

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
IN THE ADMINISTRATIVE COURT**

Bristol Civil Justice Centre
Redcliffe Street
Bristol

06/02/2014

B e f o r e :

MR JUSTICE LEWIS

Between:

**The Queen (on the application of) CYRIL
FREEDMAN**

Claimant

- and -

**WILTSHIRE COUNCIL
- and -
PETER CROCKER**

Defendant

Interested Party

**Mr Peter Wadsley (instructed by Thrings, Bristol) for the Claimant
Ms Suella Fernandes (instructed by Wiltshire Council) for the Defendant
Hearing dates: 15th January 2014**

Mr Justice Lewis :

Introduction

1. This is a claim for judicial review of a certificate granted by the Defendant, Wiltshire Council, certifying that the use of land immediately south of the Old Workshop at Home Farm Business Park, Minety, Malmesbury in Wiltshire for vehicular parking was lawful. In brief, Mr Peter Crocker, had applied for a certificate of lawful use for the Old Workshop as Class B1 offices and use of the land to the south for an ancillary vehicular parking. He contended that there had

been a material change of use from uses of the land for agriculture to use for offices and as ancillary parking. He contended that those use had continued for a period of 10 years and so were immune from enforcement as a breach of planning control.

2. The Defendant did not accept that the Old Workshop had been used for offices for a period of 10 years and declined to grant a certificate of lawful use for the Old Workshop. The Defendant did, however, consider that there had been parking on the area of land to the south and issued a certificate stating that use of the land for vehicular parking (not simply for ancillary vehicular parking) was lawful. That meant that it would not be a breach of planning control to use the land for any form of parking, whether for purposes ancillary to the use of the Old Workshop, or by staff or visitors to other premises in the Home Farm Business Park, or residents of Minety or, indeed, by the public at large.
3. The Claimant, Mr Freedman, a resident of Minety, challenges the grant of a certificate of lawful use for parking. He contends first that the Defendant had no jurisdiction under section 191 of the Town and Country Planning Act 1990 to substitute a different use, vehicular parking, for the use applied for, which was ancillary vehicular parking. Alternatively, the Claimant contends that the Defendant erred as it did not consider whether the land to the south of the Old Workshop had been used for parking, rather than ancillary parking (in connection with the use of the Old Workshop), for a continuous a period of 10 years or more or, if it did, it reached a conclusion which it could not reasonably come to on the material before it.

The Legal Framework

4. Planning permission is required for development see section 57 of the 1990 Act. Development means the carrying out of building or other works, or the making of a material change in the use of land: see section 55 of the 1990 Act. In the present case, the relevant provisions are those concerned with a material change of use in land, in this case the change of use from agriculture to the use of the Old Workshop for office use and the land to the south for ancillary vehicular parking.
5. An enforcement notice may be served in the event that there is breach of planning control, that is, if an individual carries out building works or makes a material change of use in land without planning permission: see section 172 of the 1990 Act.
6. Section 171B provides a time limit within which enforcement action must be taken. In the event that enforcement action is not taken within those time limits, the breach of planning control is immune from enforcement action. Section 171B(1) of the 1990 Act provides for a four year time limit in respect a breach of planning control comprising the carrying out of building or other works. Section 171B(2) provides a time limit of four years in respect of a change of use consisting in the change of use of any building to use as a single dwelling. The relevant provision in the present case is section 171B(3) of the 1990 Act which provides that:

“(3) In the case of any other breach of planning control, no enforcement action may be taken after the period of ten years beginning with the date of the breach”.
7. Section 191 of the 1990 Act provides for the grant of a certificate of lawfulness of the existing use or development and, so far as material, is in these terms:

“191.— Certificate of lawfulness of existing use of development.

“(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 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 is 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) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired;
and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

“(3A).....

“(4) 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.

“(5) 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.

“(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

.....”

The Facts

8. Home Farm Business Centre is located between Minety and Upper Minety in Wiltshire. It occupies the site of a number of former agricultural buildings at Home Farm. It is accessed via a private track which also serves a number of private residential properties.
9. The Old Workshop, referred to in the application for a certificate of lawfulness as “Building A” was originally in use as a farm workshop. In about 2002, it was let by the owner, Mr Crocker, to Glebe Healthcare Limited.
10. On 22 April 2013, an application was made to the Defendant for a certificate of lawful use. The description of the use for which Mr Crocker sought a certificate was in the following terms:

“Use of the Old Workshop, Home Farm Business Centre Minety (Building A) as Class B1 offices with ancillary demonstration and welfare facilities and with of the land to the south of the Old Workshop building as an ancillary vehicular parking area. Use of former stables (Building B, Section A) as Class B storage.”
11. Plans were submitted as part of the application. A statement supporting the application was also lodged on Mr Crocker’s behalf. That statement contended that the Old Workshop had been in use for offices for a continuous period of over 10 years and so were now immune from enforcement action. The statement also said that:

“The two buildings which are the subject of this application for Certificate of Lawfulness are identified on drawing reference number 0823/13/01 as buildings ‘A’ and ‘B’. An area used for vehicular parking ancillary to use of building A is also identified and on the above referenced plan. Each building is also identified on separate location plans.”
12. That was further elaborated on in paragraph 3.4 of the supporting statement which said:

“An area of land immediately to the south of The Old Workshop is used by tenants of the building for the parking of vehicles. This parking use has been ongoing for more than 10 years (see correspondence from Robert Mackenzie and Statutory Declarations of Peter Crocker and Duncan Lamb) and therefore also forms part of the corresponding application for Certificate of Lawfulness.”
13. The supporting statement concluded, so far as material, as follows:

“The area of land immediately south of The Old Workshop and identified on drawing reference 0823/13/01 has been in continuous use by tenants of The Old Workshop as an ancillary vehicular parking area without the benefit of planning permission. As it has been continuously in use as such for in excess of 10 years without any enforcement action having been taken in respect of the breach of planning control, it is now immune from enforcement action and a Certificate of Lawfulness should be granted accordingly;”
14. Various statutory declarations were lodged in support of that application. They included one by Mr Crocker who said the following:

“I have let building A on a continuous commercial basis for a period in excess of 10 years together with an area used for ancillary vehicular parking which lies alongside the surfaced access to the farmhouse (identified on plan reference 0823/13/01). Evidence of the associated rental income is presented in support of the application for a Certificate of Lawfulness together with a summary of rent due over the period November 2010 – April 2012 which is recorded in the corresponding accounts as ‘bad debt’.”

15. Other evidence, and other statutory declarations, were submitted to support the claim that the Old Workshop had been used for offices, and the land to the south for ancillary parking, for a period of over 10 years. Representations were also submitted by solicitors acting on behalf of persons who objected to the grant of a certificate of lawful use. They sought to contend that the Old Workshop was not used as offices during the period 2008 to 2012 but was used for storage purposes. In relation to the area to the south, the representations said that:

“In relation to the parking area, it is submitted by the Residents that there was only ever approximately two cars parked outside of Building A which belonged to staff. After the company moved out of Building A in 2008, the parking to the south of Building A stopped completely and only one car would be seen in this area from time to time.”

16. Other statements were made in statutory declarations relating to the land south of the Old Workshop and the extent to which it was used as parking and whether that parking was connected with the Old Workshop or used by staff working at the Old Workshop.
17. An officer of the Defendant was authorised to take a decision on the application. There is a six page report dealing with the application. That report identified the site and described the applications. It noted that the onus was on the applicant for the certificate to establish on the balance of probability that the land had been used continuously for 10 years for the purposes stated in the application. The report set out a summary of the representations received. In relation to the Old Workshop that is, Building A, the officer’s assessment was in the following terms:

“It is considered that the applicant has not demonstrated that on the balance of probability that the use of the structure has been as B1 Offices for a 10 year period, either in totality or on a continuous basis. There is significant evidence in the form of Statutory Declarations submitted by third parties which substantively contradicts that evidence submitted by the applicant and consequently in this regard alone the version of events described by the applicant is rendered on balance less than probable. In particular the continuous 10 year period of use is very explicitly contradicted. The evidence submitted by the applicant in the form of invoices is specifically contradicted by the former company secretary and another company employee both of whom do not recognise the submitted documents as company records. The timing and authorship of building refurbishments is explicitly contradicted by former employees and in this context the “applicant’s” submission is rendered less than probable.

The evidence submitted, whilst disputed in terms of exact detail and length/timing of uses, generally confirms that Building A has been at least in part used for a mix of showroom for display of healthcare and mobility products and company offices. As such there is some level of agreement on this matter. However, it is not considered that the evidence submitted precisely and unambiguously demonstrates that Building A was in use as a B1 Office. Although exact dimensions are not given by any party the sketch layout plans that have been submitted by various parties indicate that the majority of the floor space in use for display purposes. It is considered that this in effect was display to customers and is therefore a showroom. The office space, whilst at least for part of the claimed 10 year period was the sole office space for the company, is clearly substantially smaller than the showroom space and was in effect ancillary to that use. A display area/Showroom with ancillary offices is not a B1 Office use as it falls to be defined as sui generis i.e. without specific use class. Furthermore regarding the B1 Office use third parties have made submissions that the building was vacated by the principle user “Glebe Healthcare” between 2008 – 2012, which is a substantial break and would not amount to a continuous, unbroken period of office use. The applicant has subsequently submitted a further statutory declaration that a further third party – an IT specialist – sub let at least part of the office space during this intervening period. This submission was made following the initial “objector” submissions. The IT specialist company appears to have been a single individual who installed IT and telecoms hardware and software to other businesses and so was clearly out

of office for much of the working time. The extent and nature of the related “office” use could at best only have been very minimal. In this context it is not considered that this has been demonstrated precisely and unambiguously.

Turning to the submitted invoices for the rental of the structures the applicant re-submitted this documentation at the request of the case officer as the original submissions were at least in part illegible. Further clearer versions have been submitted albeit some remain not entirely legible. It is noted above that the “objectors” including the former company secretary have made sworn declarations that they do not recognise these as company documents. In addition the invoices do not cover the whole 10 year period extending only from 2004 and include a number of gaps during the 10 year period where there appear to be no invoices available/rent paid. The Council has evidence of business rates being paid at this building for the period 2003 – 2012 – slightly less than 10 years. The Council’s evidence does not specify what the business activity taking place was and certainly not in terms of a planning use class. It is considered that the “applicants” evidence is not sufficient nor sufficiently precise and unambiguous. The photographs submitted by the applicant are undated but the covering letter/statement refers to the Nov/Dec 2003 period. These appear to show both office and showroom spaces. No other corroborative evidence of bill payments for the 10 year period has been submitted i.e. lighting, water etc. Taken together with the submissions of “objectors” including former company employees and given the limited information that the Council itself can present in terms of business rates it is not considered that on the balance of probabilities the B1 Office use of Building A has been precisely and unambiguously demonstrated over a continuous 10 year period by the applicant such that a Certificate of Lawfulness can be granted.”

18. The officer did not consider that the applicant had established that there had been over 10 years continuous use of the land for use for office use. The officer, therefore refused, the application for a certificate of lawful use for the Old Workshop.
19. The officer dealt separately with the land to the south. The report describes the issue in the following terms:

“The “applicant” submits through Statutory Declarations that the area immediately south of Building A (The old workshop) and has identified on plan number 0823/13/01 has been used for vehicular parking for a continuous period of 10 years.

The “objectors” through statutory declaration assert that the only vehicles parked in the identified location were two staff vehicles and that this activity ceased when the company moved out of the building in 2008. The “objectors” statement goes on to say that only one car would be seen in the area from time to time after 2008 albeit at least one objector appears to contradict himself by acknowledging this position but then further asserting that the area was not in use for parking after 2008 at all.”

20. The officer’s assessment is as follows:

“The “applicant” submits through statutory declaration and supporting aerial photograph that the land immediately south of Building A has been in use for vehicular parking for a continuous period of 10 years.

The “objectors” assert through statutory declaration that the use was not continuous for the 10 year period.

The Council’s own aerial photographs dating to 1991 demonstrate that the land was laid out as hardstanding and in use for vehicular parking 10 years ago i.e. 2002. The statutory declarations of both parties acknowledge that the use has continued during at least part of the intervening 10 year period. The “objectors” statement appears to slightly contradict itself in that it states that

parking ceased when Glebe Healthcare vacated the building in 2008 but one car would be seen in the area from time to time thereafter. This latter statement appears to indicate ongoing usage for parking. Clearly parking associated with a “business park” unit will not be constantly in use for parking over a 24 hour period 7 days per week per year round. By its very nature there will be periods when spaces were not in use. However, given the other statements made by the “objectors” as to parking constraints at the “Business Park” as a whole it appears less than probable that vehicular parking would have ceased entirely after 2008, if anything the availability of spaces is more than likely to have been taken up, at least partially, as car usage and ownership has increased over the intervening period and continues to do so. Certainly parking demand is unlikely to have decreased at the site such that the available spaces would not have been taken up in part. At the time of the officer site visit the area was in use for parking.

Whether or not this parking was specifically used by Glebe Healthcare is not material, all that needs to be established is that parking continued uninterrupted for the 10 year period. Whilst the exact nature and extent of the use of building A has been disputed and it is not considered that a B1 office use has been demonstrated this does not in and of itself automatically mean that the adjacent parking uses is not established as a consequence. This is a separate matter and certainly evidence submitted from both sides indicates that some level of usage albeit of a disputed nature has taken place within the structure at least since 2003. On the balance of probability and the basis of the evidence available to the Council it is considered that the use of land to the south of building A has been in use for vehicular parking for a period of 10 years and a Certificate of Lawfulness can be granted in this regard.”

21. In other words, the application was a certificate for use of the land to the south of the Old Workshop for ancillary vehicular parking, that is parking in connection with the use of the Old Workshop for office use. The officer found that there was not 10 years continuous use of the Old Workshop for offices. Consequently, there could not be over 10 years use of the land to the south for ancillary parking in connection with the Old Workshop as offices. The officer instead substituted a different description of the use, that is use for parking. The officer considered that there had been some parking taking place for a continuous period of 10 years or more so decided to grant a certificate of lawful use for the land to the south of the Old Workshop for use as parking. The officer did not consider that it was necessary to distinguish between periods of ancillary parking (when the parking was in connection with and ancillary to the use of the Old Workshop) and parking which was not so restricted. The officer considered that, provided there was some element of parking taking place on the land for a continuous period of 10 years or more, that was sufficient to grant a certificate of lawful use for parking.

Issues

22. Against that backgrounds, the following issues arise in this case:
 - (1) was the Defendant entitled under section 191(4) of the 1990 Act to substitute a description of a use for vehicular parking for the description of the use applied for, namely use for ancillary vehicular parking (that is parking in connection with and ancillary to the use of the Old Workshop)?
 - (2) If so, did the Defendant err by failing to consider whether the applicant had established on a balance of probability that the land south of the Old Workshop had been used for a continuous period of 10 years or more for parking (that is, parking unconnected with ancillary use of the Old Workshop) and by aggregating periods when the land had been used only for ancillary parking in connection with the use of the Old Workshop together with periods of use for parking which was not so restricted?

Analysis

23. By way of preliminary observation, it is important to identify the different uses that may arise in the present case. The Old Workshop and the land to the south had an existing use as use for agriculture. The applicant contended that there had been a material change of use to use of the Old Workshop for B1 offices and the land to the south to use for ancillary parking. The applicant sought a certificate that the use of the Old Workshop was a lawful existing use as the use had been carried on for a continuous period of 10 years or more. The applicant also applied for a certificate to establish that the use of the land for ancillary vehicular parking was lawful, that is that the land had been used for parking in connection with the use of the Old Workshop for a continuous period of 10 or more years. If established, that would enable persons, such as staff or visitors, parking in connection with and ancillary to the use of the Old Workshop to park on the land to the south without that amounting to a breach of planning control. The certificate granted, in fact, provides that the use of the land for the purposes of vehicular parking was lawful, that is that parking by anyone on that land would no longer be a breach of planning control. If established, that use would enable anyone, such as a visitor to any of the business on Home Farm, or a resident of one of the houses, or, indeed, any member of the public, to park on the land to the south of the Old Workshop without that being a breach of planning control.

The Scope of Section 191 of the 1990 Act

24. Mr Wadsley, for the Claimant, submitted that the powers conferred by section 191(4) of the 1990 Act only enabled the local planning authority to change the description of the use for which a certificate had originally been applied for. He submitted that the power conferred by section 191(4) of the 1990 Act did not enable the authority to substitute a description of a different use from the use applied for. In the present case, the applicant had applied for a certificate for ancillary vehicular parking and, submitted Mr Wadsley, it was not open to the Defendant to substitute a different use, namely vehicular parking (that is, parking independent of the Old Workshop).
25. In my judgement, a local planning authority is entitled, in principle, to substitute a description of a different use from that described in the application form provided that the authority is satisfied, on a balance of probability, that the evidence demonstrates that the use as substituted has been carried on continuously for a period of 10 years or more. The Defendant in the present case, therefore had power to substitute a description of “vehicular parking” for “ancillary vehicular parking”, provided that the evidence established 10 years or more continuous use for vehicular parking. I reach that conclusion for the following reasons.
26. First, section 191(1) of the 1990 Act enables an individual who considers that “any existing use of buildings or other land is lawful” to apply for a certificate to that effect. The individual must specify the land and describe the use. Section 191(4) of the 1990 Act provides that if the authority is provided with information satisfying them of the lawfulness of (1) the use described in the application (2) that description of the use as modified or (3) a description substituted by them, they may grant a certificate. The section, therefore, recognises that the use as described by the applicant may not adequately describe the existing use which is lawful. To that end, the authority may modify the description, that is to say, it make changes or alterations to the description of the use as set out in the application so that the use as described correctly reflects the existing lawful use. The subsection also empowers the authority to substitute a description, that is to replace the description of the use set out in the application with a different description so that the description accurately describes the existing use that is lawful as established by the evidence of 10 or more years continuous use.
27. The wording of, and the purpose underlying, the section indicate that the powers in section 191(4) of the 1990 Act are to be construed broadly. The purpose underlying section 191(1) is to

provide a mechanism whereby an individual can obtain a determination of whether “any existing use” is lawful. The fact that the powers of the authority extend to modifying a description or substituting a description of a use indicates the power in section 191(4) is to be construed broadly. Both the width of the language used in section 191(4) and the purpose of the section indicate that the authority may, in appropriate circumstances, substitute a description of any existing lawful use for the use as described in the application. That will enable any certificate granted to reflect accurately the existing lawful use. The language of section 191(4) of the 1990 Act does not suggest that the authority is limited simply to rephrasing the description of the use as set out in the application. Nor would such a limited power be consistent with the purpose underlying section 191 of the 1990 Act.

28. Secondly, that conclusion accords with the existing case law. In *Panton v Secretary of State for the Environment, Transport and the Regions* [1999] 1 P.L.R. 92, Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, observed that one of the tasks of the authority would be:

“if it is satisfied that the description of the use specified in the [certificate of lawful development] application does not properly describe the nature of the use that resulted from the material change of use, then the decision-maker must modify/substitute such description so as properly to describe the nature of the use that resulted from the material change of use that occurred”.

29. For completeness, I was referred to paragraph 84 of the decision of King J. in *R (North Wiltshire District Council) v Cotswold District Council* [2009] EWHC 3702 (Admin). That paragraph, in my judgement, was dealing with a different issue, whether a lawful use could be described in general terms (there use for “general aviation purposes”), and not the issue that arises in this case, which is the scope of the powers conferred by section 191(4) of the 1990 Act.

The Approach of the Defendant in the Present Case

30. In the present case, the Defendant decided that the evidence did not demonstrate on a balance of probabilities that the Old Workshop had been used continuously for 10 years for office use. The implication is that the Defendant considered that that meant that the applicant had not demonstrated that the land to the south had been continuously used for 10 years for ancillary vehicular parking, that is parking ancillary to the use of the Old Workshop for offices.
31. The Defendant considered substituting a different description of the use, that is use for vehicular parking. The Defendant, however, considered that it was not necessary to consider whether the applicant had established a continuous period of 10 years or more for vehicular parking. Rather, as is clear from the officer’s assessment, the officer considered that provided there was evidence of some parking over a continuous 10 year period, that was sufficient to establish a lawful use for vehicular parking and the precise nature of the parking use was not material. In other words, the officer considered that a period of use for ancillary vehicular parking (that is, parking in connection with and ancillary to the use of the Old Workshop) could be aggregated with a period of use for vehicular parking (that is parking by any person, whether or not that parking was in connection with use of the Old Workshop). The officer considered that, provided there was a total of 10 years continuous parking of some description, that was sufficient to justify the grant of certificate that use of the land for vehicular parking was a lawful use.
32. In my judgement, that was an incorrect approach. If the Defendant was to substitute a different description of the use of the land, then the Defendant had to consider whether the evidence established that, on a balance of probabilities, that use as described had been carried on for a continuous period of 10 years or more. In the present case, if the Defendant was going to

substitute a description of the use as use for vehicular parking for the description of the use as use for ancillary vehicular parking, the Defendant had to be satisfied that the evidence demonstrated 10 years or more continuous use for vehicular parking. It would not be permissible to aggregate a period when the land was used for one use (ancillary parking, that is parking in connection with and ancillary to the use of the Old Workshop) with another period of parking (that is parking generally and independent of use of the Old Workshop). By approaching the matter in the way the Defendant did, a situation could arise whereby the land would be certified for use for vehicular parking and could be used by any person, such as a resident of the area, a visitor to a business or indeed any member of the public, even though the land had not been used for that purpose for a continuous period of 10 years.

33. In the present case, therefore, the Defendant erred as it failed to consider whether, on a balance of probability, the land south of the Old Workshop had been used for vehicular parking for a continuous period of 10 years or more. In my judgement, therefore, the certificate of lawful use in the present case should be quashed. In practical terms, that will mean that the application for a certificate of existing lawful use will, in part, be undetermined as the Defendant will not have decided whether to refuse that part of the application seeking a certificate of lawful use for the land to the south of the Old Workshop. The Defendant will, therefore, need to consider whether to reject that application or whether to modify the description or substitute a different description of the use if it is satisfied, on a balance of probabilities, that the land has been used for that use for a continuous period of 10 years or more.
34. Mr Wadsley submitted that all the evidence before the Defendant demonstrated that the use of the land to the south of the Old Workshop had been used, at least for large periods of time, for use in connection with and ancillary to the Old Workshop. He therefore submitted that the Defendant could not, on the evidence before it, reasonably conclude that the evidence demonstrated, on a balance of probabilities, that there had been use for vehicular parking generally for a continuous period of 10 or more years.
35. In my judgement, it would not be appropriate for the court at this stage to deal with the matter on that basis. At present the Defendant has approached the question of whether it can substitute a different description of the use on a flawed basis. The appropriate course is for the Defendant to consider whether or not it is satisfied that the evidence demonstrates, on a balance of probability, use for a continuous period of 10 years or more for vehicular parking. If it does not, then the Defendant will not substitute that description for the description of the use in the application and will not grant a certificate of lawful use. If the Defendant considers that the evidence does establish that on a balance of probabilities, then it is open to the Defendant to substitute a different description of the use and grant a certificate. In either case, the Defendant's decision will be subject to judicial review on the usual principles of public law. However, it is best for the Defendant to carry out its assessment first of whether or not the evidence does establish, on the balance of probabilities, use for vehicular parking for a continuous period of 10 years or more.

Conclusion

36. A local planning authority has power under section 191(4) of the 1990 Act to substitute a description of an existing lawful use for the use set out in the application provided that the authority is satisfied, on a balance of probability, that the evidence demonstrates that the use as set out in the substituted description has been carried on continuously for a period of 10 years or more. In the present case, the use applied for was ancillary vehicular parking, that is parking in connection with and ancillary to the use of the Old Workshop for office use. The Defendant had power to substitute a different use, namely use for vehicular parking (that is, vehicular parking by any person, and not limited to parking in connection with and ancillary to the use of the Old Workshop) provided that it was satisfied, on a balance of probabilities, that the land had been used for vehicular parking for a continuous period of 10 years or more. The Defendant

was not entitled to aggregate periods of use for ancillary parking with a period of use for parking generally in calculating whether there had been 10 years or more continuous use for parking. The Defendant did not, however, approach the question of substituting the description of vehicular parking in the correct way and did not consider whether the evidence established, on a balance of probabilities, that the land to the south of the Old Workshop had been used for a continuous period of 10 years or more for the use as set out in the substituted description. For those reasons, the claim for judicial review succeeds and the certificate of lawful use granted on 30 July 2013 will be quashed.