

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251597
Site Address:	Hill Farm, Jouldings Lane, Farley Hill, Wokingham, RG7 1UR
Expiry Date:	17 September 2025
Site Visit Date:	2 September 2025
Proposal: Application for a certificate of existing lawful development for the use of Yard (known as Yard B) at Hill Farm, Jouldings Lane, Farley Hill, RG7 1UR for the manufacturing and distribution of concrete, ancillary parking of concrete mixing vehicles and loading equipment plus the storage of associated raw materials.	

PLANNING HISTORY

There is no planning history for the application red line.

The wider Hill farm site is a large established farm has an extensive planning history for agricultural buildings, an agricultural dwelling, certificates and a biogas anaerobic digestion power generation facility.

INFORMATION PROVIDED

By the Applicant:

- Statements of Truth from Mr Russell Butler of Butlers Services Ltd and Butlers Lettings Ltd and Andrew Sheperd of Monster Mix Ltd
- Aerial Photography (2013 – 2025)
- Photographs of Yard A from 2013 and 2015
- Business accounts indicating rent prices and changes.

By the Council:

- Details of Monster Mix Concrete's registered business address and the timespan they have paid business rates for.
- Case Officer site photos dates 2nd September 2025.

LEGISLATION

Town and Country Planning Act 1990 (as amended) (TCPA)

Section 57 requires that planning permission is needed for development of land.

Section 55 provides that development includes any *material change in the use* of land.

Timescale

Section 171.B(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 ten years beginning with the date on which the operations were substantially completed. However, The Act includes transitional provisions which provide that, where operational development was substantially completed before the 25 April 2024, the 4 year period will continue to apply.

Section 171B(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 ten years beginning with the date of the breach.

Section 171B(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.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful, he may make an application for that purpose to the local planning authority specifying the land and describing the use, operations, or other matter. As Section 191(1)(a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:
no enforcement action may 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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

CASE LAW

The Courts have held in *Gabbittas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630 that the relevant test of the evidence on such matters is "the balance of probability". The Courts have also held that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted. If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less 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."

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely

by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application accurately describes the nature of the use, the decision maker must modify/substitute each description so as to accurately describe the nature of the material change of use which occurred.

The Panton case was considered further by the Courts in *Secretary of State for the Environment, Transport, and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten-year period of unlawful use the Local Planning Authority, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example the unauthorised use had temporarily ceased) then any such period could not count towards the ten-year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten-year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

APPRAISAL

Proposal Description:

The application is for a Certificate of Lawful Existing Use to regularise the use of 'Yard B' at Hill Farm for the manufacturing and distribution of concrete, ancillary parking of concrete mixing vehicles and loading equipment plus the storage of associated raw materials.

In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

In the case of this Certificate, it must be demonstrated that the use has been on-going continuously for at least ten years prior to the submission of this application (4th July 2015).

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance

(NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

Site Description:

The application site consists of an area of land adjacent to the main arterial road that extends the length of Hill Farm, Jouldings Lane, Farley Hill, Wokingham, RG7 1UR. The site’s surroundings are a mixture of both agricultural and commercial uses/buildings.

Evidence submitted by the Applicant:

Aerial Photography (2013 – 2025)

Aerial Photograph of Hill Farm dated 21st July 2013 showing Yard A (Source – Ordnance Survey)



Aerial Photograph of Hill Farm dated 22nd February 2014 (Source – Google Earth)



Aerial Photograph of Hill Farm dated 25th March 2017 showing Yard B (Source – Google Earth)



Aerial Photograph of Hill Farm dated 23rd June 2018 (Source – Google Earth)



Aerial Photograph of Hill Farm dated 15th April 2020 (Source – Google Earth)



Aerial Photograph of Hill Farm dated 16th July 2021 (Source – Google Earth)



Aerial Photograph of Hill Farm dated 27th February 2022 (Source – Google Earth)

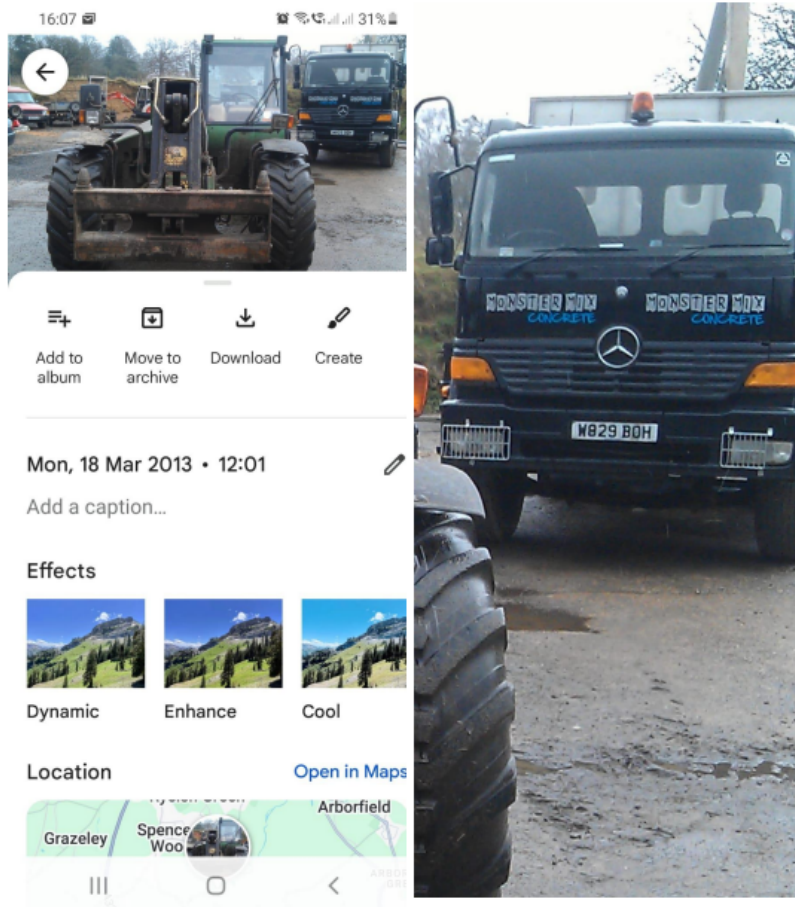


Aerial Photograph of Hill Farm dated 9th May 2025 (Source – Google Earth)



Photographs of Yard A from 2013 and 2015

Photograph of Yard A Dated 18th March 2013, Including detail of Monster Mix Pumping Lorry



Photograph of Improvements to Silage Clamp (Previously Yard A) Dated 22nd April 2015 and 9th May 2015



Statement of Truth from Mr Russell Butler of Butlers Services Ltd and Butlers Lettings Ltd:

STATEMENT OF TRUTH OF RUSSELL JON BUTLER

- 1.1 My name is Russell Jon Butler
- 1.2 I am the Director of Butlers Services Ltd, Butlers Lettings Ltd and owner of Hill Farm, Jouldings Lane, Farley Hill, Reading RG7 1UR.
- 1.3 I first let an unused silage clamp at Hill farm (hereinafter referred to as Yard A - see Appendix 1 attached) to Andrew Shepard to be used by his concrete company Monster Mix Services Ltd in August 2003 on a cash basis, with the letting of the site becoming more formalised in November 2012 when he began being invoiced directly by Butlers Services Ltd for the monthly sum of £360 per month.
- 1.4 Andrew Shepard used this yard area for the parking of concrete mixing vehicles and loading equipment, the manufacture of concrete and the raw materials required for the manufacture of concrete.
- 1.5 Andrew Shepard used Yard A continuously for the use stated above until October 2013, wherein he relocated his business to another part of Hill Farm (Yard B – see Appendix 2). Given the increase in size of Yard B compared to Yard A, we agreed an increase in monthly rent to £480 per month based on a similar price/m².
- 1.6 In March 2018 the letting of Yard B to Monster Mix Services was transferred from Butlers Services Ltd to Butlers Lettings Ltd. I have gradually increased the rent of Yard B since June 2019 to the present day to take account of inflation and to ensure that the yard rents properly reflect the market rate.
- 1.7 Andrew Shepard has continued to rent Yard B for the parking of concrete mixing vehicles and loading equipment, the manufacture of concrete and the storage of raw materials required for the manufacture of concrete continuously from November 2013 until the present day.

Statement of Truth from Andrew Sheperd of Monster Mix Ltd:

STATEMENT OF TRUTH OF ANDREW SHEPERD

- 1.1 My name is Andrew Sheperd
- 1.2 I am an employee of Monster Mix Services Ltd, a concrete mixing and pumping company.
- 1.3 I first rented an unused silage clamp at Hill farm (hereinafter referred to as Yard A - see Appendix 1 attached) from Russell Butler of Butlers Services Ltd in August 2003 on a cash basis. In November 2012, Mr Butler began raising invoices for the rental of the yard, for which I paid £360 per month.
- 1.4 I used this yard area for the parking of concrete mixing vehicles and loading equipment, the manufacture of concrete and the raw materials required for the manufacture of concrete.
- 1.5 I used Yard A continuously for the use stated above until October 2013, wherein I relocated to another part of Hill Farm (Yard B – see Appendix 2). Given the increase in size of Yard B compared to Yard A, we agreed an increase in monthly rent to £480 per month based on a similar price/m².
- 1.6 In March 2018 Butlers Lettings Ltd. became the new landlord for Yard B. The rent for the yard area has increased since June 2019 to the present day to take account of inflation and to reflect the market rate.
- 1.7 I continued to rent Yard B for the parking of concrete mixing vehicles and loading equipment, the manufacture of concrete and the storage raw materials required for the manufacture of concrete continuously from November 2013 until the present day.

Business accounts indicating rent prices and changes:

The Business accounts indicate an uplift of 33% in rent in November 2013 from £360/month to £480/month which the applicant states 'broadly' matches the increase in yard area between Yard A and Yard B.

Evidence submitted by the Council:

Case Officer site photos dates 2nd September 2025:





Details of Monster Mix Concrete's registered business address and the timespan they have paid business rates for:

The Council's Revenues team have confirmed that Monster Mix have been paying business rates and registered with the Council at the site since 2 December 2016.

Assessment:

From the applicant's submission, the clear starting point for Yard B was November 2013, when Monster Mix Concrete moved from Yard A to B. The uplift in rent does sufficiently correlate with the move to Yard B and is presumed reasonable given the increase in the size of Yard B compared to A. Uplifts in rent have only occurred since to ensure the yard rents reflect the market rates.

The plan the application red line is overlayed on does not provide a completely accurate visual representation of Yard B's boundaries. However, upon visiting the site and comparing photographs seen above with the land that has been in use by Monster Mix Concrete, the clear boundary is the concrete boundary 'wall' adjacent to the raw material (sand etc) storage seen above.

Monster Mix vehicles were witnessed parking to the south of this wall, but this area does not fall within the application red line, plus aerial images indicate this land has been used for material storage in recent years, so cannot be considered a lawful extension of the proposed redline.

Upon visiting the site, it was in active use by Monster Mix; a concrete mixer was parked up on site, as was a telehandler. Adjacent to the western boundary included a cement storage container, a shipping container with tools/equipment and an open-air storage section for raw materials. Whilst 2015-2016 aerials are not available and aerials from 2014 are not legible, aerial photos from 2017 until present day all show the aforementioned vehicles and structures consistently on site and in active operation.

The statements of truth provided by the owner of the site and the operator of Monster Mix Concrete both assert that the use of Yard B for the parking of concrete mixing vehicles and loading equipment, the manufacture of concrete and storage of raw materials required for the manufacture of concrete has been consistently occurring since November 2013. Substantial weight is afforded to these assertions in the balance of probabilities.

The applicant's photographic and financial evidence accurately correlates with the above assertions and whilst aerial photographs of the site between 2015-2016 are not available, the LPA have no other notable evidence on the contrary; the Council's Revenues Team have confirmed that Monster Mix have been paying business rates since December 2016, but this does not mean that the use commenced prior to this date as asserted by the applicant's evidence.

Conclusion:

Overall, on the balance of probabilities, based on the evidence provided and the Local Planning Authority's own information, the use of the land for the manufacturing and distribution of concrete, ancillary parking of concrete mixing vehicles and loading equipment plus the storage of associated raw materials has been occurring for a consecutive period of at least 10 years.

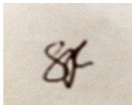
The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, the use of the land for the manufacturing and distribution of concrete, ancillary parking of concrete mixing vehicles and loading equipment plus the storage of associated raw materials has been occurring for a consecutive period of at least 10 years.

This certificate is therefore recommended for approval.

Date:	15 September 2025
Earliest date for decision:	29 August 2025
Recommendation agreed by: (Authorised Officer)	
Date:	16.9.25