Appendix 7-
Copy of decision notice PL/2023/02422 and officers report

Wiltshire Council

The Town and Country Planning Act 1990

Refusal of Certificate of Lawful Use or Development - Existing Use or Development

Application Reference Number: PL/2023/02422

Decision Date: 10 July 2023

Applicant:	Floortrak, Unit 7 Ash Hill Common, Sherfield English, Wiltshire, SO51 6FU
Particulars of Development:	Certificate of lawfulness for the operation of business outside of the originally consented hours restricted under planning permission S/2002/1994
At:	Unit 7, Ash Hill Common, Sherfield English. Romsey, SO51 6FU

Wiltshire Council hereby certify that this application for a Certificate is **REFUSED** for the following reasons:

The applicant submits that Unit 7 and the "wider site" (access and parking areas) have been in continuous use without compliance with the hours of use Condition 4 of S/2002/1994 and in excess of 10 years. However, evidence in the form of two detailed Signed Statements has been submitted to suggest that the breach first occurred in 2019, just four years ago. A Statutory Declaration from a third occupier at Bunny Lane (the landowner) does not confirm that the breach has been continuous and for a period of ten years to the present day.

Therefore, sufficiently precise and unambiguous evidence has not been submitted to support the application and there is evidence to suggest that the breach of condition has not been continuous for a period of 10 years, as required by S 171(B)(3) of the 1990 Act. The start date of the breach has not been clearly established on the balance of probabilities.

Signed

Parvis Khansari - **Corporate Director, Place**

If the applicant is aggrieved by this decision an appeal may be lodged with the Secretary of State under the terms of Section 195 of the Town and Country Planning Act 1990. Appeals may be made on a form which is obtainable from the Planning Inspectorate via the Inspectorate website of Planning Portal –

www.planninginspectorate.gov.uk

www.planningportal.gov.uk/planning/appeals

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

A copy of the appeal documents should be sent direct to planningappeals@wiltshire.gov.uk.

CASE OFFICER'S REPORT

Application Reference:	**PL/2023/02422**
Description	**Certificate of lawfulness for the operation of business outside of the originally consented hours restricted under planning permission S/2002/1994**
Address	**Unit 7, Ash Hill Common, Sherfield English. Romsey, SO51 6FU**

POLICIES

- Town and Country Planning Act 1990 as amended ("the 1990 Act") Section 191 (c) and 171B (3)
- Town and Country Planning (Development Management Procedure) (England) order 2015
- 'I'm Your Man Judgement' (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions)

NPPG Paragraph: 006 Reference ID: 17c-006-20140306

With reference to Planning Practice Guidance relative to Lawful Development Certificates, 6 March 2014, it is noted that:

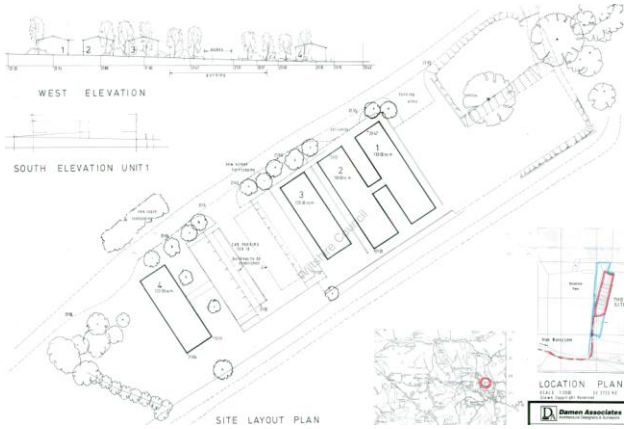
In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

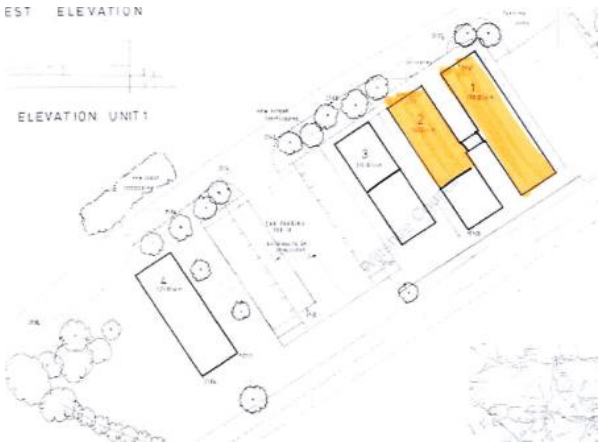
Site History:

S/1998/1271	ERECTION OF NEW PIGGERY BUILDING Approved
S/2002/1994	CHANGE OF USE ON SPECIFIC AGRICULTURAL BUILDINGS TO CLASS B1 AND CLASS B8 INCLUDING ASSOCIATED WORKS Approved by Southern Area Committee on 2/12/02 subject to conditions including No 4 (hours of use):

(4) The use hereby permitted shall not take place except between the hours of :
8.00am - 6.00pm Monday to Friday
8.00am - 1.00pm Saturday
No operations on Sundays or Bank Holidays.

Units 2 and 7 in yellow below:





Extract from letter on website dated 6/6/05 discharging details for S/2002/1994 conditions:

I refer to your letter and plans which were received on 23rd May 2005.

Condition 3
The information supplied is noted and no further information is requested at this time.

Condition 5
I can confirm that the details supplied are satisfactory and the condition is hereby discharged.

Condition 7
I can confirm that the details supplied are satisfactory and the condition is hereby discharged.

Condition 8
I agree that this condition relates to the roofing material. I can confirm that the details supplied are satisfactory and the condition is hereby discharged.

An extract from the committee report identifies the changes required for the buildings:

Not forming part of this application but submitted for information, is that it is intended the slatted floors will be removed and the internal walls lowered, a suspended concrete floor laid over to form the floor of the new buildings and internal wall application of insulated material would be sufficient. The roofs would be replaced with a profile metal sheeting of suitable colour and insulation. External walls would be painted with appropriate external paint. All external pens would be demolished and removed.

ENF/2022/00627 Unauthorised hours of working

APPLICATION DETAILS, SITE AND ITS SURROUNDINGS

The applicants seek a Lawful Development Certificate pursuant to Section 191 (c) of the 1990 Act to establish that the current hours of use for Unit 7 and the "wider site" are lawful, without compliance with Condition 4 of S/2002/1994.

The application forms states:

The applicant has occupied part of the wider site for more than 10 years and across this period they have operated their business in the same manner with the site being used for business purposes outside of the originally consented hours restrictions detailed in condition 4 of planning permission S/2002/1994.

The applicant considers that the use/activity and breach of condition 4 commenced more than 10 years ago, since 10-02-2012, without any interruption and without any material change of use of the land, and states:

It has been demonstrated, as a matter of fact, that the applicant has continually operated their business from the wider site for in excess of 10 years. Throughout this period the collection, return and loading of company vehicles has taken place beyond the hours permitted through planning condition 4 of planning permission S/2002/1194. As such, a Certificate of Lawfulness should be issued relative to the continued use of the site in accordance with planning permission S/2002/1994 in breach of condition 4.

They also state:

The applicant has occupied at least one unit within the wider site (being the land contained within the red line of planning application S/2002/1994) since 2005.

Date:	Name Change:		Unit Occupied:
	From-	To-	
Pre 2011 to 1.1.2013	n/a	n/a	Occupied Unit 2
1.1.2013 to present day	n/a	n/a	Occupied Unit 7
Pre 15.3.13		Floortrak Limited	
15.3.13	Floortrak Limited	Floortrak (Romsey) Limited	
22.9.22	Floortrak (Romsey) Limited	Floor Fix Limited	

The reason for the application is stated to be*: Although the applicant was aware of the hours condition effecting the wider site, it was believed that as long as activity was not taking place within the building/s, the collection and return of work vehicles to the site could take place outside of the times given in condition 4.*

Accordingly, out of necessity the company vans are loaded the day before a job and parked within the site car park (see pictures at appendix 4) and collected from site by staff, who will leave their cars, on the day that the contents are needed. Due to the travel times typically associated with getting to customers it is common for at least 3 of the vans to be collected before 6.00 am. Similarly, depending on how long an installation takes, or the travel times involved, vans will typically be returned to site after 6.00pm and more commonly between 7.00 and 9.00pm.

Additionally, the collection and returning of vans routinely continues on Saturdays at all times, whilst on Sunday's staff often attend site to load and prepare vans for early departures on Monday mornings.

Although detail is not being directly provided as part of this Certificate submission, it is also noted anecdotally that operators in other units within the wider site operate outside of the hours prescribed by condition 4 and have done so on an on-going basis far in excess of 10 years.

In light of the above, the applicant is seeking a Lawful Development Certificate to confirm that the applicant has carried out their activities for more than 10 years and across this period they have operated their business in the same manner with the site being used for business purposes outside of the originally consented hours restrictions detailed in condition 4 of planning permission S/2002/1994. Evidence has been submitted in the form of Statutory Declarations for Unit 7, Unit 2 and the "wider site" access and parking areas.

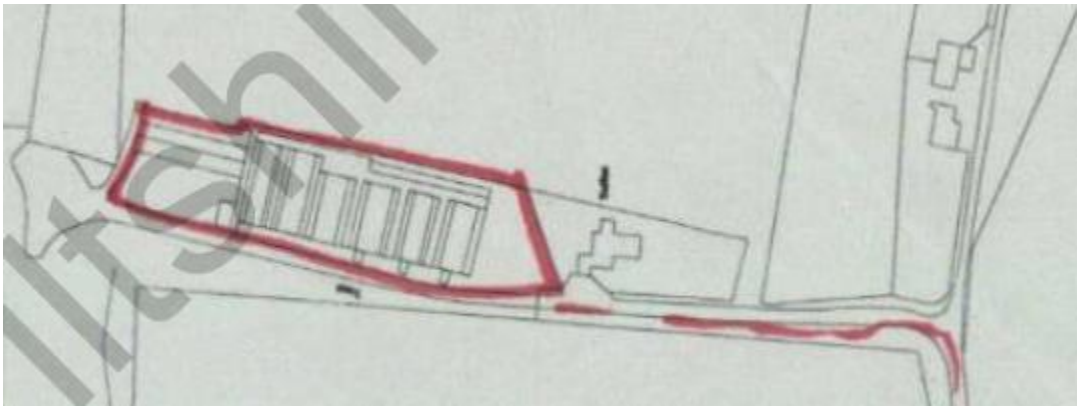
The Planning Unit

It is considered that the planning unit to be considered is as outlined in red on the plan submitted with the application and includes Units 2 and 7. The application excludes clear evidence for all other units.

The applicant is seeking confirmation regarding the use of the "wider site" without compliance with Condition 4. Condition 4 specifically relates to the use, and the use is governed by Condition 3 which states:

(2) The uses hereby approved are Class B1 and Class B8, as defied by the Town and Country Planning (Use Classes) Order 1987.

In turn, the condition is applied to the land and buildings within the red line of the original application S/2002/1994 which relates to the approved site plan:



As no evidence has been submitted other than for the wider site, Units 2 and 7, other units on the site are considered to be **excluded** for the purposes of this application for a Certificate of Lawfulness.

LEGISLATION

S191 of The Town and Country Planning Act 1990 provides:

191Certificate of lawfulness of existing use or 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.

CONSULTATION RESPONSES:

1 letter of objection.
2 signed statements of evidence and objection

CONSIDERATION OF EVIDENCE

<u>Evidence submitted in support of the application:</u>

Statutory Declarations

- Nathan Colin Marston- Business owner and occupier of Unit 7
- Luke Marston- Business owner and occupier of Unit 7
- Colin Jewell- Site owner and occupier of adjacent residential unit
- Sam Marston- Employee of Floortrak
- Daniel Penn Newman- Employee of Floortrak
- Darryl Parsons- Business occupier of Unit 1
- Darren Martin- Business occupier of Unit 5

Relevant extracts from stat decs:

5. The Business is family run. My role has always been managing director of the business. I now help oversee the day to day running of the Business with my son Luke at Floortrak UK. During the early stages of the operation of the Business I personally visited the Site before 8am and after 6pm on a daily basis.
6. I have since my involvement with the business accessed the Site between the hours of 6am and 9pm, sometimes earlier or later, on a day to day basis for the purposes of loading, collecting and dropping off vehicles in the parking area in connection with the Business.
7. As the original Director of the Business I oversee all operations. To enable installations to be carried out during the working day our staff are required to arrive at the Site prior to 8am, often as early as 5 or 6am, throughout the week to collect vehicles and go out on site visits for installations. Installations are carried out throughout the day and this therefore means that vehicles return after 6pm, often as late as 9pm on a day to day basis. Vehicles are then re-loaded and left ready for the following days installations. This practice has been ongoing throughout the operation of the Business from the Site.
8. The Business routinely operates on the same basis throughout the day on a Saturday and again therefore departs before 8am and returns after 6pm. In addition vehicles are loaded on Sundays and Bank Holidays in readiness for the following work days installations.

From the landlord:

2. As landlord I am aware that the Business is an established flooring company and installs flooring across the country and to do this it needs access to the Site to collect and drop off vehicles for installations. During the Business's time on the Site it has occupied Units 2, 4 and 7 but has consistently used the main car parking area for its vehicles.
3. I have lived at my property known as "Truffles", Ash Hill, Sherfield English, Romsey, Hants, SO51 6FU ("Truffles") since 1980 which directly adjoins the Site. I therefore have personal knowledge of the vehicle movements and activities taking place on the Site.
4. I have throughout my occupation Truffles noted vehicles operated by the Business accessing the Site before 8am and after 6pm on a day to day basis.
5. The Business routinely accesses the Site at similar times throughout the day on a Saturday and also accesses the Site on Sundays and Bank Holidays.

- Landlord Bank Statements, rental payments and bills 2010 to Jan 2023

Evidence submitted against the application:

Two Objectors have lived in their house in Bunny Lane since 2006 and have occupied a bedroom adjacent to the track since 2012. They directly challenge the applicant's evidence in a Signed Statement regarding the **year** the breach started and the **businesses** carrying out the breach:

10. I can state that whilst occupying the bedroom at the rear of our Property and subsequently the side of the Property I can confirm that the occupant of the outbuildings in question in thc land belonging to Truffles, Ash Hill Common, has certainly not been happening since 10th February 2012 as stated in the application form.

11. I confirm that from about September 2019 my husband and I started noticing the lights of vehicles travelling up and down the private access track to Unit 7, Ash Hill Common out of the hours permitted in the planning application at condition number 4 that the use

13. From around September 2019 the applicant consistently used their own vehicles to travel up the private access track to the units on the Truffles site at Ash Hill Common and then proceeded to drive their commercial vehicles out of the site at various times throughout the day including any when from 4am and after 6pm on weekdays and various times on Sundays and bank holidays in breach of the conditions.

18. In the course of completing my monitoring sheets in respect of the behaviours complained of, I can confirm that no vehicles other than those of Floortrak are using the access track outside of the permitted planning permission hours after 6pm on a daily basis and Sundays and bank holidays. Due to the fact that I have had to get out of bed to see

21. The statutory declaration of Sam Marston who is employed as Operations Manager of Floortrak UK, states that the business known as "Floortrak UK" was set up in 2014 by his father. I note that there appears to be a discrepancy in the date listed in the statutory declaration when the known business "Floortrak UK" was set up.

22. I can confirm that the alleged operation has not been happening since 2012 as stated.

A third occupier of Bunny Lane (Truffles) is also the landowner for the site and has stated in a Statutory Declaration:

4. I have throughout my occupation Truffles noted vehicles operated by the Business accessing the Site before 8am and after 6pm on a day to day basis.
5. The Business routinely accesses the Site at similar times throughout the day on a Saturday and also accesses the Site on Sundays and Bank Holidays.

However, this Statutory Declaration DOES NOT confirm that the breach has been continuous and for a period of ten years to the present day.

Analysis

- Unit 2 is stated to have been occupied by Floortrak Ltd pre- 2011 to 2013.

This does not constitute the necessary 10 years for the use of Unit 2 without compliance with condition 4 and therefore it has not been demonstrated that Unit 2 can be considered immune from enforcement action, should the breach continue.

- Unit 7 is stated to have been occupied by Floortrak Romsey Ltd since 2013 to present day.

The present use of Unit 7 and the wider site in breach of condition 4 (hours of use) are stated to have taken place from January 2013 continuously to present, which is in excess of ten years and would be immune from enforcement action.

- There is no clear and unambiguous evidence for the hours of use suggested in the statutory declarations having taken place other than in respect of Unit 2, Unit 7 and the wider site. This excludes the other units on the site.

However, there is evidence in a Signed Statement from two third parties (neighbours in Bunny Lane) that explains why the evidence in the applicant's statutory declarations is considered incorrect and inaccurate. The third parties state that the breach started in 2019 in their opinion (4 years to date). This would not be sufficient to render Unit 7 and the wider site immune from enforcement action.

- The applicant has responded to the Statements and said:

Although Mr and Mrs Cassar provided extensive detail on the situation at the site, it is noted that only anecdotal comment has been made relative to the primary issue, being the period of activity. The applicant has provided sworn statutory declarations from three independent persons in support of the application, whereas the complainants have simply provided signed statements with no supporting evidence to demonstrate that access was not being obtained prior to 2019. As attested by the applicant, the nature of the business has not changed throughout its operation and it would make no sense for practices to have suddenly changed in 2019 as has been alleged.

22 (20) No evidence is provided within the complainant's submission to prove that the *'operation has not been happening since 2012'*. Those people best able to confirm the situation are those that have been carrying out the activity, being the applicant and their staff. That said, in this instance, the applicant has provided evidence from the landlord who lives immediately adjacent to the site and thus perfectly placed to provide fully informed comment. Again, they have provided a formal declaration, unlike the complainants

Assessment and conclusion

S191 and 173 (B) of The 1990 Act are relevant, with the guidance in the NPPG para 006.

This application seeks to demonstrate, on the balance of probabilities, that the applicant has continually operated their business from Unit 7 and the wider site in excess of 10 years. Throughout this period the collection, return and loading of company vehicles has allegedly taken place beyond the hours permitted through planning condition 4 of planning permission S/2002/1194. The evidence submitted in support of the application supports this assertion and is submitted in the form of statutory declarations.

The evidence against the application is submitted in the form of signed Statements from two occupiers in Bunny Lane dating from 2019. The evidence provides clear details of the disturbance since 2019, including Saturdays and Sundays. The evidence submitted by them is very detailed and goes back to 2019 and on the

balance of probabilities, it is likely that if the use predated 2019, it would have been comprehensively detailed. Therefore, officers are not sufficiently persuaded by the evidence dictated by the applicant.

It is considered that there is insufficient evidence for the Local Planning Authority to conclude that on the balance of probabilities, the activities have occurred for a continuous period of 10 years. There is detailed evidence in the form of signed statements against this assertion, which suggests that the activities have occurred for a continuous period of 4 years only since 2019.

Therefore, sufficiently precise and unambiguous evidence has not been submitted to support the application and there is evidence to suggest that the breach has not been for a period of 10 years, as required by the 1990 Act. A Certificate of Lawfulness should be refused.

RECOMMENDATION: REFUSE

The applicant submits that Unit 7 and the “wider site” (access and parking areas) have been in continuous use without compliance with the hours of use Condition 4 of S/2002/1994 and in excess of 10 years. However, evidence in the form of two detailed Signed Statements has been submitted to suggest that the breach first occurred in 2019, just four years ago. A Statutory Declaration from a third occupier at Bunny Lane (the landowner) does not confirm that the breach has been continuous and for a period of ten years to the present day.

Therefore, sufficiently precise and unambiguous evidence has not been submitted to support the application and there is evidence to suggest that the breach of condition has not been continuous for a period of 10 years, as required by S 171(B)(3) of the 1990 Act. The start date of the breach has not been clearly established on the balance of probabilities.