

Report to South Area Planning Sub-Committee – List A – Applications for Decision

Application No:	2017/3659	Application Type:	LDCE
Case Officer:	Peter Brooks	Ward:	Weybridge St Georges Hill Ward
Expiry Date:	19/01/2018		
Location:	M C S Site Redhill Road Cobham Surrey KT11 1EG		
Proposal:	Lawful Development Certificate: Whether planning permission is required for the existing use of the building as B1(a) (Office) and the external area as a storage yard Class B8 (Storage and Distribution).		
Applicant:	Management & Construction Services Ltd		
Agent:	Mr Chris White WYG Wharf House Wharf Road Guildford GU1 4RP		
Decision Level:	If Grant – Sub-Committee If Refuse – Sub-Committee		
Recommendation:	Grant in part/Refuse in part		

This application was due to be heard at the South Area Planning Sub-Committee on 5th November 2018, but the item was withdrawn from the agenda by Officers following receipt of an email from the planning agent (sent to members of the sub-committee) which raised a number of questions in regard to the content and finding of the Officer report. This email was reviewed by the Councils legal section, who concluded that the findings and recommendation of the Officers report to be correct. The response from the Legal Officer is included below which addresses those points raised by the planning agent (Planning agent comments in bold, legal officer responses below).

1. At no point has the Applicant been given the opportunity by Officers' to further demonstrate the acceptability of the B8 usage element.

Although I have not seen any correspondence between the Applicant / Agent and EBC it appears that an opportunity for further evidence was provided as demonstrated by the fact the Director of Bricksourc submitted further information / evidence by way of email dated 27 March 2017 evidencing use of the building and confirming storage of small quantities of bricks from "time to time"

Moreover, the onus is on the applicant to provide the relevant evidence to support the application. The Applicant filed 4 Statutory Declarations in support. There was opportunity to address all matters in support of the application. The Applicant did not provide sufficient evidence to support the granting of a certificate of Lawful Use B8 Storage.

2. More than sufficient evidence has been provided for the B8 storage use.

The evidence provided by the Applicant consists of 3 statutory Declarations provided by Directors of MCS and 1 from the director of Bricksourc.

The 3 MCS Statutory declarations are identical. The evidence to support their use of the land as storage for the period of 10 years prior to the date of the Application consists of one sentence at para 5,

“ I can also confirm that throughout the time I have known the site, MCS have continued to use the site for storage purposes falling within class B8”.

No further information has been provided within any of these statutory declarations as to what is being stored, how it is being stored and or for how long it is being stored.

There is one further sentence in respect of Bricksources use of the site:-
Bricksources have used the building as their office and.... And the site for storage and distribution of bricks, falling under use class B8”

Aerial photographs have been attached to the statutory declarations. These are dated 1999, 2009, 2010, 2014, 2016. No photographs have been adduced for the time period between 1999 and 2009.

The photograph dated 1999 falls outside the 10-year period prior to the date of the application to support continued use. The other photographs are unclear and may depict items being stored on the land, but do not sufficiently evidence storage by MCS.

The Statutory Declaration of John Morley, Managing Director of Bricksources, at para 4 states:
“MCS have continued to parts of the site for storage purposes falling within class B8”.

However, at para 3 it states that it has used the site “at times the site for storage and display of bricks falling under use class B8”.

No information is provided as to the quantity of brick, how and when they are stored or displayed and or the length of time the bricks of stored.

Photographic evidence from Google Street View dated July 2008, August 2015 and July 2016, reveals a pallet or two at most placed outside the building being used as an office. A photograph dated October 2012 shows no bricks outside. This would support the evidence of John Morley that there are bricks on site from time to time.

However, on the balance of probability the location and quantity of bricks would support there being no storage use beyond that which is ancillary to the building / office use.

The stored items are not bought and sold from the site, but used by the company MCS Ltd. As such, records have not been kept itemising the transit of stored items. No services are required to store items, therefore no bills are available to further qualify the evidence, as in the case with the Office element, where bills were provided.

No Comment as this has been addressed above.

Notwithstanding this, 3 separate company directors have sworn Statutory Declarations. Furthermore para 1 of the Officer Report confirms containers and materials are stored on the site.

Storage carries with it the connotation of putting an item away for a period of time for future use, because it is not needed in the short term. (Appeal Decision) No evidence has been adduced by the Applicant to indicate what is being stored, its use, where its being stored and or for how long.

3. The application was submitted confirming the use of the building for office usage by Brick Source, and the site for storage by MCS Ltd. (who at the point the application was submitted were the owners of the site). Para 4 of the Officer Report has misunderstood the application and has assumed that the storage was only used in association to the building. Which was not what the application was submitted for.

The report may reflect that the Application is in respect of the use of the building as an office, with the surrounding land used for associated storage.

However, no evidence has been provided by the Applicant to substantiate on the balance of probability that the site has been used for storage for the last 10 years preceding the Application date, other than the ancillary use of storage from time to time by Bricksources.

4. Para 12 and 19 have misunderstood the information submitted, discounting the 1999 photo image submitted by the Applicant (and the council's own imagery pre-dating 2007) because they were before the time of Brick Source.

The 1999 photo was discounted on the basis that the Applicant is required to prove on the balance of probability the land has been used continuously for more than 10 years as B8 storage. The Applicant has failed to establish on the balance of probability that the land has been used continuously for the last 10 years as B8 Storage, and not for the reasons submitted by the Applicant.

5. However, this is again a misunderstanding of the application, and an attempt to link the building exclusively to the storage area and exclusively to Brick Source, which was not the claim by the applicant or the certificate sought.

The Certificate was refused on the basis that The Applicant has failed to establish on the balance of probability that the land has been used continuously for the last 10 years as B8 Storage. Further no (or insufficient /unclear) evidence has been provided by MCS Ltd to support the storage use that is not linked to the building or to Brick Source.

6. Statutory Declarations from MCS confirm beyond all doubt that they have used the external area of the site in excess of 20 years, and therefore the older images which show storage usage, are of relevance in qualifying the statutory declarations, and adding to the evidence confirming that the site has been used for B8 storage in excess of 10 years.

See comments in respect of point 2 above. There is insufficient evidence to substantiate on the balance of probability that the site has been continuously used for the last 10 years for storage.

This is further supported by the fact that there is no photographic evidence provided for the period 2007 to 2009.

7. Para 13 confirms that the Officer Report considered all the evidence only in association with the use of Brick Source. The evidence submitted and 3 statutory declaration by MCS Ltd. (the owners not the tenants) states that MCS Ltd. used the site continuously for the relevant period for their storage purposes. Therefore, the submission of evidence with regards to rent being paid does not limit the value of the evidence with regards to storage use, as suggested in the Officer Report.

Para 13 is to be read in addition to / or in conjunction with para 12. Para 13 confirms that in addition to the insufficient evidence, or gaps in the Applicant's evidence identified in para 12, there are also limitations on relying the Applicants evidence in respect of (not only their use of the land), but also Bricksources's use of the land as storage.

8. Para 16 is incorrect as it states that "this is the only evidence supplied with the application by anyone working from the company which occupies the site". As stated above the other 3 Statutory Declarations are from MCS Ltd who occupied the site for storage. Brick Source occupied the building and, in addition to MCS stored items on the site for the whole of the relevant period.

It is accepted that Paragraph 16 does infer that Bricksources is the only company to occupy the site. MCS appear to rely on the sentences of para5 of their directors' statutory declarations, and para 4 of the Statutory Declaration of John Morley.

No detail has been provided as what/how MCS share occupation of this site and their related use(s) of the land.

The evidence does support the fact that Bricksources occupy the site. However, the evidence submitted by the Applicant does not substantiate on the balance of probability that either company has continuously used the site as B8 storage.

9. Para 20 confirms that the Council have evidence that the site was used for external storage.

The photographs in question reveal that the site is littered with what appears to be left over materials as illustrated by various aerial and site photos. These photos do not indicate an identified use to store these materials.

10. Para 21 seems to state that the council consider the site to have not been used for storage, but instead for dumping of waste material. The evidence submitted, as discussed by Officers elsewhere within the report confirms that the materials stored on site changed over the years, not waste left on the site, and the Statutory Declarations confirm that the site was used for storage not waste materials.

Para 21 refers to the Appeal Decision which identifies that Storage carries with it the connotation of putting an item away for a period of time for future use, because it is not needed in the short term. It continues:

"However, the important point is that this is a matter of fact and degree in each case and it is for the applicant to establish by adducing evidence that materials were brought onto and taken off the Site". (Emphasis mine).

In this case the Applicant has failed to adduce any evidence to establish on the balance of probability that materials were brought onto and taken off the site for the 10 years preceding the date of Application.

11. Para 24 contradicts the remainder of the Officer assessment, as it acknowledges that the storage and office uses are not just connected to each other, and that independent storage uses are being applied for.

Para 24 does not contradict the assessment. Para 24 can be read as a statement or a summary of the Use description and Classes as provided by the Applicant in the Application dated 24/11/2017 and an assessment of the evidence filed in support of that Application. In this case the Applicant provided the description of Use Class B8 and Office B1(a). Accordingly report indicates that 2 distinct categories are identified, and that evidence is required to substantiate both. In this case the Applicant's evidence substantiates the use of the building as B1(a) Office, but is insufficient to substantiate the use of the site as B8 Storage.

12. Due to how the rest of the information has been interpreted and the evidence for the storage unreasonably discounted due to its lack of connection to Brick Source, in addition, three statutory declarations stating that the site has been used for storage (from directors of a building contractors company) and photographic evidence of storage, both from the council's own records and submitted photos; all demonstrate beyond all reasonable doubt that the external areas of the site have been used for storage for the relevant period.

As detailed above the Applicant has failed to provide evidence to support a finding that on the balance of probability the continued use of the site as B8 storage within the 10 years preceding the date of the application.

On the basis of the response provided by the Legal Officer, Officers consider the original recommendation made to the sub-committee to part permit, part refuse the Lawful Development Certificate, to be correct. The Council consider that whilst the applicant has been able to demonstrate the use of the office the evidence submitted is not sufficient to demonstrate on the balance of probabilities the continuous use of the external area as B8 storage for a continuous period of at least 10 years.

The original report to Sub-Committee is set out below.

Representations: Two letters of objection were received in relation to this application the contents of which can be summarised as follows:

- Consultation period over Christmas
- Previous complaints about storage of materials on site
- Potential for site to be combined with Lian Yard if Certificate is granted
- Site could be used as an alternative access for HGVs
- Granting of Certificate could lead to additional hardstanding and fencing on the site

This application has been promoted by Cllr Donaldson if the recommendation is to grant the certificate

R e p o r t

1. The M C S site is located at the southern end of Redhill Road, Cobham. The application site has a small frontage along Redhill Road where it shares an access with the adjacent site Lian Yard which is to the north west of the site. Within the site is a building which the applicant describes as an office located towards the south east boundary of the site. The remainder of the site laid with a mix of hardstanding and gravel. There are also two shipping containers and a shed located to the north east of the office building. There is currently various building materials and equipment stored around the site.

2. Relevant Planning History

Reference	Description	Decision
2006/2292	Lawful Development Certificate: Whether planning permission is required for storage of ground work equipment	Refused
2000/0147	Change of use from timber storage and processing to business use (Class B1) with single storey extension	Refused – Appealed – Appeal Dismissed

Proposal

3. This is an application for a Lawful Development Certificate: Whether planning permission is required for the existing use of the building as B1(a) (Office) and the external area as a storage yard Class B8 (Storage and Distribution). These elements are indicated on the Site Plan LY-007 as an office and as an external storage area respectively.
4. The description of development was amended during the application to more accurately reflect what was being applied for by the applicant. This relates to the use of the building as an office with the surrounding land used for associated storage.
5. Additional evidence was accepted during the consideration of the application in relation to the use of the site.

Positive and Proactive Engagement

6. Paragraphs within the NPPF requiring the Local Planning Authority to engage in a proactive manner do not apply to LDC applications.

Assessment

7. The applicant contends that the evidence confirms, “beyond all reasonable doubt that the site has been in constant use as a builders [sic] merchants storage and distribution place falling under Use Class B8, and an office falling under Use Class B1(a), for a period in excess of 10 years”.
8. The evidence submitted in support of the application comprises Statutory Declarations (SDs), all of which are in the correct form, having been sworn at Meadows Ryan Solicitors.
9. Statutory Declaration of Adrian Rumble
Mr Rumble describes himself as a Company Director, Co-owner and shareholder of MCS Ltd. He confirms that MCS let the site shown on the exhibited plan of the site to Brick Source, a commercial builders merchant, from 2004-2017, a continuous period in excess of 10 years.
10. He goes on to state that, “Brick Source have used the building as their office ... and the site for the storage and distribution of bricks”. Unfortunately, he does not say when, as these 2 sentences are not linked. In other words, that is, he does not say that throughout the period of the tenancy, each of the uses was continuous.
11. Mr Rumble states that MCS paid bills for water, electricity and business rates at the Site, and charged Brick Source a commercial rent during this period, but leaves it to others to supply the documentary evidence of this. Utility bills are really associated with the B1 Office Use, as the B8 use is not associated with a warehouse or similar and the wording of the SD is unhelpful, being confined to the loosely worded paragraph 5:
“... throughout the time I have known the site, MCS have continued to use the site for storage purposes falling within use class B8”.
12. Evidence of B8 use comprises Google Earth images, dated 1999, 2009, 2010, 2014 & 2016. The first of these photographs is irrelevant, as it predates Brick Source’s occupation of the Site and the period covered by this application. The relevant evidence begins 10 years later at 2009, which means that there are 2 years unaccounted for from 2007 to 2009. The photographs, for 2009 and 2010 clearly show items at the rear of the Site, although the crescent shaped area nearest to the entrance is green and open. The photo for 2014, is dark and indistinct and pixelates when enlarged. By 2016, the Site is more evenly covered. In summary, the photographs only show shapes that could be stored items on the Site in 2009, 2010 and 2016, which is insufficient to demonstrate continuity and only points to sporadic use.
13. In addition, as long as the rent is paid, most landlords have a relatively remote relationship with their tenants, and do not concern themselves with their business affairs unless there are complaints. This does limit the value of this evidence in demonstrating the extent of the storage use on the site.
14. Statutory Declaration of Peter Attewell
Mr Attewell describes himself as being a Company Director, Co-owner and shareholder of MCS Ltd. The wording of his SD is identical to that of Mr Rumble and the same comments apply.
15. Statutory Declaration of Paul Hodges
Mr Hodges describes himself as being the Managing Director of MCS Ltd during the relevant period. The wording of his SD is identical to that of Mr Rumble and the same comments apply.

16. Statutory Declaration of John Morley

John Morley describes himself as the Managing Director of Brick Source. This is the only evidence supplied with the application by anyone working for the company which occupies the Site. The wording confirms that Brick Source have rented the Site continuously for more than 10 years, "...using the building as our main office, falling under use class B1(a) and at times the site for the storage and display of bricks, falling under use class B8". The use of the wording "at times" is not considered to be indicative of a continuous B8 use and would suggest that this wording has been carefully chosen, given that the making of a false statement in a SD is perjury.

17. Mr Morley also submits the same Google Earth photographs as Mr Rumble, although these seem clearer, so perhaps copies were taken of these to exhibit to the other SDs. The 2014 photograph in particular shows that the crescent shaped part of the Site between the office building and the entrance is clear and open.

18. Additional Unsworn Evidence

This comprises utility bills, business rates, invoices, bills etc that are set out in the Appendix. Whilst it would have been preferential for this evidence to be exhibited to one of the SDs provided by the MCS Ltd personnel, they are compelling evidence of the use of the building on the site. However, whether this was being used as an office is unclear and it does not address the use of the surrounding land.

19. The Council's Evidence

The Council has aerial photographs dated 1945, 1971, 1995, 1999, 2003, 2010 and 2012/13. The photographs predating 2007 are all irrelevant, as they are outside the 10-year period under consideration for the purposes of this application. The photographs for 2010 and 2012/13 are inconclusive due to the tree canopy overshadowing the Site.

20. The Council also has in its possession, photographs that were taken at Lian Yard in connection with the adjacent land, which is in separate occupation but with which it shares an access. One such photograph shows the Site from the rear, bounded by a post and rail fence. Apart from a stack of palettes, the items closest to the fence are tightly packed and it would be difficult to see how they would be accessed.

21. Appeal Decision APP/K3605/X/17/3173985 against the refusal of an LDC application for a Boathouse r/o 16 Hurst Road, East Molesey, discusses B8 use and quotes a further appeal APP/R3325/X/10/2135822, which says: "Storage carries with it the connotation of putting an item away for a period of time for future use, because it is not needed in the short term". In that particular case, the appellant was trying to make out a storage use based on a deposit of building waste on the land. The Inspector dismissed this claim, as there was no evidence of this process, simply that materials had been forgotten and abandoned. However, the important point to grasp is that this is a matter of fact and degree in each case and it is for the applicant to establish by adducing evidence that materials were being brought onto and taken off the Site during the relevant period.

22. On the balance of probabilities the initial evidence as submitted does not adequately demonstrate the continuous use of the site for the use stated and required supplementing.

23. Following this further evidence was submitted in the form of an email of John Morley, Managing Director of Brick Source Ltd, dated 27 March 2018. In his opening paragraph he says: "I have operated my company, Brick Source Ltd. out of a building rented from MCS, at Lian Yard, Redhill Road for the last 15 years. ... The building is used as our office for co-ordinating of [sic] brick sales, general business administration and for client meetings". This statement is congruent with the content of his Statutory Declaration, in which he says that he has rented an office at the site for a period in excess of 10 years. However, as regards the storage use of the surrounding land, he says very little: "From time to time we also store small quantities of bricks on the site". This suggests sporadic use of the surrounding yard, rather than a continuous use, which the applicant would need to demonstrate on a balance of

probabilities in order to render it immune from enforcement in accordance with s.171B(3) of the Act and consequently eligible for the grant of a CLEUD.

24. In section 7 of the Application form, the use is described as, "Builders [sic] merchants good [sic] storage place B8 Office B1(a)". In section 8 this is expanded to read, "Builders [sic] merchants goods storage and distribution falling under Use Class B8 and Office falling under Use Class B1(a)". The application can be read as separating the use of the building (B1 Office) from that of the goods yard (B8 Storage) and the evidence submitted must address both uses if the application is to succeed. However, there is a marked discrepancy between the quality of the evidence in support of the B1 element compared to the B8 element.
25. Whilst the evidence is considered to be sufficient to demonstrate, on the balance of probabilities, that the building marked as an office on Site Plan LY-007 has been in continuous use as a B1 (a) for a period of at least 10 years. However, the evidence provided in relation to the use of the remainder of the site marked as external storage area on the Site Plan LY-007 is not considered to be sufficient to demonstrate the continuous use of this area as B8 storage for a continuous period of at least 10 years. As a result a lawful development certificate can be granted in part in relation to the office use and refused in part in relation to the storage use.

Matters raised in Representations

26. This LDC application will establish whether, on the balance of probabilities, the use of the building as a B1 (a) Office and the remainder of the site as a B8 storage yard can be demonstrated for a continuous period of longer than 10 years.
27. Matters raised in representations that do not relate to the lawfulness of the use are irrelevant in the determination of this application.
28. Concerns were raised regarding the fact that the consultation period was over the Christmas period. The date of the submission is outside the Council's control, however representation is accepted after the consultation period up until the date of determination. It is not considered that any party has been prejudiced by the timing of the consultation period.
29. The comments regarding previous complaints about storage of materials on site are noted.
30. Concern was raised regarding the potential for site to be combined with Lian Yard if the Certificate is granted. There were other related concerns that any granting of the Certificate could lead to the site being used for HGV access or that additional fencing and hardstanding would be carried out on site. These matters are not part of the consideration of this application and may require separate permission.

Conclusion

Based on the assessment of evidence:

31. It is recommended that a certificate be granted for the following:
 - 1) The use of the building marked Office on the Site Plan LY-007 as a B1 (a) Office.
32. It is recommended that the following is refused:
 - 1) The use of the area marked as external storage on the Site Plan LY-007 for B8 storage.

The proposed development does not require a CIL payment

Recommendation: Grant in Part/Refuse in Part

Informatives

- 1 REASONS FOR GRANT OF CERTIFICATE
Based on the assessment of evidence it is recommended that a certificate be granted for the following:

- 1) The use of the building marked Office on the Site Plan LY-007 as a B1 (a) Office for a continuous period of at least 10 years before the date of the application.

2 REASONS FOR REFUSAL OF CERTIFICATE

Based on the assessment of the evidence, it is recommended that a certificate be refused for the following reason:

- 1) The use of the area marked as external storage on the Site Plan LY-007 as it is not considered the submitted information is sufficient to demonstrate the continuous use of this area as B8 storage for a continuous period of at least 10 years.

Informatives

1 REASONS FOR GRANT OF CERTIFICATE

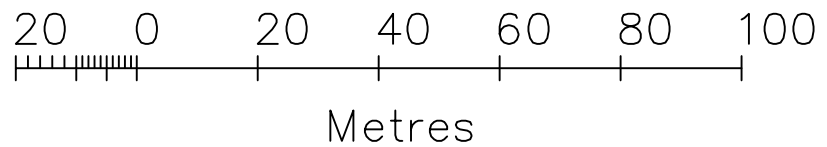
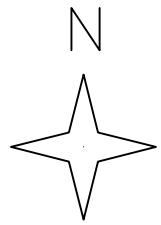
Based on the assessment of evidence it is recommended that a certificate be granted for the following:

- 1) The use of the building marked Office on the Site Plan LY-007 as a B1 (a) Office for a continuous period of at least 10 years before the date of the application.

2 REASONS FOR REFUSAL OF CERTIFICATE

Based on the assessment of the evidence, it is recommended that a certificate be refused for the following reason:

- 1) The use of the area marked as external storage on the Site Plan LY-007 as it is not considered the submitted information is sufficient to demonstrate the continuous use of this area as B8 storage for a continuous period of at least 10 years.



Location Plan

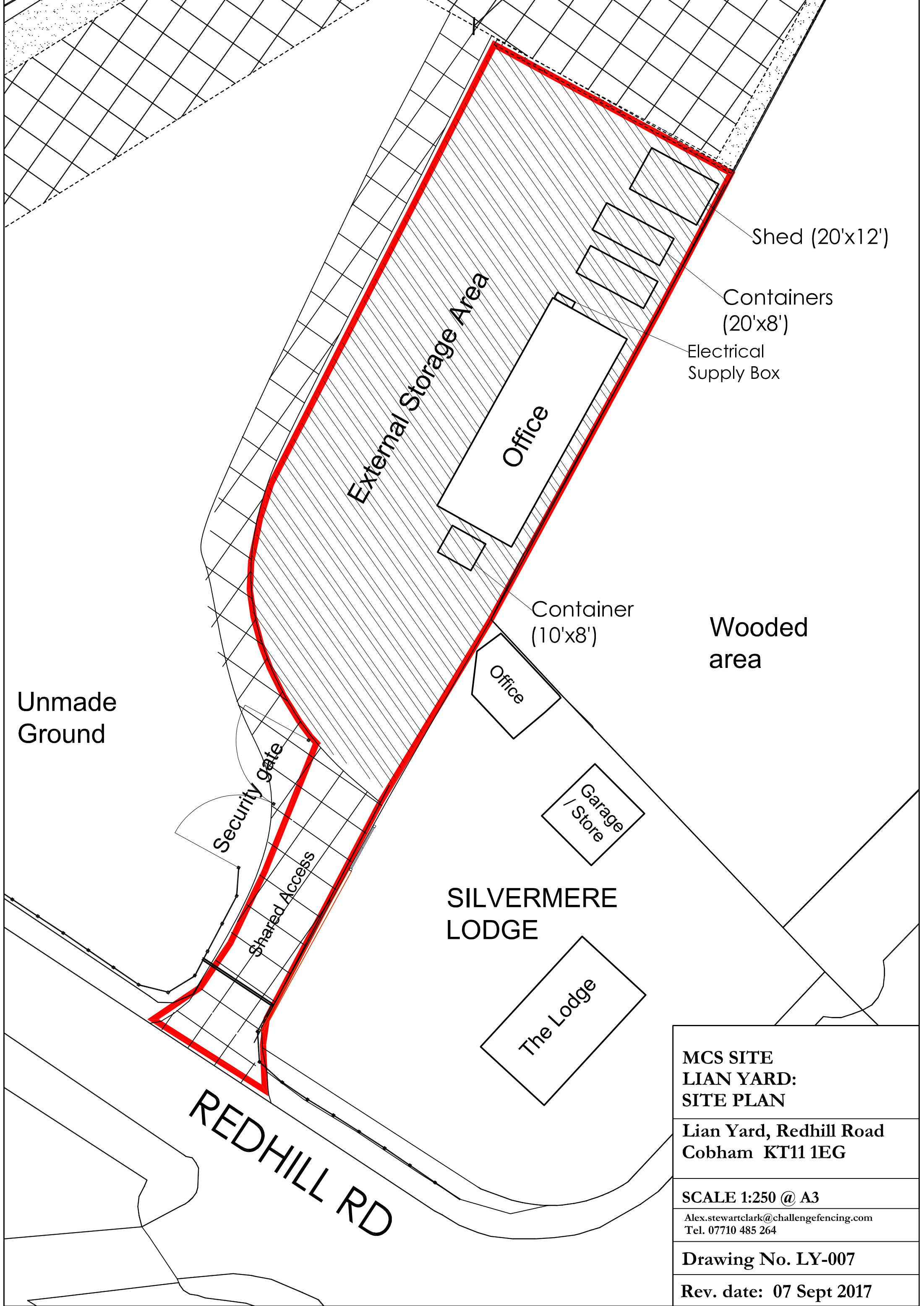
**Lian Yard, Redhill Road
Cobham KT11 1EG**

SCALE 1:1250 @ A3

Alex.stewartclark@challengefencing.com
Tel. 07710 485 264

LY-006

Rev. date: 21 Nov 2017



Shed (20'x12')

Containers (20'x8')

Electrical Supply Box

External Storage Area

Office

Container (10'x8')

Wooded area

Office

Unmade Ground

Security gate

Shared Access

Garage / Store

SILVERMERE LODGE

The Lodge

REDHILL RD

MCS SITE LIAN YARD: SITE PLAN
Lian Yard, Redhill Road Cobham KT11 1EG
SCALE 1:250 @ A3
Alex.stewartclark@challengefencing.com Tel. 07710 485 264
Drawing No. LY-007
Rev. date: 07 Sept 2017