



## Planning Services

# COMMITTEE REPORT

### AGENDA ITEM NUMBER:

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#### APPEAL UPDATE REPORT

#### APPEALS DETERMINED

**Appeal against the refusal to grant a certificate of lawful development for a car sales office and workshop building. (DM/15/002893/CLU) at Valley View, Hilltop, Esh, Durham.**

An appeal against the refusal to grant a Lawful development Certificate for the above development was received on 27th July 2015. The application was refused under delegated powers for the following reasons:

*“The evidence submitted with the application and the Council’s own evidence is not sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, the use of the building for a car sales office and workshop is immune from enforcement action with the use not having commenced more than 10 years ago. The application is therefore contrary to part VIII Section 171B(3) of the Town and Country Planning Act 1990 (as amended).”*

The appeal was dealt with by way of written representations and site visit held on the 16 February 2016.

Based on the evidence submitted the Inspector considered that the erection or refurbishment of the appeal building and the change of use of the land occurred more than four years ago but less than ten years ago.

As the Appellants’ own evidence stated that the current use in the building has only subsisted since 2009 the Inspector concluded that the use has not acquired immunity from enforcement action through the passage of time and is therefore unlawful.

The Inspector made reference to case law that demonstrated that although the construction of a building as operational development may be immune from enforcement action four years after its substantial completion, its use does not gain immunity over the same period therefore concluding that it is possible to have an immune, lawful, building that has no lawful use.

The Inspector concluded that the Council was right to take the view that the ten year enforcement period applies to the use of the appeal building as a car sales office and workshop and dismissed the appeal.

## **RECOMMENDATION**

That the report be noted.

Reports prepared by Louisa Ollivere (Planning Officer).