In reaching this conclusion the local planning authority has taken into consideration evidence submitted by the Applicant, evidence from local residents and other interested parties and evidence which is contained within the authority's own records.

5.0 Recommendation

- 5.1 That the Council issue a negative for the Certificate of Existing Lawful Use (Reference 11/3759N) for the parking and storage of vehicles, machinery and equipment at White Moss Quarry (Triangular Field).

6.0 Financial Implications

6.1 There are no specific financial implications of this decision.

7.0 Legal Implications

7.1 The certificate has now been independently assessed and a recommendation/decision made. The decision to issue a negative Certificate could be subject to an appeal in accordance with the normal procedures

8.0 Risk Assessment

8.1 There are limited risks to this decision as it has been through all identified statutory processes and appropriate legal tests.

9.0 Reasons for Recommendation

9.1 To determine the submitted CLEUD in accordance with the detailed report.

For further information:

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Background Documents:

Application documents can be viewed on the application file

APPENDIX 1

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APPLICATION FOR A CERTIFICATE OF EXISTING USE WHITE MOSS QUARRY, BUTTERTON LANE, BARTHOMLEY, CREWE REPORT PREPARED FOR CHESHIRE EAST COUNCIL

1. INTRODUCTION

1.1. I have been instructed by Cheshire East Council (“the Council”) to re-assess an application for a certificate of existing lawful use for “*the parking and storage / parking of vehicles, machinery and equipment*” at White Moss Quarry, Butterson Lane, Barthomley, Crewe (“the Application”). The Application was allocated the planning reference 11/3759N. The re-assessment of the Application follows a decision by the Council to revoke the certificate granted on 14 December 2011 which itself followed a critical report from the Local Government Ombudsman.

2. RELEVANT LEGISLATIVE PROVISIONS

2.1. Section 191 of the Town and Country Planning Act 1990, as amended (“the Act”) provides, so far as is relevant, that

(1) If any person wishes to ascertain whether

- (a) any existing use of buildings or other land is lawful;*
- (b) any operations which have been carried out in, on, over or under any land are lawful; or*
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted was lawful*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act 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 any enforcement notice then in force.*

(3) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations 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 they shall refuse the application.

(4) A certificate under this section shall –

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 5(2)(f), identifying it by reference to that class;
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

2.2. Section 172(1) of the Town and Country Planning Act 1990, as amended, (“the Act”) provides that

The local planning authority may issue a notice (in this Act referred to as an enforcement notice) where it appears to them

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations

2.3. Section 171A(1) of the Act provides that

For the purposes of this Act

- (a) carrying out development without the required planning permission;
- or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control

2.4. The statutory time limits for taking enforcement action are laid down in section

171B of the Act which states that:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

2.5. As can be seen from Section 191, the planning merits of the claimed use or development, such as whether the use has an impact upon amenity or highway safety, are not matters that can lawfully be considered as part of an application for a certificate of lawful use.

2.6. It is also important to note that it is not a criminal offence to carry out development without the benefit of planning permission; the law only provides for an offence to be committed where there has been non-compliance with an enforcement or breach of condition notice.

3. GOVERNMENT GUIDANCE

3.1. In terms of the evidence submitted with an application for a certificate of existing lawful use, current Government guidance as set out in the National Planning Policy Guidance states as follows:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to cooperate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict 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 evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

4. PLANNING HISTORY

4.1. 10/0296C – Application for a lawful development certificate for an existing use for a mixed use of agriculture and storage of skips and containers, parking of skip lorries, other vehicles and trailers, storage of construction materials, formation of a crushed stone surface – Certificate refused.

4.2. 10/4139C - Retrospective change of use from agriculture to mixed use for agriculture and storage of skips and containers, parking of skip lorries, other vehicles and trailer, storage of construction materials, formation of a crushed stone surface - Refused February 2011
4.3. 11/3759N – Application for a lawful development certificate for the parking and storage of vehicles, machinery and equipment – Current application.

4.4. 13/4132N – Outline planning application for housing – Resolution to grant planning permission subject to the completion of a s106 planning obligations.

5. THE APPLICATION

5.1. The Application has been submitted by Mr D Beecroft of Land Recovery Limited. Land Recovery Limited (company registration number 1648166) was incorporated on 5 July 1982; according to Companies House, the nature of the business is “operation of gravel and sand pits, mining of clays and kaolin”. The application form states that the “parking and storage / parking of vehicles machinery and equipment” on land at White Moss Quarry has taken place since 31 August 1981 and that there has been no material change in the use of that land since that time. The Applicant considers the claimed use to falls within the sui generis class.

5.2. The Application is accompanied by a combined block / location plan at a scale of 1:500 showing a triangular shaped piece of land to the east of the access road into White Moss Quarry outlined in red (“the Site”). A notation on the plan suggests that the area comprises 1,260 square metres. The application is also accompanied by a location plan detailing the location of the application site; that plan also has a partial blue line drawn onto it. A blue line is used in planning to denote other land within the ownership of the applicant. As this blue line is only partial, the full extent of other land owned by the applicant is not specified, although this is likely to equate to the area of White Moss Quarry itself.

5.3. In terms of supporting information, the applicant has submitted a statutory declaration from Mr David Ernest Beecroft dated 16 November 2011. As the declaration is short, I set out its contents in full:

I can confirm that the use of the site at Triangle Field, currently subject of a Lawful Use Application has been continually used for the parking of vehicles, with an established hard standing, from March 2001 to the present day.

The area land shown on the image taken on 27 June 2000 clearly shows the access and hard sanding, this hard standing was extended in early 2001 and fully established in March 2001.

Attached to the statutory declaration is the same block / location plan that accompanied the application. Although not specifically referenced in the statutory declaration, it is reasonable to assume that the plan relates to what is called “the site at Triangle Field” within the declaration itself.

5.4. In addition to the statutory declaration, there is also a statement in support of the application prepared by the Applicant’s Agent. This statement refers to the land in question as “a triangular plot bordered on 2 sides with mature hedges and trees, with an open unmarked, unfenced boundary to the open field. It has a gated access and is irregularly surfaced with an unbound stone layer”. In terms of the use, the agent states “The site is used for the parking of operatives and visitors to White Moss Quarry [sic], the parking is irregular and not marked out. There are some ancillary items of equipment

and materials on the application site... The site is only used during the operation of the quarry and is closed off when the establishment is not operating”.

5.5. Whilst the hours of operation are not explicitly stated in the supporting information, it is understood from the latest planning consent relating to the quarry that the authorised hours of operation are 07:30 to 18:00 Mondays to Friday and 07:30 – 12:30 Saturdays. Plant maintenance may only occur between 07:30 to 18:00 on Mondays to Saturdays but that on Saturdays moveable plant and vehicle maintenance is to be carried out within designated buildings. No working takes place on Sundays or public holidays.

5.6. By way of an email dated 4 August 2014, the Applicant’s Agent has confirmed that the Applicant does not propose to submit any additional information over and above that which is already in the Council’s possession. The Agent does, however, request that correspondence between the Applicant and the Council since the Application was submitted it taken into consideration.

5.7. One of the issues previously identified by the Local Government Ombudsman related to the lack of a definitive red line for consideration by the Council. In response to a request from the Council, the Applicant has now submitted a plan that outlines the entirety of the Site with a red line with no annotations. For the purposes of this report, this new plan is considered the definitive plan upon which the application is based.

6. REPRESENTATIONS ON THE APPLICATION

6.1. Whilst not legally required to carry out consultation on such application, the Council sent letters of notification of the Application to local residents and the town Council. In response to those notifications, the Council received a number of responses, all of which objected to the grant of a certificate. Not all of the representations received are relevant to an application for a certificate of lawfulness, because they deal with issues of planning merits. The representations which are of relevance to the Application can be summarised as follows:

6.1.1. **20 Nursery Road** - Equipment was stored on the field as a short-term favour for a friend of the field owner, this was cleared. Information supplied in the past contradicts the current declarations made by the applicant.

6.1.2. **6 Woolaston Drive** – The aerial photograph dated 27 June 2000 does not support the claimed use. The area of hardstanding referred to in the accompanying flight report, certificate and statement is a fraction of the application site.

6.1.3. **66 Close Lane** – As a user of the footpath, the area was used for agriculture in 2001. The aerial photograph dated 27 June 2000 shows no parking, no storage, no vehicles, no machinery and no equipment. The hardstanding which now fills the plan area was laid in approximately 2005.

6.1.4. **68 Gowy Close** – No recollection of any vehicles, machinery or equipment being parked on the site until 2005. Aerial photographs dated 1998, 2000, 2003 and 2005 show no evidence of any vehicles. Aerial photographs dated 2006 do show the parking of vehicles and trailers. The enforcement officer for Cheshire County Council stated that the field had been cleared in 2008; this is a break in the 10-year continuous use period. At a meeting of the liaison committee it was stated that Mr Beecroft and the late Mr Needham purchased the site in 1983, this differs from the current claim that the land was purchased in 1981. It was also stated at the same meeting that Mr Beecroft had no need for parking space outside of the quarry boundary.

6.1.5. **Swallow Barn** – There has been a variety of machines on the site for only a few years and not the 10 years as suggested.

6.2. In addition to local residents, **Alsager Town Council** also made representations on the application. The Town Council states that no new evidence had been provided by the applicant following the refusal of the earlier application (application reference 10/0296C). The letter from the Town Council refers to an aerial photograph from 2000 and provides their analysis of what that photograph shows. The letter concludes by stating that the Town Council does not consider that the applicant has proven that the use of the land for the purpose of parking and storage of vehicles, machinery and equipment began more than 10 years prior to the date of the application and recommended that the certificate be not issued.

7. OTHER RELEVANT INFORMATION

7.1. The following pieces of information, held by the Council, which are considered to provide information relevant to the determination of the application are as follows:

7.1.1. Response dated 9 November 2009 to a Planning Contravention Notice issued by the Council.

7.1.2. Documents relating to application 10/0296C as referred to in paragraph 4.1 above

7.1.3. Documents relating to an application 10/4139C referred to in paragraph 4.2 above.

7.1.4. Minutes of the White Moss Quarry Liaison Group.

7.1.5. Correspondence from the Applicant's Agent in connection with the proposed revocation of the original certificate issued under the Application, including extracts from a visitor log for White Moss Quarry which covers the period 1 September 2012 to 2 August 2013.

8. RELEVANT CASE LAW

8.1. The identification of the appropriate planning unit (whether larger or smaller than the land specified in the application) is an essential part of the decision whether a certificate under s191 should be granted – *Sellars v Basingstoke and Deane Borough Council* [2013] EWHC 3673 (Admin); per Mr Ockelton sitting as a deputy high court judge

21. An enforcement action against the use of land on the ground that there had been a material change of use would not confine its ambit to the piece of land on which the use in question was taking place, nor could it be confined by the occupier's specifying that that land and no other should be taken into consideration. It would begin by identifying the appropriate planning unit. Having done that it would consider whether in relation to that planning unit there had been a material change of use, and would go on, if required, to consider whether the new use had been continuing for ten years and so had become immune from enforcement action. The operation of the provisions of s 171B (time limits for enforcement) have no meaning outside the enforcement process; and that process is in my judgment imported hypothetically into s 191 by the reference to the time for enforcement action having expired.

8.2. In respect of determining the planning unit, the leading case is that of *Burdle v Secretary of State for the Environment* [1992] 1 WLR 1207; per Bridge LJ

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

But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another...

Thirdly, however, it may frequently occur that, within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes [and] in such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

....

It may be a useful working rule to assume 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 in substance to a separate use both physically and functionally.

9. ASSESSMENT OF THE APPLICATION

9.1. The first matter to be considered is whether there has been a material change in the use amounting to development. This necessitates an identification of the planning unit to which the land belongs. The Site forms part of a larger field for which the recognised lawful use is agricultural. The Site is bounded on two sides by native hedgerows. A boundary has been created to the remainder of the field with an opening that permits access into it.

9.2. In this case, the unit of occupation comprises the larger field, which is owned by Mr Beecroft and Mrs Need. The recognised lawful use of the wider field is agricultural and thus this would be the recognised use of the Site itself (subject to the outcome of this Application). Applying the starting point in Burdle, the planning unit would be regarded as being the entire field. No direct evidence has been submitted by the Applicant to demonstrate that the Site has become a planning unit in its own right. However, Officers are of the view that the Site is a separate planning unit because it has become a separate and distinct area from the larger field and is occupied for substantially different and unrelated purposes to the field as a whole.

9.3. The change in the use of the Site from agriculture to parking / storage uses amounts to a material change of use and comprises development as defined, it is then necessary to consider whether planning permission was required and, if so, whether planning permission was granted. There are no permitted development rights that would have permitted such a change of use without the need for the express consent of the Council, thus planning permission would have been required. In this respect, the Council has not granted express planning permission for the change of use.

9.4. Thus it is only if the change of use is immune from enforcement action that the requirements in section 191(2)(a) are complied with. As explained previously, the relevant period in respect of a change of use of this type is **10 years** from the date prior to the date of the application, in other words January 2000.

9.5. The paragraphs that follow evaluate the various sources of evidence available.

Aerial Photograph 1998

9.6. Although technically prior to the relevant period for the purposes of the application, within the delegated report for the previous application, there was a reference to an aerial photograph dating from 1998. The author of the report states that it shows *“one indistinct item in the very corner of the field but otherwise the whole field appears to be ploughed”*.

9.7. No trace of the actual photograph can be found within the Council's records, but the assessment made by the case officer remains relevant in the absence of any other opinion as to the photograph or in the absence of a different conclusion having been reached in an appeal. The evaluation of the photograph casts doubt on the claim in the application form that the use commenced in August 1981.

Aerial Photograph 2000

9.8. I have seen an aerial photograph supplied by the Applicant, which dates from 27 June 2000. This photograph shows, in my opinion, a change in the ground conditions within part of the Site with gap in the hedge between the Site and the access road to the Quarry itself. A total of what seems to be five vehicles are parked not in the Site itself but on the quarry side of the gap in the hedge and then along the access road to the Quarry. There is no visible

sign of any cars, machinery or equipment within the Site itself. There appears to be a pile of hardcore / stones to the south of the access, although one cannot say what the purpose of that might be. The majority of the Site remains either grass or vegetation covered.

9.9. The Applicant contends that the photo demonstrates that "*the access to the site is evident, the use of the site, with changes in the ground conditions clearly visible*". I do not agree. I accept that there is a gap in the hedge to the field from the access road, which could constitute an access to the Site. I also accept that there is a change in ground conditions to part of the Site, whether this is from disturbed earth or compacted hardcore (or similar), is not clear³. I further accept that an aerial photograph is but a snapshot of one day in time. However, the photo does not provide evidence that the Site was being used in 2000 for the parking of vehicles or the storage of machinery or equipment. As stated above, there are no cars in the Site, nor is any machinery or equipment discernible.

9.10. Given that the Applicant asserts in the application form that the use of the whole of the Site commenced in 1981 it would not be unreasonable to expect that, were that the case, the area of ground 'disturbance' would have been considerably larger than shown in this photograph particularly as the Site would have had over 19 years' worth of cars and other vehicles driving over it and equipment stored upon it.

9.11. Furthermore to the extent that the photograph could be said to demonstrate some use of part of the field for the parking of vehicles, it is impossible to discern from a photograph whether such 'disturbance' was caused by agricultural vehicles or by vehicles associated with the Quarry.

9.12. My conclusions on this photo are strengthened by the content of the statutory declaration accompanying the Application, which, contrary to the application form itself and supporting documentation, states that the continual use of the Site did not occur until 2001. 2001 clearly postdates this photograph upon which reliance is placed.

Aerial Photograph 2003

9.13. Within the delegated report for the previous application reference was made to an aerial photograph dating from 2003. According to the author of that report the photograph "*shows a roughly triangular area of bare ground measuring approx. 60 metres along the quarry access road by approx. 50 metres along Crewe Road by approx. 50 metres across in the corner of the field but there is nothing distinguishable on this area. There appear to be a number of items randomly scattered across the remainder of the field to the east but since this area is now clear no lawful use can be claimed in respect of it.*"

9.14. No trace of the actual photograph can be found within the Council's records, but the case officer's evaluation remains relevant in the absence of any other opinion as to the photograph or in the absence of a different conclusion having been reached on appeal. Whilst the extent of the 'bare

ground' appears to have increased since the 2000 photograph, given the absence of any vehicles or other equipment, it cannot be said that the photograph supports a contention that the Site was used for the parking / storage of vehicles and the storage of machinery /equipment in 2003.

Aerial Photograph 2005

9.15. Within the delegated report for the previous application reference was made to an aerial photograph dating from 2005 was referred to. According to the author of that report it showed *"the same roughly triangular area now covered in part by what appears to be a hard standing but still partly covered by vegetation from the corner alongside the quarry access road and on which there appears to be about 12 vehicles, skips and other contains and a small area covered with items which again may be stone blocks. This photograph clearly shows vehicle tyre tracks around the remainder of the field to the east but turning around outside the boundaries of the site suggestion that the farm was indeed 'ploughing around' anything in the field at that time."*

9.16. No trace of the actual photograph can be found within the Council's records, but the evaluation remains relevant in the absence of any other opinion as to the photograph or in the absence of a different conclusion having been reached on appeal. It is considered that the photograph lends some evidential support to a contention that the Site was in use as claimed in 2005.

Other Photographs

9.17. In December 2011 a number of black and white photographs were taken of the Site by an officer of the Council. These photographs show a number of parked vehicles, plant vehicles, wood, pallets, large rocks and other items on the Site. In addition, there is a clear entrance way onto the quarry access road. As the photographs are in black and white it is not possible to be certain as to the surfacing of the Site, although it does appear to be roughly surfaced in some material.

9.18. In my opinion, these photographs support the contention that the Site was being used in 2011 for the parking of vehicles and that it was being used for some form of storage.

Evidence From Local Residents

9.19. In both this and the previous application, local residents and Alsager Town Council have provided evidence contrary to the claims made by the Applicant. Whilst this evidence has not been provided in the form of statutory declarations, certain residents have offered to provide them if requested. It is not considered that the fact that the evidence does not appear in a statutory declaration format should mean that this evidence should be afforded less weight than that of the Applicant.

9.20. Clearly there are differences between the information provided by individual residents; it would be highly unusual if this were not the case. Residents accept that the Site has been used for the parking of vehicles, but state that this has only been since 2005. This evidence therefore does not

support the Applicant's claim regardless of whether the use of the Site commenced in either 1981, 1988 or 2001.

Evidence From Other Persons / Sources

9.21. In addition to residents, evidence exists from Mr Rod Brookfield, formerly an officer of Cheshire County Council, who had dealings with the Quarry during the course of his employment from April 2006 to April 2009. Mr Brookfield's recollections are set out in the delegated report for the previous application and I do not repeat them here. However, in summary, he notes that the Site was being used for various purposes, other than agricultural, in early 2007 and during 2008. A note from 2007 suggests that the owner was in the process of clearing the Site of redundant plant and machinery and stone stockpiles in January 2007. A note from 2008 suggests that the Site was being used for the sandstone blocks and gravel for the haul road and again indicates that the owner agreed to remove it. His conclusion is that the Site was not in continual use throughout the relevant 10-year period.

9.22. The minutes of the White Moss Quarry Liaison Group dated 19 November 2008 record that it was reported that Mr Brookfield "*was pleased to see that the field adjoining the quarry has been cleared of assorted materials*". In my opinion these public minutes indicate that the use of the Site has not been continuous throughout the required period.

9.23. In 2009, the Council served a Planning Contravention Notice in respect of the use of the Site. In response to the Notice, the Applicant's then agent replied on 9 November 2009 that the "*field began to be used for the parking of vehicles and the storage of ancillary equipment in 1988 after planning permission for the quarrying of sand at Whitemoss quarry was granted*". This information was confirmed in letter from Mr Beecroft dated 3 November 2009 in which he stated "*As owner of the field I am able to accurately recall when it first came into use for open storage and parking purposes. It was 1988 when sand extraction at Whitemoss Quarry first began and it was at that time that additional open storage space was needed. The field was used for storage of materials for the construction of the road, then sand washing plant and the weight bridge. Stone and hardcore needed to be stored on site*". However, the date of commencement of use of the Site as indicated in the response has subsequently been contradicted by Mr Beecroft himself in the current application.

9.24. In connection with the application for planning permission for a retrospective change of use, the case officer undertook a site visit (the precise date is unknown but would have been between mid December 2010, when the application was submitted, and the end of January 2011, when the report was completed). This is referred to in the following terms

When the case officer conducted his site visit [he noted] that the land had been used for the storage of skips / containers, building maters, and parking of vehicles and the formation of hardstanding for some time.

This information suggests that the Site was being used for parking and storage by this time.

The Applicant's Evidence

9.25. From the outset it is to be noted that the statutory declaration submitted on behalf of the Applicant does not reflect the use claimed in the application form. The application form claims that the lawful use is "*the parking and storage / parking of vehicles, machinery and equipment*". However, Mr Beecroft's statutory declaration refers the land as having been "*continually used for the parking of vehicles, with an established hard standing*". There is no mention in the statutory declaration to the storage of vehicles or the storage of machinery and equipment. The only reference to matters other than the parking of vehicles appears in the supporting statement and application form. Furthermore, the application for does not seek to establish the lawfulness of any hardstanding.

9.26. In a letter from the Applicant's Agent dated 7 August 2013, it is stated "*there has been no storage of ancillary equipment or machinery on the CLEUD site that relates to the quarry. There is a container on the site which from time to time has stored spares for machinery that is used in the quarry, but that is the only storage on the site that is linked to the quarry*"> However, apart from this statement there is not further information / evidence about the storage of machinery and equipment not connected with the quarry. Thus there is no 'evidence' submitted by the Applicant *per se* in support of the storage of vehicles or storage of machinery / equipment on the Site.

9.27. As part of the process towards the revocation of the former Certificate, the Applicant provided a visitor log for White Moss Quarry that covers the period 1 September 2012 to 2 August 2013. The letter from the Applicant's Agent explains that there is no legal requirement to keep a record of the workers, operatives or visitors at the quarry. However, as a matter of practice "*a record of those who have visited the [S]ite and who have then entered the working quarry*" is kept by the Owner. Whilst the log does provide details of visitors to the Quarry during that period, it does not on its face provide any evidence as to where those visitors parked. The log details the name, date, organisation, time in and time out and comments plus the signature of the visitor. From 2013, the log includes the car registration and details of whom the person was visiting. Even if it could be said that the visitor log is prima facie evidence of parking on the Site, it only covers the period September 2012 to August 2013 and thus does not provide evidence of parking on the Site for the entirety of the relevant period. The Applicant's Agent does explain in the letter that the log covers the "most recent" visitors to the site; however, following the Council's general invitation to submit any additional evidence, no further logs have been submitted and the Applicant has expressly stated that they wish to rely upon the evidence currently before the Council.

9.28. There are a number of inconsistencies contained in the Applicant's evidence, both in its own right and when read alongside that submitted in connection with previous applications:

9.28.1. In the previous application, the applicant claimed that the use commenced in 1988 (albeit that this related to a larger area than the current application). In the current application form it is claimed that the use of the Site commenced on 31 August 1981. Both dates appear uncertain, to say the least, given the content of the statutory declaration of Mr Beecroft submitted with the application wherein it is stated that the date upon which the continual use of the Site for the parking of vehicles commenced is March 2001.

9.28.2. In a letter dated 7 August 2013, the Applicant's Agent stated that there had been no storage of ancillary equipment or machinery on the Site. However in the supporting information submitted with the Application the same agent stated "*there are some ancillary items of equipment and materials on the application site.*"

9.28.3. As indicated above, the information provided by way of a response to the Planning Contravention Notice does not accord with the information now being provided in this Application as to when the use of the Site commenced.

10. IS THERE AN ENFORCEMENT NOTICE IN FORCE FOR THE SITE?

10.1. The final question for consideration under s191(2)(b) relates to whether the use contravenes the requirements of any enforcement notice currently in force.

10.2. There is no enforcement notice currently in force that relates to the Site and thus the use cannot be said to contravene any such requirements.

11. CONCLUSION

11.1. There was a material change of use of the Site amounting to development and this required planning permission. Thus the main issue for the determination of the application is whether the use is immune from enforcement action.

11.2. I am of the opinion that the Applicant's own evidence as to the claimed lawful use is neither precise nor unambiguous given a number of inconsistencies⁴. In addition, despite being offered the opportunity to provide any additional evidence to support the re-determination Application, the Applicant has chosen not to do so beyond relying on matters that were before the Council as part of the revocation process.

11.3. Additionally, evidence has been forthcoming from local residents, which suggests that the change of use of the Site did occur until 2005. Evidence from aerial photographs generally supports this contention. Furthermore evidence from other sources suggests that the use of the Site ceased at various points after 2005.

11.4. In light of all the available evidence, whilst the application is to be determined on the balance of probabilities, it is not considered that the Applicant has demonstrated to this standard that the use claimed is immune from enforcement action. As a consequence the application fails to meet the requirements of section 191(2)(a) and, in accordance with section 191(4), should be refused.

11.5. It is therefore recommended that the application be refused for the following reason:

The Applicant has failed to demonstrate, on the balance of probabilities that the use of land known as Triangle Field, Butterson Lane, Barthomley, Crewe, as outlined in red on the attached plan, for the parking and storage / parking of vehicles, machinery and equipment is immune from enforcement action on the basis of it having been used for in excess of ten years prior to the date of the application. In reaching this conclusion the local planning authority has taken into consideration evidence submitted by the Applicant, evidence from local residents and other interested parties and evidence which is contained within the authority's own records.