Lucid Planning Ltd
11 Pinewood Road, Hordle. SO41 OGN
E: abarker@Lucidplanning.com
T: 07585 289488

Our Reference: 1163P/CertAppLet 2/AB

Development Management
Economic Development and Planning
County Hall
Bythesea Road
Trowbirdge
BA14 8JN

28 September 2023

**VIA PLANNING PORTAL**

Dear Sir/ Madam

**Unit 7 Ash Hill Common, Certificate of Established Use Breach of Condition- REVISED SUBMISSION**

We act on behalf of Floortrak, being a business that currently rents Unit 7 of the above referenced employment park, and take pleasure in submitting herewith a formal Certificate of Lawfulness (revised submission) for an existing activity being carried out in breach of a planning condition under Section 191 of the Town and Country Planning Act 1990.

This application follows refusal of a previous submission (PL/2023/02422) on 10 July 2023 (copy of decision notice and officer report contained at Appendix 7). The applicant was intending appealing the referenced decision, but in light of the Council apparently misinterpreting the content of one of the Statutory Declarations from the site landlord, and given the ability to provide additional evidence, in liaison with the Council's Planning Enforcement Team it was considered appropriate to first seek to resolve the matter without the need to resort to appeal. Such an approach is fully in line with national planning guidance.

Through this updated submission it is demonstrated that the applicant has had an interest in the wider site for considerably more than 10 years, whilst consistently throughout this period activities have been taking place outside of the originally consented hours restrictions as detailed in condition 4 of Planning Permission S/2002/1994 (see Appendix 1).

Within the remainder of this letter detail is given on the content of the current Certificate submission, reflection on the previous Certificate, the site and history, use of the site and the accompanying evidence. It clearly outlines the chronology, demonstrates the continued use and the breach for which a Certificate is now sought. The opportunity is also taken to reflect further

on the situation in the round, including the previously lodged statement by the landlord and decision notice S/2002/1994.

**Application Contents**

This Certificate of Lawfulness submission comprises of:

- Covering letter (this letter)- updated from application PL/2023/02422
- Application forms (via Planning Portal)- updated from application PL/2023/02422
- Submission fee in the sum of £298, including administration fee, paid via the Planning Portal
- Use Time Line linked to all provided evidence- updated from application PL/2023/02422
- Appendix 1, Copy of Planning Permission S2002/1994 with plan details- unchanged from application PL/2023/02422
- Appendix 2, Site location plan- unchanged from application PL/2023/02422
- Appendix 3, Key plan for referenced elements and photograph locations- updated from application PL/2023/02422
- Appendix 4, Site pictures- updated from application PL/2023/02422 to address previous comments from third party
- Appendix 5, Statutory Declarations and Statements from business owners, current employees, previously employee, landlords, adjacent occupiers within wider site and customers (12 in total). Original copies of the Declarations and Statements can be provided if required- updated from application PL/2023/02422
- Appendix 6, Historic evidence (record of rental payments, bills etc)- unchanged from application PL/2023/02422
- Appendix 7, Copy of decision notice PL/2023/02422 and officers report- additional Appendix
- Appendix 8, Copy of letter dated 1 June 2023 from applicant relative to objections received relative to PL/2023/02422- additional Appendix
- Appendix 9, sample of staff timesheets- additional Appendix

**The Site and History**

The site is located to the north west of Sherfield English. It is in a rural location accessed from Bunny Lane (north of A27), a private lane and then an access track (see Appendices 2 and 3). It was originally agricultural land and accommodated a number of buildings used for pig farming.

The site is owned and managed by Mr and Mrs Jewell and they secured consent for the initial change of use of the wider site and buildings (see Appendix 1) in December 2002. They also reside at '*Truffles*', which they had built in 1980, being a bungalow located immediately south of the site on the access track (refer to Appendices 3 and 4). There is a gate on the track immediately to the north of their property which they use to control access and to manage operations at the site. Given this, and their proximity to the application site, they are fully aware of all activities taking place and the timings that people are attending and leaving the site. Indeed, they have occupied the building adjacent to the site since the time when Floortrak started trading

from this location, being more than 17 years. It can be noted that much of the evidence provided in support of this submission has had input from Mr and Mrs Jewell, whilst they provide specific Declarations (see Appendix 5).

The access lane and track serve a range of users, including farmers, houses and other commercial operators, including a shop fitter business (Interior Build Uk Ltd) located at the junction of the lane and track (see statement from Stephen George, Interior Build owner contained at Appendix 5). It can be noted that across the wider area, including along Bunny Lane, there are a number of semi commercial activities taking place (refer to Appendix 4), including engineering and vehicle repair/ sales. All of these can attract activity across the day, night and at weekends.

The applicant recognises some of the residential sensitivity along the access route to the site and actively seeks to maintain the physical condition of the lane and track in order to provide a smoother and quieter route. Signs have also been erected to promote respectful behaviour by all drivers.

On 27 December 2002 Planning Permission S/2002/1994 was secured for:

**Change of use on specific agricultural buildings to class B1 and class B8 including associated works.**

The Planning Permission (see Appendix 1) contained 7 conditions, including:

**2) the uses hereby approved are Class B1 and Class B8, as defined by the Town and Country Planning (Use Classes Order)**

**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 operation on Sundays or Bank Holidays.**

**Use of the Site**

The applicant has occupied at least one unit within the 'wider site' (being the land contained within the red line of planning permission S/2002/1994) since 2005. During their time on site, they have traded consistently under the name "Floortrak UK" carrying out the same business function in the same way. The Company name (rather than the trading name), however, changed in September 2022 following the winding up of the previous company. Since February 2013 (the start of the 10-year period being evidenced through this submission), the changes to the units being occupied and the company operating from the site can be summarised as follows:

| 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 | |

Floortrak are a flooring business and install flooring and related products across the country. They currently employ 14 members of staff and this number has only varied slightly over their time on site. 6 members of staff are office based, whilst the remaining 8 are directly involved in going off site to carry out fitting. The business operates a fleet of 5 vans which are used to take equipment, products and fitters to customers. Again, the number of vans operating from the business has remained broadly consistent, with the minimum available at any time being 3.

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, the collection and return of work vehicles to the site could take place outside of the times given in condition 4.

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 (see statements from CPG Logistics, Jade Aden Interiors and First Floors within Appendix 5) it is common for at least 3 of the vans to be collected before 08.00. Similarly, depending on how long an installation takes, or the travel times involved, vans will typically be returned to site after 18.00 and more commonly between 19.00 and 21.00.

Additionally, the collection and returning of vans routinely continues on Saturdays and Sundays, whilst staff will often attend site at the weekend to load and prepare vans for early departures on Monday mornings. The same applies to Bank Holidays.

Although detail is not being directly provided as part of this Certificate submission, it is 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. Similarly, other businesses operating across the wider proximate area also generate activities before 08.00 and after 18.00, as do the numerous dwellings.

**Certificate History**

The applicant originally submitted a Certificate of Lawfulness for the breach of condition applied for here following extended communication with representatives of Wiltshire Council's Planning Enforcement team dating from July 2022. Concern had been raised relative whether the site was operating in line with the terms set out through planning condition. A Planning Contravention Notice was issued on 16 November 2022 with the requested details being duly returned to the Council.

The previous submission was subsequently made on 24 March 2023 (Council reference PL/2023/02422) and contact was maintained with the Case Officer throughout the application process to ensure that there were no queries. Through this contact it was initially indicated (10 May 2023) that '*it is likely that a certificate could be issued for Units 2 and 7 as shown… This could change if contrary evidence is received to challenge the assertions in the application'*. Two objections were subsequently received (from the same household and substantially containing the same text) and the applicant offered comment in the response issued on 1 June 2023 (copied at Appendix 8). Despite contact from the applicant nothing further was requested by the Council, whilst on 6 July 2023 it was indicated that the case had not yet been assigned to a solicitor ('*normally take two weeks')* whilst 2 working days later the refusal notice was issued on 10 July 2023. No further comments or evidence had been requested prior to this.

As evidenced here, further detail could have been produced if requested. If this were needed it would have seemed appropriate to have had a discussion rather than the application simply being refused without further dialogue.

Relative to the decision notice, it is reiterated that use of the site by the applicant extends beyond Unit 7, as they have occupied other units as well as utilising the '*wider site'* for access and parking purposes.

It is not clear why the two largely identical statements from local residents were considered more reliable than the business operators, staff or landlords who live immediately adjacent to the site (7 formal Declarations in total). Despite the assertion by the Council, it is not considered that the objectors actually offered any substantive evidence to demonstrate that the activity had not taken place before 2019.

It was also suggested by officers that '*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'*. Such a comment is confusing and it appears that the declaration of Mr Colin Jewell was misinterpreted. Paragraph 3 of the referenced Declaration confirmed that he had occupied his property adjoining the site since 1980 (i.e., more than 10 years) and paragraph 4 then stated that '*throughout my occupation (i.e., more than 10 years) [of] Truffles noted vehicles operated by the Business accessing the Site*'. The statement clearly confirms therefore that his observation covers more than a 10-year period. Appreciating this, the Declaration from Mr Jewell as presented here has been updated in an attempt to try and address

any uncertainty around this matter, confirming that he has lived adjacent to the site since 1980 and observed continued out of hours activity by Floortrak since their occupation of one of the units within the site for more than 17 years continually. The opportunity has also been taken by Mr Jewell to reflect on the content of the objection/s previously submitted to the Council. His wife Geraldine has also provided a statement to support the case, being a directly adjoining neighbour to the application site.

From the wording of the Officer's Report, it has been taken that the Council is no longer challenging whether the applicant has been located at the site for a continual period of more than 10 years, which had been asserted pre submission. Indeed, this point is not challenged within the decision notice.

Given the significance of this matter to the applicant, and the continued operation of their business, they had been preparing to appeal decision notice PL/2023/02422, but following communication with the Council Enforcement Team, have sought to progress this revised application in the hope that the time and cost associated with an appeal can be avoided.

Through this submission further evidence is being put forward in the form of:

- Updated Use Time Line
- Updated/ additional Statutory Declarations/ Statements from Luke Marston (owner), Colin Jewell (landlord and adjacent residential occupier), Geraldine Jewell (landlord and adjacent residential occupier), Wayne Pond (former employee), Richard Lord (customer), Paul Meyer (customer) and Stephen Cogdell (proximate business owner). These additions baluster the unchanged Declarations from planning application PL/2023/02422which are also resubmitted here (Appendix 5)
- Sample of staff timesheets referencing 12 different years (Appendix 9)

This new evidence sits alongside the detail originally submitted and further supporting information enclosed.

The applicant has commented on the objections previously received relative to PL/2023/02422 (Appendix 8). It remains the case that it cannot be understood why the Council decided to favour one party over many. It is not known if the objector/s had received advice relative to timescales for immunity from enforcement action or why they selected a specific date to start taking an interest in Floortrak. The applicant is, however, concerned that their efforts appear to be targeted at Floortrak. Although it is accepted that Floortrak operates outside of the consented hours, which is the purpose of this submission, it is difficult to believe that no other vehicles use the access lane and track either before 08.00 or after 18.00 when it serves other businesses and residential units. Yet the objector previously stated (paragraph 18) that *'I can confirm that no vehicles other than those of Floortrak are using the access track outside of the permitted planning permission hours on a daily basis'*. If nothing else, it is known that the occupiers of 'Truffles' frequently move along the lane and track outside of the indicated hours, but have not been recorded doing so.



It is not considered that the objectors presented anything substantive to counter the case presented by the applicant relative to the way that Floortrak operates or the hours staff keep, whilst these have not changed from initial occupation of the site in 2005.

**Evidence**

As detailed within the accompanying Use Time Line and Appendices 1 to 6 and 9, this submission is accompanied by extensive evidence to both prove the applicant's long term continued activity within the wider site and to illustrate that the business has continued to operate outside of the consented hours for the entirety of their involvement with the site (considerably longer than the 10 years applied for).

As previously highlighted, it is understood from Certificate decision PL/2023/02422 that the Council is no longer challenging the fact that the business has operated from the site for more than 10 years continuously. Similarly, with regard to demonstration of hours, from the previously submitted Certificate and register of activity provided by objectors it does not actually appear that recent activity can be questioned.

With regard to hours, although CCTV is in operation, due to issues of data storage these records are not kept over extended periods and are of little use here, acknowledging the activity records that the proximate resident has already shared with the Council. Appreciating this, although the applicant does not keep records of when a van is collected and returned, staff have always been required to produce basic time sheets. Unfortunately, as identified in the Statutory Declaration from Luke Marston a large number of records have now been destroyed as part of an on going housekeeping exercise. That said, it has been possible to collate a substantial sample of relevant timesheets including partial detail for 2008, 2009 and 2010 (prior to the 10 years being applied for but demonstrating long standing nature of operations in terms of hours kept), 2014, 2015, 2017, 2018, 2019, 2020, 2021, 2022 and 2023 (see Appendix 9).

These timesheets make it clear it is common place for fitters to be starting work through collection of the vans well before 08.00 and returning them after 18.00, a fact which is supported by the customer statements, whereby fitters are required on location before 08.00, having picked up the company vehicle and travelling having already taken place.

To further support this submission, and assist with filling any gaps within the timesheet details provided, Statutory Declarations and Statements have been provided by owners, landlords, staff (existing and former), customers and proximate businesses (Appendix 5) demonstrating that the way the business operates has not changed since it first came to the site and has been accessed on a day-to-day basis outside of the conditioned hours for more than 10 years.

For completeness key points to note from the provided Statements include the following:

<u>Statutory Declaration by Nathan Marston, former Floortrak Director</u>



*1…The business…has been operating from Ash Hill Common, Bunny Lane, Sherfield English since 2005…*
*6. I have since my involvement with the business accessed the site between the hours of 6am and 9pm*
*7. Our staff are required to arrive at the site prior to 8am..throughout the week to collect vehicles and go out on site visits…vehicles return after 6pm, often as late as 9pm…*
*8. The Business routinely operates on the same basis..on Saturday…In addition vehicles are loaded on Sundays and Bank Holidays*

Statutory Declaration by Luke Marston, Floortrak Director

*5. I have been involved in the general operations of the Business since 1/8/2014…I. Personally visited the Site before 8am and after 6pm on a daily basis*
*7…This requires staff to arrive at the Site prior to 8am, often as early as 5 or 6 am, throughout the week…vehicles return after 6pm, often as late as 9pm…This practice has been on going throughout my involvement with the business since 2014*
*8. The business routinely operates on the same basis throughout the day on a Saturday…In addition vehicles are loaded on Sundays and Bank Holidays…*
*9. Employees of the company submit paper timesheets at the end of each week detailing the hours worked. Although the company retains these records short term for recent activities, due to issues of need and storage they are routinely destroyed as part of on-going housekeeping….produced with this statement (as part of the revised Certificate of Lawfulness application) are timesheets...for 2008, 2009, 2010, 2014, 2015, 2017, 2018, 2019, 2020, 2021, 2022 and 2023. All of the timesheets clearly demonstrate access to the Site outside of the hours detailed in condition 4 of planning permission S/2002/1994, being before 08.00 and after 18.00 on a day to day basis, as well as at weekends, for the duration that the business has been trading.*

Statutory Declaration by Geraldine Jewell, Landlord and adjacent residential occupier

*..We are the freehold owners of the business units…I have lived at the property known as 'Truffles'…which directly adjoins the site, since built in 1980…I have noted vehicles operated by the business, and its staff, accessing the site before 08.00 and after 18.00 on a day-to-day basis. This has been continuous since 2005...and is still occurring…similar times throughout the day on Saturdays and Sundays, as well as Bank Holidays…I have not noticed any change in the level of vehicle movements from the site since the site was first occupied by the business in 2005…Activity commenced in 2005 and have remained constant ever since, including between January 2013 and January 2023…*

Within the Statutory Declaration by Colin Jewell, Landlord and adjacent residential occupier, the same points are noted.



Statutory Declaration by Sam Marston, member of staff

1. *I am employed as Operations Manager at Floortrak…and have been since 2015*
*4…I…personally visited the site before 8am and after 6pm on a daily basis.*
*5. I have since my involvement with the business accessed the Site between the hours of 6am and 9pm…*
*6….Staff are required to arrive at site prior to 8am, often as early as 5 or 6am, throughout the week. This means vehicles return after 6pm…I can confirm this has been the case since I was first employed in 2015.*
*7. The business routinely operates on the same basis throughout the day on a Saturday...In addition vehicles are loaded on Sundays and Bank Holidays…*

Statutory Declaration by Daniel Penn- Newman, current member of staff

2. *…My role since 2017 has been from learning to install to begin with to now being supervisor…and personally visited the site before 8am and after 6pm on a daily basis…*

*5…staff are required to arrive at the site prior to 8am, often as early as 5 or 6 am, throughout the week to collect vehicles…Installations are carried out throughout the day and this therefore means that vehicles return after 6pm, often as late as 9pm…This practice has been ongoing since I started working for the business.*
*6. The business routinely operates on the same basis throughout the day on a Saturday. In addition vehicles are loaded on Sundays and Bank Holidays…*

Statement by Wayne Pond, former member of staff

*I worked for Floortrak from February 2013 to October 2016…During this time company vehicles were kept at the parking area at unit 7…For the duration of my employment my hours of work were anytime from 06.00 until the job was finished...When fitting I would aim to be at the customers address by the start of the working day…This meant that I would have to collect the company van typically between the hours of 06.00 and 07.00…it would be unusual for me to return the company van to the Floortrak offices ...until 18.00 and often it could end up being much later up to 23.00…Whilst at work my car would be parked in close proximity to the Floortrak office…*

Statutory Declaration by Darryl Parsons, occupier of unit 1/ neighbouring business

1. *I am the tenant of unit 1...and have been since January 2007…*
*4…whilst present note vehicles operated by the business accessing the site before 8am and after 6pm on a daily basis, including Sundays and bank holidays…*

Statutory Declaration by Darren Martin, occupier of unit 5/ neighbouring business

1. *I am the tenant of unit 5…and have been since 2006…*
*4… whilst present note vehicles operated by the business accessing the site before 8am and after 6pm on a daily basis, including Sundays and bank holidays…*

Statement by Richard Lord, Managing Director of CPG Logistics, long standing customer of Floortrak

*…CPG Logistics has regularly used the services of Floortrak…since early 2000…Floortrak staff have always been required to arrive at our premises no later than 08.00 when attending site…our work typically runs past 18.00…and Floortrak staff are required to be flexible in accommodating these extended hours which has often meant that their departure was significantly later and up to 7pm or even later...Floortrak also more regularly carry out emergency repair works for us on weekends…*

Statement by Paul Meyer, Director of First Floor Uk Ltd, long standing customer of Floortrak

*It is confirmed that First Floor has..used the services of Floortrak..since early 2006…*
*First Floors operate across the country…Floortrak staff have always been required to arrive at sites no later than 08.00..for both weekdays and weekends…the nature of our projects often requires additional time beyond standard working hours and our work typically runs past 18.00…*

Statement by Stephen George, owner of Interior Build located proximate to the site at the junction of the access lane and track

*I…have had my business here since 2011…Floortrak and their employees have been using the track past my office which is 300 metres to their office outside permitted hours during this time.*

Given the content of the statements it is clear that activity has been taking place outside of consented hours (condition 4 of Planning Permission S/2002/1994), whilst the method of operation and level of activity has not changed since 2005. Indeed, why would the method of activity realistically change. These details provide clear evidence that the site has been accessed on a day-to-day basis by staff outside of the previously approved hours.

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

(Our underlining)
Paragraph: 006 Reference ID: 17c-006-20140306

The Council should also bear in mind that whilst the applicant may not have produced independent evidence of a breach for each individual day over the last 10 years the requirement is for the use in breach (in this case the business use of the property outside of the permitted operating hours) to have been continuous. Small breaks or compliances does not affect the continuous nature of this use as is demonstrated by the case of North Devon District Council v

SofS 1998 PLCR 356, where a condition was not actively breached for 7 months of the year due to the nature of the use (holidays) and in the case of Swale Borough Council v First Secretary of State and Roger Lee 2005 EWCA Civ 1568, where the Court held that it was right to distinguish between a '*cessation of use and absence of the occupier for a time'* (this again related to an occupancy condition). In this case there has been no cessation of use throughout the 10 year period which has been ongoing and consistent.

Extensive detail has been produced to support this application, whilst the fact that complaints from a neighbouring occupier prompted the Council looking into the issue highlights the fact that activity is taking place outside of permitted hours. Earlier within this submission, and as part of exchanges associated with the previous application, the applicant has highlighted the inadequacy of the comments previously raised by the local objector and it is not considered that the comments provided constitute evidence to counter the extensive detail now put forward by the applicant.

Given the above/ attached it is contended that the submission demonstrates, as a matter of fact that the applicant has continually operated their business from the wider site for in excess of 10 years. Throughout the identified 10-year period the collection and return of company vehicles has taken place beyond the hours permitted by planning condition 4 of Planning Permission S/2002/1194. The additional detail provided here can only serve to strengthen this belief and counter comments previously made by third parties. 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'* and thus cannot be enforced against, negating the need to bring this matter before a Planning Inspector.

We hope that the above/ attached is in order but should you have any queries or require anything further please feel free to contact me. It is emphasised that if there are any issues the applicant would welcome the opportunity to explore these with officers prior to any formal decision being made on the application, something which unfortunately did not happen relative to application PL/2023/02422.

Yours faithfully

[redacted]

Adrian Barker
Director- Planning

C.C Mr Luke Marston, Floortrak

Enc.