

Planning Committee 15 March 2022
Report of the Director Environment and Planning

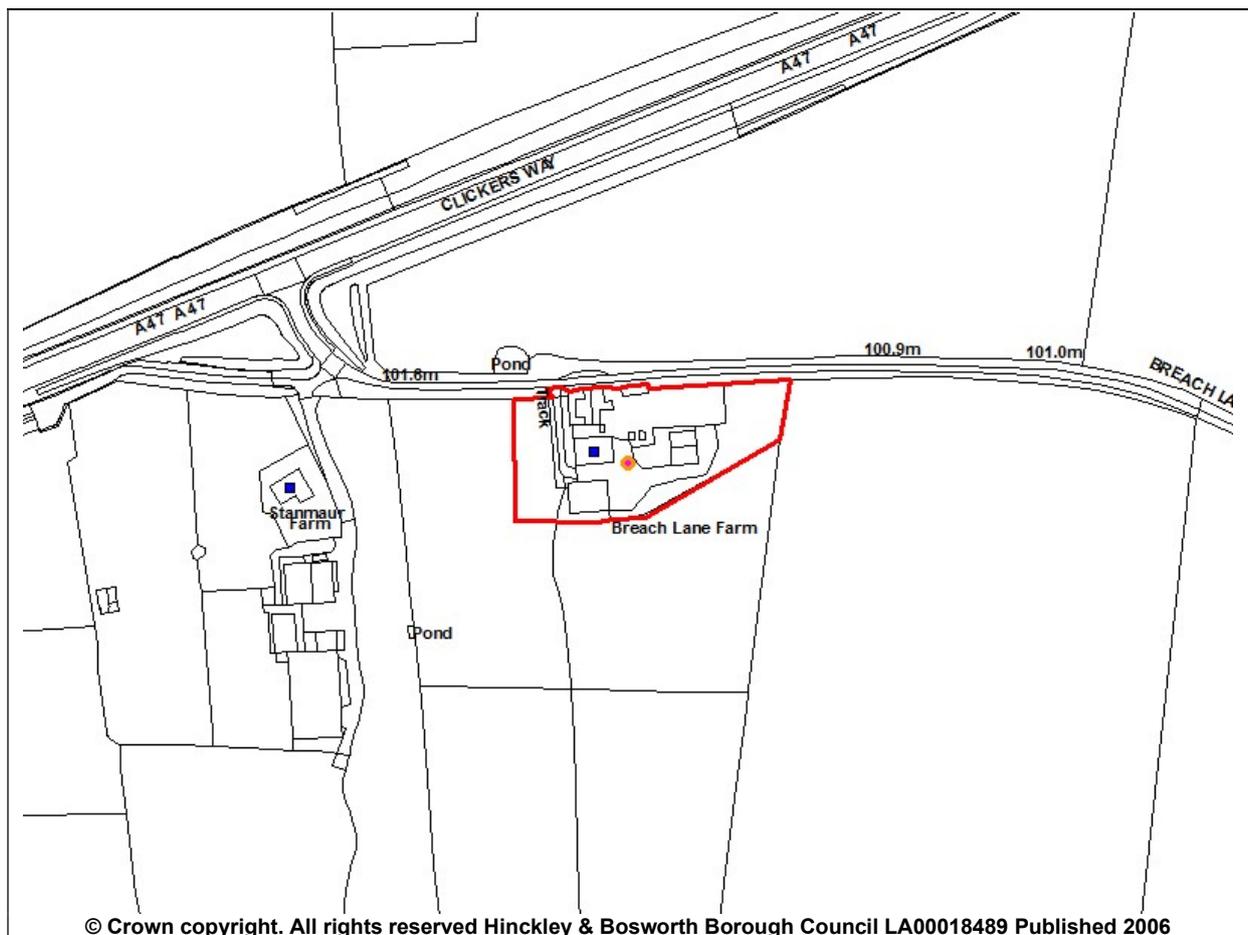
Planning Ref: 20/01374/FUL
Applicant: Mr Mike Deacon
Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: Breach Lane Farm Breach Lane Earl Shilton

Proposal: Change of use of land for the storage, repair, restoration and sale (ancillary) of vehicles, associated shipping containers and area of hardstanding (sui generis) (part retrospective)



1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

1.2. That the Planning Manager be given powers to determine the final detail of planning conditions.

2. Planning application description

- 2.1. The scheme submitted proposes a change of use, part retrospective for the storage, repair and restoration of vehicles with associated shipping containers and**

an area of hardstanding. The change of use is to the existing buildings located to the south and south east of the main dwelling house and overall site.

- 2.2. These buildings are predominantly single-storey agricultural-style buildings that are no longer used for agricultural purposes. There is no specific planning history found for these buildings, although it is reasonable to believe they have been in place for over 4 years. It is understood that the outbuildings were once used for sheep, the agricultural use has long since ceased.
- 2.3. At present there is also a shipping container on site that is being used for sand blasting. This container has been adapted by adding a pitched timber and opaque corrugated plastic roof, assumed for the purposes of light and ventilation.
- 2.4. The existing buildings are proposed to be used for a mixture of storage for both hobby and business uses by the applicants, one of whom resides in the main dwelling, located to the north of the application site.
- 2.5. There are two existing accesses onto the site. One to the west of the house and one to the east of the house. The access located to the west is that used for this application and a footpath sits immediately adjacent to it. The footpath runs along the entire western boundary of the application site and heads south towards Elmsthorpe.
- 2.6. Separate residential access will be retained to the east of the main dwelling.
- 2.7. The application form has been revised since its original submission to address some of the concerns raised as part of the planning application and to better inform the activities on site and proposals going forward.

3. Description of the site and surrounding area

- 3.1. The application site comprises approximately 2800m² and is located on Breach Lane in the Parish of Earl Shilton. Breach Lane extends from Station Road in Earl Shilton and forks off into different directions where it meets with the A47. The application site is located on the part of Breach Lane that sits south of the A47. It is sited in the countryside, outside of the development boundaries and surrounded to the east south and west by open countryside. To the north is another open field beyond which sits the A47. Access to the site is via a predominately single track road with informal passing places.
- 3.2. The application site is accessed via an existing metal gate that fronts onto Breach Lane. It is opposite this access that the recently constructed lay-by has been situated. The western boundary is made up of a mixture of gates that open into the neighbouring field to the west and the remaining boundaries predominantly post and-wire fencing with some shrub and tree planting. The residential dwelling is separated from the application site by gates, fencing and one of the existing buildings forming a flank wall to the south.
- 3.3. The buildings mostly comprise grey/brown corrugated metal and plastic sheets, are utilitarian in appearance and rural in character. The land surrounding these buildings comprises a mixture of concrete hardstanding, gravel and grass.

4. Relevant planning history

98/00044/COU

- Siting of residential caravan for farm worker for temporary period of 12 months
- Withdrawn

- 11.06.1998

20/00632/FUL

- Storage container and hardstanding (retrospective)
- Withdrawn
- 09.10.2020

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.
- 5.2. To date there have been three letters of representation received from one objector. The concerns raised include the following:
- 1) The house is domestic not commercial
 - 2) Limited access as single track road
 - 3) Not suitable for HGVs
 - 4) Applicant has carried unlawful work to the highway and footpaths
 - 5) Construction work carried out close to a sensitive pond with Great Crested Newts
 - 6) The Lay by was constructed without permission
 - 7) Fencing, gates and hardstanding erected without permission
 - 8) The submission advises Breach Lane as private which is incorrect
 - 9) Application proposes no commercial waste which is incorrect
 - 10) The septic tank was moved without planning permission
 - 11) Most of the buildings on site do not have planning permission
 - 12) Application states it is connected to the main sewer which is incorrect
 - 13) HBBC and HSE have visited the site regarding contamination and hazardous waste
 - 14) Lots of incorrect information submitted in the technical note
 - 15) Access and egress should be in forward gear.
 - 16) Parking in the illegal layby will cause problems with access
 - 17) Number of vehicles on site in the application form is inaccurate
 - 18) Conflict with road and footpath users
 - 19) Big increase in activity on site
 - 20) Open pole barn has been enclosed and being used as a sales building
 - 21) Noise survey is incorrect and flawed
 - 22) Vehicles carry contaminated toxins
 - 23) Employee number on site is confusing
 - 24) Illegal layby should be returned to its original state
 - 25) Domestic dwelling is not the site for this type of use
 - 26) Why is there a huge crane on site
 - 27) Incorrectly notified

6. Consultation

- 6.1. Following consultation, no objection, subject to conditions have been received from:
- Ramblers Association
 - LCC Highways
 - Environmental Health
 - HBBC Waste

6.2. Earl Shilton Town Council objects. The application form questions are considered to be inaccurate for the following reasons:

- 1) Question 6 - Existing Use - Applicant states 'no' to questions about past and possible contamination. Who professionally and independently has verified this as fact for HBBC as LPA?
- 2) Question 7 - Materials - Use externally. Town Cllrs find it hard to believe that petrol, oil and lubricants (POL) will not be present and manually handled externally. Does the applicant have a SHEF spill plan for commercial operation?
- 3) Question 8 - Access & Rights of Way - all answered in the negative. Reports of this continue to be the opposite of the stated case. Have HBBC officers verified the applicant's statement recently and engaged with officers from LCC footpaths?
- 4) Question 11 - Assessment of Flood Risk (et al) - All answers in the negative but in plain sight there is a pond just across the narrowing of Breach Lane opposite the main entrance to Breach Lane Farm. See OS maps and the application itself or consult with LCC footpath officers. ESTC Cllrs, even as lay persons, find it incredible to believe the pond is not fed wholly or in part by some form of watercourse within 20m of the property. Surface water disposal by 'main sewer' - what main sewer has been verified professionally and independently?
- 5) Question 12 - Biodiversity et al - All negative applicant answers. There are no explicit proofs in the Landmark Planning Ltd 'Planning Justification Statement' and so should be verified professionally.
- 6) Question 13 - Foul Sewage - Applicant's answers are 'unknown'. This answer is wholly or in part contradictory to the answer given in section 11 above. Where do the employees toilet, (having done so since 2008?), and where does their foul sewage go to?
- 7) Question 14 - Waste storage & Collection - applicant's answers both negative. Town Cllrs incredulity is stretched to breaking point because of the need of the applicant dispose of spent POL and reports of the use of sand blasting engine parts etc cannot be without consequential waste, most probably contaminated in some way, so in short the LPA must investigate this matter please.
- 8) Question 15 - Trade Effluent - negative applicant answer. Town Cllrs are adamant there must be some effluent and scrap metals, paints etc. This is an application for a commercial venture already with 2No FTE employees.
- 9) Question 19 - Hours of Opening - negative applicant answer. Noise, traffic, night light should be professionally assessed to gauge the impact on other users please. For example: does a neighbour, cyclist, dog walker, horse rider wish to be confronted with an HGV on Sunday morning accompanied by the sound of sand blasting? Town Cllrs assert Breach Lane is popular with users in daylight hours especially at weekends.
- 10) Question 21 - Hazardous Substances - negative applicant answer. Town Cllrs strongly suggest the applicant needs to convince HBBC for POL alone, if nothing else, that he has a professional and up to date COSHH assessment in place. Town Cllrs wish the LPA to note that for significant and commercial applications they take a dim view of retrospective applications and request this one is pursued to a finite degree by professionally qualified officers with relevant expertise and the applicant is

required, at his expense, to provide similar professional reports that do more than just quote the nomenclature of HBBC Development Management Policies. The first question is does the applicant have 'Employer's Liability' insurance for his employees? If not he is committing a criminal offence and should be closed down by HBBC enforcement officers or those of the HSE.

- 6.3. Officer note, the majority of points raised by Earl Shilton Parish Council above are not considered to be planning considerations. Furthermore, the application form has been updated to provide clarification.
- 6.4. Ecology Officer response in addition to earlier comments and following further investigation are as follows:
- 6.5. “We have been shown a neighbour’s photo of a Great Crested Newt taken near the pond on the opposite side of the lane to the application. I also understand that there have been recent works done to the area which is outside the current planning application boundary. These works were done before the planning application was submitted. If further works are undertaken to the verge on the opposite side of the road or to habitats such as hedges, ditches or rough grassland in the vicinity of the pond, I advise that the applicant should undertake great crested newt surveys of this pond. This includes works that require planning permission and those that do not. If GCNs are found to be present in the pond, then mitigation will be required; and this may require licensing from Natural England. At the moment, I find the extent and nature of any additional works to those currently being proposed to be unclear, and would be grateful if plans showing this could be provided in order that we can assess potential impacts on ecology. “
- 6.5. Comments received prior to this read as follows: The existing buildings appear to be unaffected by the proposed change of use. The site is within 100m of a likely great crested newt pond, but as the proposed area of hardstanding appears to already be in place, no further action is required at this stage. No ecological surveys are required, and I have no objections to the application.
- 6.6. Following the revision of the application form all consultees have been re-consulted. Comments will be reported as an update to Planning Committee. The revisions have been provided to seek clarification on several matters raised by the Parish Council and neighbour representation.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 2
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM6: Enhancement of Biodiversity and Geological Interest
 - Policy DM7: Preventing Pollution and Flooding
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2021)
 - Planning Practice Guidance (PPG)

- 7.4. Other relevant guidance
- Good Design Guide (2020)
 - National Design Guide (2019)

8. Appraisal

- 8.1. Key Issues
- Assessment against strategic planning policies
 - Design and impact upon the character of the area
 - Impact upon neighbouring residential amenity
 - Impact upon highway safety
 - Ecology
 - Drainage

Assessment against strategic planning policies

- 8.2 Paragraph 2 of the National Planning Policy Framework (NPPF) 2021 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- 8.3 Policy DM1 of the Site Allocations and Development Management Policies DPD (SADMP) sets out a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved without delay subject to other material planning considerations.
- 8.4 The relevant development plan documents in this instance consist of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies Development Plan Document (2016) (SADMP).
- 8.5 Policy DM4 of the adopted SADMP states that to protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development. The Policy lists 5 primary criteria and proposals need to meet at least one of these criteria. A further 5 secondary criteria should then be met. Policy DM4 reads as follows:

Policy DM4 states that the countryside will first and foremost be safeguarded from unsustainable development. Development in the countryside will be considered sustainable where:

It is for outdoor sport of recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or

The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or

It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or

It relates to the provision of stand-alone renewable energy developments in line with policy DM2: Renewable Energy and Low Carbon Development; or

It relates to the provision of accommodation for a rural worker in line with Policy DM5: Enabling Rural Worker Accommodation.

And:

It does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and

It does not undermine the physical and perceived separation and open character between settlements; and

It does not create or exacerbate ribbon development

If within a Green Wedge, it protects its role and function in line with Core Strategy Policies 6 and 9; and

If within the National Forest, it contributes to the delivery of the National Forest Strategy in line with Core Strategy Policy 21

- 8.6 The development does fall under one of the categories of sustainable development as identified in Policy DM4 in that the proposal would involve the change of use of existing buildings. The proposed commercial use on this site is small in scale, with no additional buildings being erected and only ancillary sales. The scheme does not propose retail space and the existing buildings will be used for the storage of cars, which will need to be kept maintained, watertight and secure. The proposal is considered to have a neutral impact on the immediate setting of the site, which could be enhanced visually and ecologically through additional landscaping secured by way of a condition. The principle of a change of use is considered to be acceptable in this location subject to the proposal leading to the enhancement of the immediate setting and not having a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. The impact on the character of the area is assessed below.

Design and impact upon the character of the area

- 8.7 Policy DM4 requires that development proposals in the countryside do not have any significant adverse effects on the intrinsic value, beauty, open character and landscape character of the countryside. Policy DM10 of the adopted SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, design and materials.
- 8.8 The plans submitted show how the existing buildings will be used for both hobby and commercial use. The buildings are not being extended or increased in height, therefore the impact visually on the surrounding countryside will be minimal. It has been advised that one of the portal framed buildings has been enclosed on all sides and is now being used commercially. Enclosing the existing building is not considered to be unacceptable in terms of impact on the countryside of impact of views to the site and nor did this process require specific planning permission. However, the use is to be considered as part of this planning assessment. The outbuildings are not considered to be excessively prominent in the landscape and no further external alterations are proposed to the existing buildings.
- 8.9 The buildings are to remain as existing visually and it is their use that is intended to change. Whilst the buildings will remain untouched in terms of size, scale and appearance, the use of the buildings can also have an impact on the character of the area. The existing use of the application buildings are predominantly for general storage and the restoration of vehicles and storage of hobby cars. It is this element of the application that has been in place since approximately 2008, with no previous commercial use on this site. This application seeks to alter this through applying for a small sui generis commercial use that involves the storage, repair, restoration and

ancillary sale of vehicles, with some work being carried out in the associated shipping container on site.

- 8.10 The applicant does currently operate a larger commercial site on the Merrylees Industrial site. It is clear from the website that some of the vehicles associated with this business have been located on the application site and it is likely there is some cross-over in terms of storage. This does make the separation of the two uses difficult to assess as the hobby use is closely linked to that of the business use.
- 8.11 The difficulty is differentiating between hobby use and commercial use within the existing buildings and whilst a condition could be included it is unlikely to meet the relevant tests; a hobby vehicle under restoration is unlikely to look any different to that of a commercial vehicle under restoration. As a result the management of the commercial use and its potential impact on the character of the area need to be carefully controlled. It is not considered unreasonable to limit the amount of vehicles that are stored externally and outside of the existing buildings as well as limiting the time and number of vehicles visiting the site. This will ensure that the levels of commercial use and hobby use on this site fit within the existing buildings, with any future expansion requiring specific planning permission and further assessment through a planning application.

Impact upon neighbouring residential amenity

- 8.12 Policy DM10 of the SADMP requires development to not adversely affect the amenities or privacy of the occupiers of neighbouring properties.
- 8.13 The closest neighbouring dwelling, outside of the application site is located to the west comprising approximately 50m between boundaries. Concern has been raised regarding a number of matters within the representations received. Many concerns refer to the inaccuracy of the originally submitted application form. The content is now accurate and the report reflective of the changes. Additionally, there is concern about noise and air pollution as well as potential contamination of surface water. The impact on surface water is discussed later in the report.
- 8.14 The Environmental Health Officer has visited the site to specifically assess the acoustic impact of the proposed 'media blasting' that is to take place within the adapted shipping container. Comments of which are on file. The supporting application documents advise this process will be relatively infrequent, however, the level of use once permitted is difficult to enforce and therefore the Environmental Health officer has requested specific conditions to ensure the doors of this building are closed but appropriately ventilated to ensure a reduced noise impact on the neighbouring occupier and the health and safety of the user is not compromised.
- 8.15 Of additional concern is the impact of the proposal on the occupier of the dwelling located to the south. One of the applicants resides in this property. This is also where toilet facilities are located and future staff will be working from. As a result it is considered necessary to restrict the occupancy of this dwelling directly to the surrounding business use. Discussion with the applicants have informed this is acceptable.
- 8.16 Given the restrictive size of the unit and the existing buildings on site the proposed uses, as applied through this application would be small in scale, and well contained within the site. As such it is considered that the proposal would not cause undue noise and disturbance to the occupiers of this dwelling who would be in control of the operation of the use. The proposal is therefore considered to comply with Policy DM10 of the SADMP.

Impact upon highway safety

- 8.17 Policy DM17 of the SADMP states that all new development should be in accordance with the highway design standards. Policy DM18 requires all development to provide appropriate parking provision. LCC as Highway Authority has confirmed that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impact on the road network would not be severe. Additionally no concern has been raised about the parking, turning or manoeuvrability of vehicles.
- 8.18 Observations on 16th February, 4th March and 3rd August 2021 requested additional information with regards to access, trip generation and the internal layout. As a result of the various negotiations the LHA has no objection subject to conditions regarding implementation of the access as per the agreed drawings, removal of the existing gates, visibility splays and PROW development involving footpath T89. Therefore, subject to the imposition of conditions it is considered that the development would accord with Policies DM17 and DM18 of the SADMP.
- 8.19 The removal of the existing gates, which have been in place for a number of years seems to be unnecessary. However the applicant is content with moving them back into the site to ensure a car can park clear of the highway on entering for the purposes of the business use. This proposal is being discussed with the LHA and an update will be provided to Planning Committee.

Ecology

- 8.20 Paragraph 174 (a) of the NPPF (2021) states that planning policies and decisions should contribute and enhance the local natural environment by protecting and enhancing sites of biodiversity.
- 8.21 Policy DM6 of the SADMP requires development proposals to demonstrate how they conserve and enhance features of nature conservation. In recognition of the importance and value of biodiversity in the borough, the LPA will first and foremost seek to avoid harm or loss to biodiversity.
- 8.22 According to the Good Design Guide, it is essential to consider the impact of conversion work upon wildlife, particularly in relation to protected species. Their protection is a material consideration in the planning process.
- 8.23 Whilst it has been noted that further work could trigger reptile surveys no further survey work is required at this stage. Overall it is considered that the proposal would not significantly harm protected species on the site in accordance with Policy DM6 and Paragraph 174 (a) of the NPPF (2021).

Drainage

- 8.24 Policy DM7 of the SADMP seeks to ensure that development does not create or exacerbate flooding. The Environment Agency (EA) Flood Maps confirm that the site is located within Flood Zone 1, having low probability of flooding from rivers and sea and low risk from surface water flooding. The scale of proposal does not require a site specific Floor Risk Assessment to be submitted. No new floor area is to be created and no new drainage is to be added to the existing arrangements.
- 8.25 There is concern that the proposed commercial use will introduce contamination into the surface water run-off. The Environment Agency were consulted 03/03/2021 and raised no comments. The EA has been re-consulted following the updated application form. Planning Committee will be updated accordingly should any objections be received from statutory consultees.

9. Equality implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. There would be no conflict with policy 2 of the Core Strategy and Policies DM1, DM4, DM6, DM7, DM10, DM17 and DM18 of the SADMP.

11. Recommendation

- 11.1 **Grant planning permission** subject to:
- 11.2 That the Planning Manager be given powers to determine the final detail and wording of planning conditions. Draft condition wording will be reported to Planning Committee following the current public consultation.
- 11.3 **Conditions and Reasons**
1. EHO conditions – use of container for sand blasting to control noise
 2. LHA conditions – for access and moving gates
 3. Limit outside storage of vehicles and parts – to control the number of vehicles on site to distinguish between hobby and commercial uses
 4. Occupancy conditions – to ensure the commercial use is linked to the existing on site residential use
- 11.4 **Notes to applicant**
1. Ecology surveys required if use to expand in future (with planning permission required)
 2. Impact on footpaths
 3. No further work to the highway

