

Application Number	12/0956/CLUED	Agenda Item	
Date Received	24th July 2012	Officer	Mr Toby Williams
Target Date	18th September 2012		
Ward	Queen Ediths		
Site	Cantabrigian RUFC Sedley Taylor Road Cambridge Cambridgeshire		
Proposal	Application for a certificate of lawfulness under Section 191 for use of land (excluding the footprint of the Cantabrigian's clubhouse) ancillary to the playing field as a car park		
Applicant	Mr David Norman 160 High Street Cottenham Cambs CB24 8RX		

SUMMARY	<p>An application for a Certificate of Lawfulness has been submitted in respect of land, including the former tennis courts, off Sedley Taylor Road.</p> <p>The application seeks to demonstrate that the lawful use is for car parking ancillary to the use of the playing fields adjacent.</p> <p>A variety of evidence is submitted in support.</p>
RECOMMENDATION	That a Certificate of Lawfulness be granted

1.0 SITE DESCRIPTION/AREA CONTEXT

- 1.1 The site is land, including the former tennis courts, located to the west of no. 51 Long Road and south west of no.23 Sedley Taylor Road. The site contains the Cantabrigian Rugby Club clubhouse. It is rectilinear in shape, measuring 33m by 57m.
- 1.2 The site is currently used for parking associated with the sports

fields to the west and northwest.

- 1.3 Access to the application site is to the east between nos.23 and 23a Sedley Taylor Road. To the northwest is the site of the proposed new Hills Road sports pavilion. Neither the access nor the pavilion are part of the application site for the Certificate of Lawfulness.
- 1.4 The land is identified as Protected Open Space on the 2006 Local Plan proposals map.

2.0 BACKGROUND

- 2.1 This is an application for a Certificate of Lawfulness of existing use. The application is made under Section 191 of the Town and Country Planning Act 1990. It is not a planning application. The application seeks to demonstrate that the existing lawful use of the land is for parking associated with the use of the adjacent playing fields. The application is made by a Trustee of the land on behalf of the Trustees and has been put forward to seek clarity on the lawful use of the land. Part of the land was formerly used as tennis courts and is referred to as such throughout the assessment.
- 2.2 The application is being brought to Committee because of the public interest in the use of the land to which the Certificate of Lawfulness applies and also in relation to a recent application for the erection of a pavilion on the adjacent Hills Road Sixth Form College (HRSFC) sports fields (11/0900/FUL) which has been subject to High Court Challenge.

3.0 CERTIFICATES OF LAWFULNESS

- 3.1 Applications for Certificates of Lawfulness are not normally considered by Committee and are routinely dealt with by officers under delegated powers. An application for a Certificate of Lawfulness differs from a planning application in that its purpose is to establish whether:
 - a) any existing use of buildings or other land is lawful
 - b) any operations which have been carried out in, on, over or under land are lawful
 - c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has

been granted is lawful

- 3.2 Uses and operations are considered lawful if no enforcement action can be taken against them and the uses and operations do not contravene the requirement of an enforcement notice.
- 3.3 If a Certificate is granted then the development is immune from enforcement action. The judgment as to whether a use or operation is lawful is based on an assessment of evidence; the planning merits of the proposed development cannot be considered. For applications involving an unauthorised change of use, the applicants have to prove that the change of use occurred more than 10 years ago and has been continuous up to the date of the application.
- 3.4 When an application for a Lawful Development Certificate is made, the onus of proof is on the applicant to demonstrate to the local planning authority that a certificate should be issued. The evidence submitted should be clear and convincing.
- 3.5 Without sufficient or precise enough information, the authority will be justified in refusing a certificate. This does not preclude another application if more information can be produced later on.

4.0 **THE PROPOSAL**

- 4.1 The application is accompanied by the following information:
1. Statutory declaration by a Mr E Richardson and photograph taken in 1995 showing the application site in use as a car park.
 2. Statutory declaration by Mr I Reid on behalf of Cambridge Granta Cricket Club stating that the club has been parking cars on land surrounding the Cantabrigian Rugby Club, including the former tennis courts, since 1987.
 3. Statutory declaration by Mr N Standbridge, Estates Bursar at HRSFC stating that since 1993 the parking of vehicles has always taken place on land surrounding the Cantabrigian Rugby Club, including the former tennis courts.

4. Statutory declaration by Ms A Hemming, Head of Sport at HRSFC stating that since 1993, the parking of vehicles has always taken place on the former tennis courts.
5. Statutory declaration by Mr T Fitzmaurice, a former member of the Cantabrigian Rugby Club, stating that the land bounded by the clubhouse, the playing field, the gardens of houses on Sedley Taylor Road and the grass verge of Long Road was in common use as car parking in the 1994-1995 season and since by members of the club and visitors.
6. Extracts from proof of evidence by a Mr Wilson of Cambridge City Council dated 7/12/1999 in relation to appeal APP/Q0505/A/99/103111, which references a general parking area associated with the rugby club.
7. Extract from the Planning Inspector's appeal decision dated 19/01/2000 in relation to appeal APP/Q0505/A/99/103111 where the Inspector refers to 'views across the relatively unattractive car park of the Catabrigian Rugby Union Football Club'.
8. E-mail from Ms Alison Twyford of Cambridge City Council dated 8/2/2012, who states in her opinion that 'the possible material change of use of the land, would now be immune from enforcement action under planning legislation'.
9. Letter from Mr J Tuck, Partner at Bidwells estate agents and in capacity as agent for Trinity College for the last 12 years, confirming the land has been used for car parking for at least 12 years and in addition, as having been a playing member of Shelford Rugby Club, recalling playing away matches at the Catabrigian Rugby Club and parking his car on the car park area adjoining the clubhouse from 1990.
10. Letter from Mr S Allen of Catabrigian Rowing Club confirming their use of the car park (former tennis courts) from about 1995/1997 for the storage of 2-3 boat trailers for periods of time, which ceased in 2008.
11. Aerial photograph taken in 2001 from Commission-Air

showing the site with cars parked on it.

12. Letter from Stephen Porter, whose parents lived at 23a Sedley Taylor Road in 1988, and who remembers cycling along the access track and noticing the large car park with small club house.

Following a request for clarification from officers, an e-mail dated 17 October 2012 from the applicants regarding boat trailer storage and parking during a period of contractor parking was received, confirming:

13. That car parking in connection with the use as playing fields continued alongside the storage of the boat trailers.

14. That there were never more than three boat trailers stored on the site, occupying only a fraction of the available space. An additional aerial photograph dated 28th March 2002, shows the trailers and the limited space they occupied. This photograph shows no line markings or nets on the former tennis courts.

15. That car parking by contractors took place between May and November 2009.

16. That parking in connection with the use of the playing fields by Cantabs and HRSFC continued during the period of use by contractors. The main use for parking in connection with the playing fields continued to be at weekends and weekday evenings when there was little or no contractor parking.

17. Two construction companies used the car park. In both cases this was only to be while they were working on the Addenbrooke's Hospital site and therefore not indefinite. These were informal agreements. At no time was there any intention by the applicants to abandon the use of the car park in connection with the playing fields, nor was control of the car park, or any part of it, ever given to a third party. The arrangements were only temporary and were in fact terminated before the work on Addenbrooke's had been completed.

5.0 SITE HISTORY

Reference	Description	Outcome
12/0585/CLUED	Application for a certificate of lawfulness under Section 191 for use of land as a car park (land to the west of 51 Long Road).	Withdrawn
C/95/0813	Permanent installation of green secure steel storage shed for sports equipment (D2) - 63sq.m.	A/C
C/96/1118	Outline application for residential development on 0.455ha of land.	Ref
C/88/1359	Use of clubhouse as nursery school (weekdays in term-time only)	A/C
C/83/0441	Erection of extension to existing club-house	A/C
C/80/0108	Erection of extension and improvement to existing clubhouse	A/C
1953 (19314)	Construction of access and new clubhouse and overhead electricity line to serve the Old Canterbrigians RUFC.	A/C

Adjacent Planning History

- 5.1 Planning permission was granted for the demolition of the existing sports pavilion and the replacement and relocation of a new replacement Sports Pavilion, with associated secure open-air store, on the playing fields to the northwest, under planning reference 11/0900/FUL, on 23 November 2011. The applicants were HRSFC. The application for the pavilion was the subject of a substantial number of objections, which are detailed in the report to the Committee meeting of 20 October 2011. The application has been the subject of a High Court Hearing, which found in the Council's favour on all of the substantial points. The legal challenge is continuing.
- 5.2 A number of responses have referenced planning application 11/0900/FUL. I will deal with the merits of these responses

particularly whether the two applications and the issues they raise should be considered alongside one another.

- 5.3 Two appeals 05/0028/S73 and 99/0562/OP on land to the rear of 23 Sedley Taylor Road have been put forward as relevant to both the applicants and third parties, for and against the grant of a certificate. I discuss these in my assessment.

6.0 PUBLICITY

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|------------------------|-----|
| 6.1 Advertisement: | No |
| Adjoining Owners: | Yes |
| Site Notice Displayed: | Yes |

7.0 CONSULTATIONS AND THIRD PARTY RESPONSES

- 7.1 Applications for Certificates of Lawfulness are not normally subject to neighbourhood consultation because the merits of the proposal are not under consideration. However in this case, neighbours have been consulted and a site notice has been posted, due to the level of public interest.

- 7.2 Responses have been received from the following addresses:

- 15 Sedley Taylor Road
- 20 Sedley Taylor Road
- 23 Sedley Taylor Road
- 24 Sedley Taylor Road
- 35 Sedley Taylor Road, on behalf of Sedley Taylor Road and Luard Road Residents' Group
- 49 Long Road

- 7.3 The responses from 23 and 35 Sedley Taylor Road are substantial and have been summarised and responded to in detail in appendix A. The responses as a whole can be summarised as follows:

1. Lack of evidence of continued use over the whole area in question.
2. If any certificate of lawfulness is to be issued it should be strictly limited to those activities which can be shown to have existed unchallenged for the full statutory period, excluding more recent and future changes of use such as contractor parking and boat trailer storage.

3. The tennis court next to the Cantabrigian's rugby pitch was in use as an occasional car park in 1993. There was a locked bollard in the middle of the narrow path leading to the pitch. There have been cars parked there on occasion since that time, mainly at weekends.
4. The car parking area has inadequate access, which is too narrow.
5. The car park should only be allowed if it has access from Long Road.
6. Impact on the use of the access on: the amenity of adjacent neighbours by virtue of noise and disturbance; on the fabric of the listed building 23 Sedley Taylor Road; and on damage to property as result of its narrowness.
7. The existing use of the access track is relatively light, there is concern that by granting the application, its usage could increase for commercial purposes unconnected to the use of the playing fields.
8. If the intention was to apply for permission in respect of uses related to the new pavilion, that should have been part of the planning application for the pavilion and a S.191 would not be applicable.
9. The provisions of S.191 should not be abused to provide permission via the 'back door' for new developments, which should properly be considered via a planning application and assessed under modern criteria.
10. The application should be considered in conjunction with the proposed new pavilion for HRSFC.
11. The site is part of a wider development project, which would require an Environmental Impact Assessment.

The above responses are a summary of the comments that have been received. Full details of the responses can be inspected on the application file. Bearing in mind the statutory criteria set out at paragraph 3.1, only the third party responses in relation to points 1, 2 and 3 are relevant.

8.0 ASSESSMENT

- 8.1 This is an application made under S191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness to demonstrate that the existing lawful use of the land is for parking associated with the use of the adjacent playing fields.
- 8.2 The covering letter with the application states that part of the land within the red line of the application site has been used as a car park to serve the playing fields since its acquisition from Trinity College in 1953 and that part of the site was temporarily used as a tennis court, which ceased in the early 1990's, with the whole of the area outlined in red used for parking since this time.
- 8.3 Evidence has been put forward, mainly in the form of statutory declarations from people either with some historical involvement with the Cantabrigians Rugby Club or Hill's Road Sixth Form College, who have used the land for parking cars in association with the use of the playing fields. In the event that this information was false, the declarers would be liable for perjury.
- 8.4 The evidence includes two dated photographs, the first of which is a photograph taken in 1995 showing the former tennis courts used for car parking with the outer fencing still in place and the second of which is from a company 'Commission-Air' showing an aerial photograph of the site dating from 2001. This latter photograph shows limited parking of vehicles on the land. Worn court markings are shown on the 1995 photograph whereas there are no markings evident on the 2001 photograph, which supports the claim that the land was not used for tennis but for parking.
- 8.5 The statutory declarations cover differing dates and periods of time, which would not be unusual given peoples' changing interests and involvement in the land and adjacent playing fields. The earliest declaration is from the Head of Cambridge Granta Cricket Club stating that the club has been parking cars on land surrounding the Cantabrigian Rugby Club, including the former tennis courts, since 1987.
- 8.6 The majority of the declarations and letters refer to dates of the use of the land for the purposes described from between 1993 and 1995 to the present (a 17-19 year period). These are from employees of HRSFC, a former member of the Cantabrigian Rugby Club and a member of Catabrigian Rowing Club. I note the

letter from Mr J Tuck, of Bidwells, who confirms the use for car parking for at least 12 years, who also recalls having used the car park in 1990.

- 8.7 The combination of statutory declarations, combined with the photographs, form a strong body of evidence to support the lawfulness of the use.
- 8.8 The application also includes a proof of evidence by a Mr Wilson of Cambridge City Council dated 7/12/1999 in relation to an appeal for a single dwelling at the rear of 23 Sedley Taylor Road. Paragraph 7.2 and the penultimate sentence of that evidence refer to a general parking area associated with the rugby club that the proposed dwelling will immediately adjoin. It is not clear from the evidence that the parking area in question included the former tennis courts or not. I accept that the evidence does not refer to tennis courts as being one of the surrounding uses but the presence of the tennis courts would not have been material for the purposes of the appeal to make any such reference essential. As such, in light of the uncertainty of the extent of parking area described, I give this evidence little weight.
- 8.9 There is also an extract from the Planning Inspector's appeal decision dated 19 January 2000 in relation to the appeal Mr Wilson was providing evidence for. Paragraph 9 of the appeal decision refers to 'views across the relatively unattractive car park of the Catabrigian Rugby Union Football Club'. If there had been tennis courts present at the time the Inspector made his site visit, they would probably have been cited in the subsequent decision letter and, particularly, in the context of paragraph 9. However, the appeal site was not the site of the current application for a CLUED, the presence of the tennis courts would not have been material for the purposes of the appeal to make any such reference essential. In light of the uncertainty of the extent of parking area described, I give this evidence little weight.
- 8.10 An e-mail extract from Ms Alison Twyford of Cambridge City Council dated 8 February 2012 is included in the submission package. The e-mail states that Ms Twyford has written confirmation that the use of the land for car parking 'has taken place since 1993' and 'As a result, the possible material change of use of the land, would now be immune from enforcement action under planning legislation'. The e-mail is in connection with an enforcement enquiry and hence does not quote the specific source

of written confirmation or the recipient of the original response who raised the enforcement query. I have discussed the nature of the information Ms Twyford received which lead to her conclusion, which adds nothing to the information submitted by the applicants for the CLUED.

- 8.11 I note one response from the occupier of 20 Sedley Taylor Road who notes that the tennis court next to the Cantabrigian's rugby pitch was in use as an occasional car park when they moved to Sedley Taylor Road in 1993 and that there have been cars parked on that land on occasion since that time. This fits with the package of evidence submitted by the applicants.

Third Party Responses

Boat Trailer Storage

- 8.12 The evidence from the applicants includes a letter from Mr S Allen of Catabrigian Rowing Club confirming their use of the former tennis courts from about 1995/1997 for the storage of 2-3 boat trailers for periods of time, which ceased in 2008. Objectors to the grant of a certificate argue that this constitutes an alternate use, which has not been applied for and demonstrates a break in continuity of use solely for parking ancillary to the use of the playing fields.
- 8.13 The applicants have confirmed that during the period that boat trailers were parked on the site that they took up a very small proportion of the overall application site and that parking ancillary to the use of the playing fields continued. I have no reason to doubt that this was the case. The 2001 and 2002 aerial photographs show a very small area of the former tennis courts occupied by boat trailers. In my opinion, the storage of two, sometimes three boat trailers, would not have altered the primary use of the land for the purposes described. Access to store or remove the trailers would have been occasional and would not necessarily have taken place at times that prevented car parking on the former courts. In my opinion, this was a de minimis use and not a primary use of the land and does not break continuity.

Use for Contractor's Parking

- 8.14 Some residents argue that the parking of contractor and sub-contractor's vehicles working on the Addenbrooke's site

constitutes a break in continuity of use.

- 8.15 In 2009 the land was temporarily used for contractor's parking for a period of 7 months (from May to November). The applicants do not deny that this occurred.
- 8.16 Photographs submitted by a third party show parking across the former tennis courts by 'ADBLY Construction' and 'SDC'. There are also other domestic vehicles present in the photograph but it is not clear if these are contractor employee vehicles or not. Also submitted by way of information to prove contractor parking took place is a letter from Davis Langdon of 9 November 2009 and a letter from Addenbrooke's Hospital of 12 November 2009, in relation to two construction projects on the Addenbrooke's site and a photograph of a sign for Contractors not to lock the gate between certain times on Tuesdays and Wednesdays, thereby allowing HRSFC access. The sign indicates that at the very least HRSFC had a continuing need to use the access point during this period, which is supplemented by the additional evidence from the applicants of 17 October 2012.
- 8.17 The applicants have stated that parking in connection with the use of the playing fields by Cantabs and HRSFC continued during the period of use by contractors. This is because the main use for parking continued to be at weekends when there was no contractor parking but also in weekday evenings when there was little or no contractor parking. The applicants have confirmed that control of the car park, or any part of it, was never given to any third party and that the arrangements were only temporary. I accept this and do not consider the continuity of car parking in association with the playing fields to have been substantially interrupted.
- 8.18 Having carefully considered all this information, including that submitted by residents who oppose the grant of the certificate, I am of the opinion that the use of the land (including the former tennis courts) for car parking in association with the use of the playing fields continued from 1993 to the date of the application and was not abandoned, substantially interrupted, or significantly altered in nature. This constitutes a continued period of use of 19 years.

Environmental Impact

- 8.19 Third party responses claim that the CLUED and the application for the new sports pavilion (11/0900/FUL) are linked and require a screening opinion to assess whether an EIA is required. The legal case 'Commission v UK and Ardagh Glass v Chester CC (2009)' is quoted, to which I have taken legal advice regarding its relevance.
- 8.20 For the purposes of the Council acting in its role as the Local Planning Authority, Environmental Impact Assessment (EIA) regulations apply to proposals involving development. This application does not constitute development. The EIA regulations are not relevant.
- 8.21 Even if it was argued that EIA regulations were relevant, the CLUED site does not form part of a project that requires a screening opinion. It could not be considered solely or partly as an urban development project as defined by the EIA regulations. No works are proposed that could reasonably be construed as constituting an 'infrastructure project'. The size of the CLUED application land is 0.1789HA, well below the relevant EIA threshold of 0.5HA. The site is not in or adjacent to a sensitive area as defined by the EIA regulations. The use of the former tennis courts for the parking of vehicles has not and does not give rise to significant environmental effects, by virtue of its nature, size or location.

Inadequacy of the Access

- 8.22 A substantial number of objectors to the grant of a certificate refer to the inadequacy of the access to the land. The access to the land does not form part of the application for a CLUED. The Council does not deny that the access is substandard. There is correspondence to that effect in relation to the application for the new HRSFC pavilion and various appeal decisions. As this is not a planning application, the inadequacy of the access does not have a material bearing on the consideration of the CLUED. The Council can only consider whether the use is lawful as demonstrated by the evidence put forward. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the land and the interpretation of any relevant planning law or judicial authority. The inadequacy of the access does not have a bearing on the

determination of the CLUED application.

- 8.23 Whilst there is no legal basis to seek an improvement of the access to the application site through an application for a Certificate of Lawfulness, it not to say that there is not an access issue that should not be addressed. I am aware of a recent incident regarding a car and a young cyclist at the access point from Sedley Taylor Road. This has been raised with the Catabrigian Rugby Club and HRSFC, who both have an interest in the safe operation of the access and potential resolution of conflict arising through its continued use by vehicles. This could potentially be resolved through the construction of an alternative and more suitable access point from Long Road, but it cannot be secured through a CLUED.

Bollard at Access Point

- 8.24 Some of the representations cite the presence of a lockable bollard in the middle of the access from Sedley Taylor Road as demonstrating that the access was used as a pedestrian and cycle access only for a period of time. Having spoken to the applicants on this issue, they have confirmed that the bollard was put in place to allow parking on the land for persons connected with the use of the playing fields. I do not find the historical presence of the bollard to conflict with the continuity of use. The attempt to control access demonstrates that the nature of the parking was in association with the sports fields. I understand a gate has subsequently been installed at a point further down the access for this purpose.

Intensification of Use

- 8.25 The level of use of the land for parking is dependant on the size of the application site itself but also the number and capacity of the sports pitches and the type of sporting event/use of the pitches at any one time. Events and larger sporting competitions will attract a greater number of cars to park. I understand weekend events typically attract a greater number of cars to the site than, for example, mid-week training. Given that the size of the car park is the controlling factor in terms of the limit of parking provision and that the land for the Rugby and HRSFC playing pitches has not itself been increased over the last 10 years (accepting various alterations to pitch layout and configuration), I do not find any merit in the argument that more recent alleged intensification of use gives rise to a break in continuity.

New Access from Long Road

- 8.26 Some responses to the application have stated that the certificate should only be granted if it has access from Long Road and that the provisions of sec. 191 should not be abused to provide permission via the 'back door' for new developments, which should properly be considered via a planning application.
- 8.27 Any proposal for a new access from Long Road would require planning permission. Such an application would be determined on its own merits. Unlike planning applications, certificates of lawfulness cannot be granted to require certain matters to be fulfilled or agreed by condition. A certificate could not require an application for a new access from Long Road to be made.

Other Issues

- 8.28 Numerous issues have been raised with regard to the impact of the access: on the amenity of adjacent neighbours by virtue of noise and disturbance; on the fabric of the listed building 23 Sedley Taylor Road; and on damage to property as result of its narrowness. None of these matters are relevant as to whether a certificate should be granted.
- 8.29 Responses to the application have also raised concern regarding the fact that most of the statutory declarations are from individuals connected with HRSFC or the Catabrigian Rugby Club and that they have a vested interest in the outcome. This is to be expected. I do not find it surprising that the mainstay of the evidence arises from people connected with the use of the land. I have determined the application on the basis of the merits of the evidence put forward.
- 8.30 I have considered all other points raised by third parties, which I have summarised in appendix A.

9.0 CONCLUSION

- 9.1 Based on the evidence provided in the application and in consideration of the information received from residents, I am satisfied that on the balance of probability, the land has continued to be used for car parking in association with the use of the playing fields from 1993 to the date of the application (19 years). There is

no evidence that tennis continued to be played on the courts from its cessation in the early 1990's to the present. The use has not been abandoned at any stage, substantially interrupted, or significantly altered in nature.

10.0 RECOMMENDATION

- 10.1 That a Certificate of Lawfulness be granted under Section 191 of the Town and Country Planning Act 1990 (as amended) for use of land ancillary to the playing fields as a car park (excluding the footprint of the Cantabrigian's Clubhouse) as outlined in red on the submitted plan.

Appendix A: Summary of Responses Received

	Issue	Officer Response
	Residents' Group of Sedley Taylor Road and Luard Road letter of 3/09/12	
1P	09/0894/FUL, change of use from tennis court to car park for temporary period, condition 3 states the land should be restored to its former use on or before 28 February 2011. Issue concerning consistency of approach.	Unrelated application on different site for full planning permission. Not relevant to a CLUED application.
1	76 Hillcrest declaration and accompanying photos submitted as evidence from 1995 show 2 tennis net posts and fencing to three sides of the courts which are still present	These appear to be remnants of the previous use and it is noted that some fencing still remains as of today. The photo shows cars parked across the tennis courts with faded tennis court markings. There is no evidence to suggest the land was used for tennis at this point in time.
2	34 Greystoke declaration that Granta Cricket Club has been parking on land, including the tennis courts, since 1987 is disputed. The Association recall that the courts were still in use in the early 1990's.	It is acknowledged that this evidence states an earlier time of use for parking on the courts than most of the other supporting evidence to the CLUED.
3	Hills Road 6 th Form College declaration that since 1993 the courts have been parked on, ignores parking for boat trailers in 1995/97 and contractor's parking in 2009.	There is no evidence that <u>only</u> boat trailers were parked in this period and it appears that these co-existed with car parking associated with the use of the playing fields for that period also, which remained the primary use. Car parking associated with the use of the playing fields continued during the period of contractor parking. The use for parking in association with the

	Hills Road 6 th Form College are Co-Trustees of the Cantabs land and access track.	playing fields was not abandoned. This issue is assessed in more detail in the officer report. This is not material to whether a Certificate should be granted.
4	As 3 above	As 3 above
5	28 Oatlands Avenue declaration is the only declaration from a member of the Cantabs Rugby Club.	This is not material to whether a Certificate should be granted. There is evidence submitted by a variety of sources, both independent of the Cantabs and connected with the club. The question is whether the evidence supports the granting of a certificate of lawfulness.
6	Appeal in 1999 for house to the rear of 23 Sedley Taylor Road demonstrates that a safe access cannot be provided.	It is not disputed that the access, which is not part of the site for the CLUED application, is substandard. The access is not part of the CLUED application.
7	Appeal in 1999 for house to the rear of 23 Sedley Taylor Road was not to establish the lawfulness of the use of the tennis courts but was concerning adjacent land.	The appeal decision letter is not compelling evidence regarding the use of the former tennis court land, but its contents are noted, particularly the lack of reference to tennis court use in the Inspector's description of the surroundings. This issue is assessed in more detail in the report.
8	Letter from Alison Twyford is not evidence.	The letter constitutes an informal opinion regarding the lawful use of the land, it neither adds nor detracts from the merits of the application.
9	Bidwells declaration does not refer to parking on the tennis courts.	Acknowledged.

10	<p>Cantabrigian Rowing Club letter confirming their use of the car park from about 1995/1997 for the storage of 2-3 boat trailers for periods of time, which ceased in 2008, is a different use than that applied for and was not ancillary to the use of the playing field as a car park. It is evidence that the whole application site area has not been in continuous use for car parking.</p> <p>Reference to storage for significant periods of time on the land, restricted to away rowing events and occupying a lot of car park. Empty boat trailers are 2.38m wide and 10.4m long, scaled plans attached.</p>	<p>There is no evidence that <u>only</u> boat trailers were parked in this period. Trailer storage co-existed with car parking associated with the use of the playing fields. The maximum storage of three trailers would have occupied less than approximately one tenth of the area that could have been used for parking associated with the use of the playing fields and would not have prevented car parking. Access to store or remove the trailers would have been occasional and would not necessarily have taken place at times that prevented car parking on the land.</p>
11	<p>Commission-Air Aerial Photograph of 2001 shows boat trailers only and one towing vehicle.</p>	<p>If the playing fields were not in use one would not necessarily expect car parking to be shown in the photograph. The photograph does show 2 boat trailers occupying a small corner of the tennis courts and a car adjacent. It is unclear whether the car is a towing vehicle associated with the trailers. The photograph shows no markings on the courts and the tennis nets are not in place.</p>
12	<p>The author of the letter from 54 The Lane is a relative of the owners of the garden backland to the rear of 23 Sedley Taylor Road which has been refused planning permission.</p>	<p>This is not material to whether a Certificate should be granted.</p>
13	<p>Covering letter from applicants is disputed because from</p>	<p>See 10 above.</p>

	1995/1997 to Nov 2009 another unauthorised use occupied much of the application site.	
14	During 2009 the application site was used for commercial car parking by contractor's working on Addenbrooke's. This is a break in continuity of use.	See 3 above.
15	From 1996 there was a bollard in place in the access track restricting access to the car park, which was subsequently knocked down.	This does not prove that the car park was not in use. It is evidence to suggest that access to car parking in the area was restricted at certain times. It is unclear for what period the bollard was in place. The access is currently gated but this does not prohibit parking on the land. If anything, it supports the notion that the car parking use is in association with the use of the playing fields.
16	1951 Ordnance Survey Map shows no tennis courts, no CRC Clubhouse and no access track.	Description not disputed.
17	1969 and 1970 Ordnance Survey Maps show a small area by the CRC Clubhouse enclosed with a dotted line. The tennis courts are enclosed by a solid line.	Description not disputed.
18	1996-1999 Ordnance Survey Maps show an enlarged area adjacent to the CRC Clubhouse enclosed with a dotted line. The tennis courts are enclosed by a solid line.	Only 1999 OS Map included but description not disputed. The map does not demonstrate that the tennis courts were in use as tennis courts.
19	2008 Ordnance Survey Map show an enlarged area adjacent to the CRC Clubhouse enclosed with a dotted line. The tennis courts	Description not disputed. The map does not demonstrate that the tennis courts were in use as tennis courts.

	are enclosed by a solid line.	
20	Gated entrance to access track installed by Hills Road 6 th Form College encroaches into the listed curtilage of no. 23 Sedley Taylor Road and LBC consent not sought.	Not relevant to the consideration of the CLUED.
21	Footprint of the clubhouse included within the red line application site. This is an anomaly as the clubhouse has been in place for nearly 60 years and could not have been parked on.	Agreed that this is an anomaly. From an assessment of the evidence submitted it is clearly not the intention of the applicants to demonstrate that there has been parking on the footprint of the clubhouse itself. This does not prejudice the determination of the application for a Certificate, which could exclude, for the purposes of clarity, the clubhouse footprint. See wording of final recommendation
22	Fire appliance access plan submitted with application 11/0900/FUL and associated Building Regs application	Not relevant.
	Residents' Group of Sedley Taylor Road and Luard Road letter of 10/09/12	
1	No decision should be made until the outcome of the 1 August Judicial Review hearing is known.	The Council has a duty to consider applications put to it.
2	The Cantabrigian Rugby Club have indicated that an access from Long Road to the car parking area is possible. Residents support this.	The Local Planning Authority does not have any such application before it. The existence or non-existence of an application for an access from Long Road does not have a bearing on the determination as to whether the use of the land is lawful. The determination of any application for a new

		access would not alter the lawfulness of the existing use.
3	Since 2000, and in relation to the 1999 planning appeal, the fence adjacent to the track and 23 Sedley Taylor Road has moved south 560mm, to the south of which is also a ransom strip owned by a third party. The fence is not in its original position and no reliance can be made on the access width of the southern access.	It is not disputed that the access, which is not part of the site for the CLUED application, is substandard. These factors do not have a material bearing on the consideration of the CLUED.
4	There is no continuous use for car parking either by Cantabs or Hills Road 6 th Form College. There have been other uses which have been sui generis or commercial.	See point 10 response in relation to Residents' Group of Sedley Taylor Road and Luard Road letter of 3/09/12
5	The criteria for issuing Certificates of Lawfulness includes impact on surrounding roads. There are adverse highway safety issues associated with the granting of a certificate.	The criteria is based upon the evidence submitted to demonstrate a continuous use. Such factors do not have a bearing on the outcome of an application for a CLUED.
6	Notification letter incomplete	Noted.
	Residents' Group of Sedley Taylor Road and Luard Road letter of 13/06/12	
1	The application forms part of the HRSFC replacement pavilion project 11/0900/FUL and associated travel plan condition 15 affecting the 'car park' use.	This matter is contested. The Judge considered condition 15 in the recent legal challenge and considered its imposition lawful. Condition 15 does not prevent vehicular access. EIA is not relevant. See assessment.
2	This application is the second	This is not a planning

	of a two-part application relating to the replacement pavilion and should not be determined before the outcome of the preliminary JR proceedings.	application. The Council has a duty to consider the application for a CLUED put to it.
3	The Principal of the Hills Road 6 th Form College (HRSFC) and Chair-person of the PTA act as co-Trustees of the application land. HRSFC has a vested interest in the outcome of the application. This is improper.	This is not relevant to the consideration of the CLUED.
4	The application fails to include the access within the red or blue line. The access is unsafe.	The application site does not include the access to the land within the red line. The access, which is not part of the site for the CLUED application, is substandard. This factor does not have a material bearing on the consideration of the CLUED and lawful use of the land.
5	The access is substandard on many counts. Detailed dimensions are given relating to the access and visibility to demonstrate its unsuitability, together with its surfacing.	See answer to 4 above and 3 in relation to Residents' Group of Sedley Taylor Road and Luard Road letter of 10/09/12
6	The proposal represents a wide-ranging negative environmental impact. The site is not suitably landscaped. Tree no T44 would be damaged by the proposal if the Certificate is granted.	I have considered whether the change of use would have required an EIA in the main body of the report. There is no evidence that T44 would be damaged by the issuing of a certificate and this is not material to the consideration of the lawfulness of the use.
7	The car park should be served by a positive drainage scheme including anti-pollution measures.	Drainage matters would be a consideration for a planning application but they are not relevant to CLUED's.
8	No evidence has been put forward to demonstrate that the large car parking area is	The points made are not material to the consideration as to whether the use of the land is

	needed. The car park serves a larger purpose and bays should be defined. It is unsafe.	lawful.
9	The proposal does not safeguard the amenities of the area. It should be refused on the grounds of loss of privacy and amenity to neighbours, noise and nuisance and harm to the setting of the listed building.	The points made are not material to the consideration as to whether the use of the land is lawful.
10	The use of the access has caused harm to the fabric of the listed building 23 Sedley Taylor Road.	The points made are not material to the consideration as to whether the use of the land for parking is lawful.
11	County Highways have indicated that intensification of the use of the access would represent a danger to highway safety. There should be control over the levels of the use of the access. Residents do not accept the dismissal of the access as a consideration either in relation to this application or 11/0900/FUL.	The points made are not material to the consideration as to whether the use of the land for parking is lawful. See answer to 4 above and 3 in relation to Residents' Group of Sedley Taylor Road and Luard Road letter of 10/09/12.
12	The 11/0900 Travel Plan condition gave the Council an opportunity to deal with the matter of the access but it has not done so and this is subject to JR proceedings.	The points made are not material to the consideration as to whether the use of the land for parking is lawful. Attempting to limit the use of the access under 11/0900 to pedestrians and cyclists only would have been ultra-vires and would have been contrary to planning Circular 11/95 guidance. The recent High Court ruling found in favour of the Council on this point.
13	The Council should act in relation to private land on various grounds, including Open Space and Recreation Strategy Guidelines.	The points made are not material to the consideration as to whether the use of the land for parking is lawful.
14	The red-line area is part of a	The points made are not

	larger area of designated Open Space. The application would result in the loss of a playing field contrary to current planning guidance and Sports England Policy.	material to the consideration as to whether the use of the land for parking is lawful
15	There is unanimous preference locally for the two accesses to the sports fields to be used solely by pedestrians and cycles. This was previously put forward as a solution by HRSFC.	See 12 above
16	The Cantabrigian Rugby Club have indicated that an access from Long Road to the car parking area is possible. Residents support this.	See answer to point 2 of Residents' Group of Sedley Taylor Road and Luard Road letter of 10/09/12
17	The access width is too narrow to accommodate a Fire Tender.	The points made are not material to the consideration as to whether the use of the land for parking is lawful.
18a	The applicant has not presented any clear or convincing evidence of need. There is a lack of evidence from users. Use has only been fairly recent. The application is calling for an intensification of use.	The application was withdrawn and re-submitted with additional evidence to support the lawfulness of the use. Lack of need is not material to the consideration of an application for a CLUED. The application is seeking to establish the lawful use of the land.
18b	During 2009 the former tennis courts were used for the parking of contractor's and sub-contractor's vehicles working on the Addenbrooke's site. The continuous parking for sports use cannot therefore be claimed.	The parking by contractor's is not disputed. See main assessment.
	Letter from occupant of 23 Sedley Taylor Road of 12/09/12	

1	All parties involved should await the outcome of the JR hearing before taking decisions on the present matter.	The Council has a duty to consider the application for a CLUED put to it.
2	General point made regarding lack of co-ordinated intervention from public bodies to resolve local issues.	Noted but not relevant
A(i)	Permission for the Clubhouse was issued in 1953. That permission did not include a car park or tennis courts. How can permission be sought for a change of use from tennis courts to car park? The tennis courts were built in 1957 and were in use up until the early 1990's. There is no document to prove when the tennis courts fell out of use. OS map records indicate a tennis court up to 2008.	<p>The application is not seeking permission for a change of use. It is seeking to establish an existing lawful use.</p> <p>It is unclear what document the resident would expect to be presented to prove the tennis court use had ceased and what evidence in addition to that submitted could be adduced.</p> <p>The OS records do indicate a tennis court. This does not demonstrate that a change of use had not occurred. Evidence supplied by the applicants demonstrates that the tennis courts were not in use as such in 2008 and before that since at least 1993.</p>
A(ii)	The land is not registered.	The point made is not material to the consideration as to whether the use of the land for parking is lawful.
A(iii)	The covenants pertaining to the southern access include instructions that no vehicles should stand or park along it. A bollard closed off the access up to 2000. From 1953 – 2000 the path must have been used for pedestrian access only.	It is doubtful that the access was only used by pedestrians during the period 1953-2000 as evidence submitted by the applicants demonstrates that cars were parked on the land, including the former tennis courts, from the early 1990's. It is doubtful that access for these

		vehicles would have been from anywhere other than the southern access. The applicants have confirmed that the bollard was removable. The concerns raised regarding the lawful status of the use of the access track or 'path' do not fall to be considered as part of this application, which does not include the access track as part of the land for consideration.
B(i)	A land search for the purchase of (presumably) 23 Sedley Taylor Road in 2000 did not reveal the existence of any car park or evidence of any authorised or unauthorised vehicular use of the path or land in the clubhouse area.	Records of unauthorised use would not necessarily be reported as part of a land search. This neither proves nor disproves the lawful use. The point is not relevant.
B(ii)	No sustained vehicular use of the path to the site from 2000-2008	The concerns raised regarding the intensity of use of the access track or 'path' do not demonstrate that the land was not used for parking.
B(iii)	Between 2000 and 2008 the site was used for boat storage as opposed to car parking. This caused highway safety issues. There was no evidence of sustained car park use by HRSFC. The educational access remains from Luard Road.	<p>For issues relating to boat storage see answer 10 to Residents' Group of Sedley Taylor Road and Luard Road letter of 3/09/12</p> <p>The response fails to mention whether they witnessed use of the former tennis courts by Cantabs Rugby Club.</p> <p>The application does not seek to establish a lawful use for a specified educational institution or sports club but rather a car parking use in association with the use of the playing fields.</p>

B(iv)	Use by the Cantabs Rugby Club is restricted to practice on Tuesday and Thursday evenings and occasional Saturday matches during the Rugby season. The use was interrupted by the boat storage and contractor use.	See answer 10 to Residents' Group of Sedley Taylor Road and Luard Road letter of 3/09/12 regarding boat storage. See answer 18b to Residents' Group of Sedley Taylor Road and Luard Road letter of 13/06/12 regarding contractor parking.
B(v)	There is no 10-year precedent for community use.	See answer to B(iii) above.
B(vi)	The application is contrary to the 191 regulations governing Certificates of Lawfulness. There is no evidence to suggest that the land was only used as a car park and only as a car park since 2002. Between 2002 and 2012 the use of the land was as a boat store. From 2009-2010 there was a material change from sporting to commercial use. There has not been a continuous use.	See answer 10 to Residents' Group of Sedley Taylor Road and Luard Road letter of 3/09/12 regarding boat storage. See answer 18b to Residents' Group of Sedley Taylor Road and Luard Road letter of 13/06/12 regarding contractor parking.
C(i)	The application does not list constraints but 12/0585/CLUED did. It is unacceptable to claim that the constraints do not exist. There is no reference to the Open Space and Recreation Strategy.	This is not relevant and neither is the Council's Open Space and Recreation Strategy, in the consideration of the CLUED application. The land forms part of a wider parcel of Protected Open Space which includes the playing fields adjacent.
C(ii)	There is no report from Building Control regarding a change in the use of the access path into a main service road.	The point made is not material to the consideration as to whether the use of the land for parking is lawful.
C(iii)	There is no report from Conservation Officers regarding a change in the use of the access path into a main service road and the effect on	The point made is not material to the consideration as to whether the use of the land for parking is lawful.

	the listed building.	
C(iv)	Conflict with Local Plan policy 8/10 and the designation of the land as protected open space.	See answer to C(i). This is not relevant. An application for the lawful use of the land for car parking ancillary to the use of the playing fields had not been made in 2006. Policy makers would not designate a potential lawful use as a car park in the absence of a certificate of lawfulness. It is for the applicants to prove the lawfulness of the use not the Local Plan or policy guidance.
C(v)	Concerns of the Council's past dismissal of material concerns relating to the dangers of the access, with reference to the Appeal decisions and lack of action from the Council and other authorities. The access should not be precluded from the consideration.	See answer 4 to Residents' Group of Sedley Taylor Road and Luard Road letter of 13/06/12. Lots of the issues concerning the use of the access constitute a neighbour dispute and are not material to the determination of the application for a CLUED, which is to be assessed on its own merits.
C(vi)	The use of the land and access to it has resulted in a loss of privacy and amenity.	The points made are not material to the consideration as to whether the use of the land is lawful.
C(vii)	The use of the land and access to it has resulted in a loss of privacy and amenity to adjacent residents as evidenced in the Appeal decision which have been dismissed by the Council, which has a duty of care to seek solutions rather than dismiss problems.	The points made are not material to the consideration as to whether the use of the land is lawful. Many of the issues raised point towards a neighbour dispute that the Council has no formal authority or power to remedy.
C(viii)	No attention has been given to the possibility of alternative access arrangements, such as from Long Road.	See answer 2 to letter from Residents' Group of Sedley Taylor Road and Luard Road letter of 10/09/12
	Letter from occupant of 23	

	Sedley Taylor Road of 27/08/12	
1	Extra evidence of uses is submitted with 12/0956/FUL	Noted
2	Asks for the consultation period to be extended until the 14 September 2012	Agreed
3	Asks for any recommendation to await the outcome of the Judicial Review	The Council has a duty to consider the application for a CLUED put to it.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Under Section 100D of the Local Government Act 1972, the following are “background papers” for each report on a planning application:

1. The planning application and plans;
2. Any explanatory or accompanying letter or document from the applicant;
3. Comments of Council departments on the application;
4. Comments or representations by third parties on the application as referred to in the report plus any additional comments received before the meeting at which the application is considered; unless (in each case) the document discloses “exempt or confidential information”
5. Any Structure Plan, Local Plan or Council Policy Document referred to in individual reports.

These papers may be inspected on the City Council website at:
www.cambridge.gov.uk/planningpublicaccess
or by visiting the Customer Service Centre at Mandela House.