

HESTIA TOWN PLANNING

64 Pinfold Hill,
Lichfield,
WS14 0JP
E: hestia.planning@outlook.com

Bury Council, Planning Department,
Town Hall, Knowsley Street,
Bury, Lancashire,
BL9 0SW

Date: 06/02/2026

Sent via Planning Portal

Dear Sir/Madam,

Town and Country Planning Act 1990

Certificate of lawfulness for the use of land for parking

Land adjacent to 5 Crompton Street, Bury, BL9 0AD

I write on behalf of our client, Crompton Living Ltd, in support of an application for a certificate of lawful development (LDC).

The application seeks to establish that the existing use of the land outlined in red on the Site Location Plan (**Figure 1**) as a private car park constitutes lawful development under Section 191 of the Town and Country Planning Act 1990 (TCPA).

This statement forms the supporting evidence accompanying the application.

LDCs are provided for under Part VII of the Town and Country Planning Act 1990 (as amended) with s.191 relating to existing uses/developments and s.192 referring to proposed use or development.

Under the provisions of s.191(1) any person wishing to ascertain whether an existing use of buildings or other land is lawful or whether any operations which have been carried out in, on, over or under land are lawful can make an application for a certificate of lawful use. In this regard, paragraph 2 of s.191 states the following:

"No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission, or because the time for enforcement action has expired or for any other reason)."

In the case of material changes of use, section 171B of the TCPA confirms that the relevant time period is ten years.

1) Planning history and current use

The application site comprises a private car park measuring approximately 480 square metres, fronting Crompton Street and benefiting from a dropped kerb providing vehicular access.

The car park lies adjacent to 5 Crompton Street, which is owned by Crompton Living Ltd. The adjoining car park land is leased and controlled by Crompton Living Ltd. For clarity:

- = The lease relates to **Land Registry Title Number MAN169237**; and
- = Ownership of 5 Crompton Street relates to **Land Registry Title Number MAN169612**.

Figure 2 illustrates the relationship between the car park (shown in red) and 5 Crompton Street (shown in blue). A copy of the lease is provided at **Appendix A**.

The site has been used continuously as a private car park associated with 5 Crompton Street for a period exceeding 10 years.

While the use and occupancy of 5 Crompton Street has changed over time, the use of the application site for parking has remained consistent throughout. Historically, the car park has been used by customers associated with previous uses of 5 Crompton Street (including when the building operated as a nursery), and more recently by residents occupying the property.

For completeness, the planning history relating to 5 Crompton Street is set out in Section 2 of this statement.

The site's long-established use as a car park is evidenced by:

- = A sequence of Google Earth images from October 2014 to November 2024, which clearly demonstrates the site's continuous use for vehicle parking.
- = Acknowledgement of parking on site from Bury Council and the previous occupier of the site dated 2015 (Appendices B-D).

No Enforcement Notice or other enforcement action has been served in respect of the use of the site, and therefore the statutory immunity period has not been interrupted.

[illegible]

2) Planning History

The following planning history relates to the site and 5 Crompton Street:

- 34269 - Crompton Street/The Haymarket Bury - Demolition Of Methodist Church & Part Former Post Office; 4 Shop Units To The Haymarket; Service Yard Off The Rock; External Works To Lions Garden And Crompton Street - Approved Conditionally – 29/7/98
- 34298 – Crompton Street/The Haymarket Bury - Demolition Of Church And Rear Of Post Office (Conservation Area Consent) - Approved Conditionally – 29/7/98
- 39887 - Former Post Office 5 Crompton Street Bury - Change Of Use To Licensed Bar (Class A3) - Approved Conditionally - 18/11/2002 49341 - 5 Crompton Street, Bury, BL9 0AD - Change Of Use From Former Post Office To A Licensed Food And Drink Operation (Class A4) - Approved Conditionally – 20/2/2008
- 49406 - 5 Crompton Street, Bury, BL9 0AD - Change Of Use From Former Post Office To A Licensed Food And Drink Operation (Class A4) (Alternative Scheme To Ref 49341 - Includes An External Area) - Approved Conditionally - 19/3/2008
- 54208 - 5 Crompton Street, Bury, BL9 0AD - Change of use from Sui Generis (post office with sorting office facilities) to mixed use comprising retail (Class A1) , financial and professional services (Class A2), restaurant and cafe (Class A3), and drinking establishment (Class A4); Alterations to side elevation to provide canopy, additional access and new windows - Approved Conditionally – 2/11/2011
- 55352 - 5 Crompton Street, Bury, BL9 0AD - Change of use of building from Sui Generis to D2 (Assembly & Leisure). - Approved Conditionally – 3/9/2012
- 58453 - 5 Crompton Street, Bury, BL9 0AD - Change of use from ground floor children's play centre and first/second floor offices to creche/day nursery/children's play centre (Class D1) to the ground/first/second floors; New access to first floor flat roof area at rear and installation of 1.8 metre high railings to create outside play area - Approve Conditionally – 22/4/2015
- 58472 - 5 Crompton Street, Bury, BL9 0AD - Two storey extension to side elevation to form additional internal staircase (resubmission) - Approved Conditionally - 15/4/2015 62907 - 5 Crompton Street, Bury, BL9 0AD - 1 No. non-illuminated fascia sign - Approved Conditionally 20/8/2018
- 69480 - 5 Crompton Street, Bury, BL9 0AD - Prior approval for proposed change of use from Class E to 16 no. apartments (Class C3) - Prior Approval Not Required – 17/5/2023
- 69687 - 5 Crompton Street, Bury, BL9 0AD - First floor rear extension to form 1 no. lower first floor flat and loft conversion/roof alterations with dormers to form 2 no. second floor flats with external alterations and associated works - Refused – 24/8/23
- 70177 - 5 Crompton Street, Bury, BL9 0AD - Change of use from Class E to 16 no. apartments (Class C3). Application for a Non Material Amendment to Prior Approval 69480 to allow addition of stairs within some

apartments. Apartments 1, 6, 7, 8, 12, 14 and 15 will include an additional floor in the apartment to increase living space and modifications to internal arrangement. - Approved Conditionally - 20/11/2023

- 70320 - 5 Crompton Street, Bury, BL9 0AD - Replace existing windows and doors - Removal of three doors and reinstatement of full length windows; Partial removal of bricked door with insertion of window; 3 no. windows with railings to be removed and replaced with larger windows - Refused 07/02/2024

3) Relevant case law

The onus is placed on the applicants to prove, on the balance of probabilities, that the LDC should be granted. This was confirmed in the case of *FW Gabitas v Secretary of State for the Environment and Newham Borough Council* (1985), where the court held that the applicant's own evidence need not be corroborated by "independent" evidence in order to be accepted. With reference to the balance of probabilities, In the case of *Re H and Others (Minors) (A.P) (Respondents)* (1996), Lord Nicholls explained that the balance of probability test was a flexible one, stating:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury... The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

In *Miller v Minister of Pensions* [1947] 2 All ER 372, Denning stated that, *"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."*

Expressed in percentage terms, if the conclusion is reached that it is 51% likely that a Certificate of Lawfulness should be granted, then, by the balance of probabilities, it should be granted.

4) Review of evidence submitted

As the images below demonstrate (taken from Google Earth), the area has been consistently used for parking (see red circle in each figure) for a period of more than ten years, and therefore the use as a car park cannot be reasonably queried.

Figure 3 – October 2014

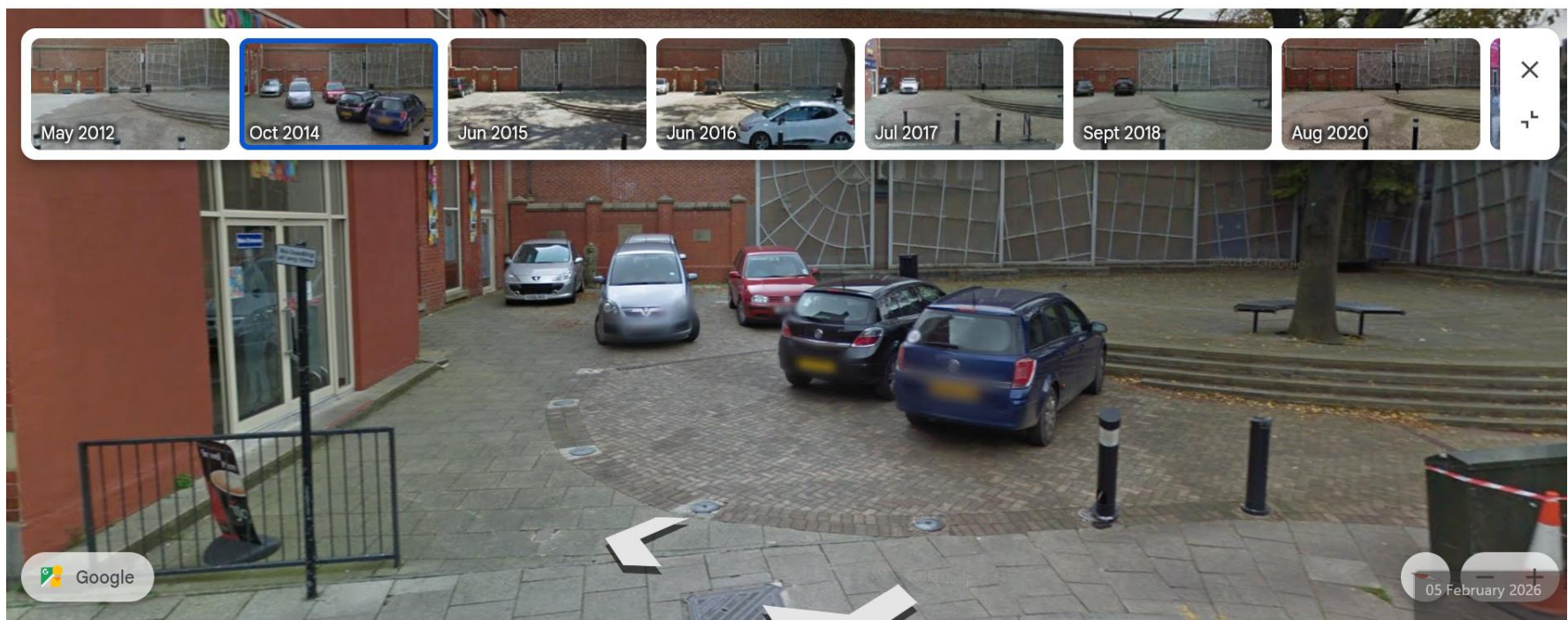


Figure 4 – October 2017

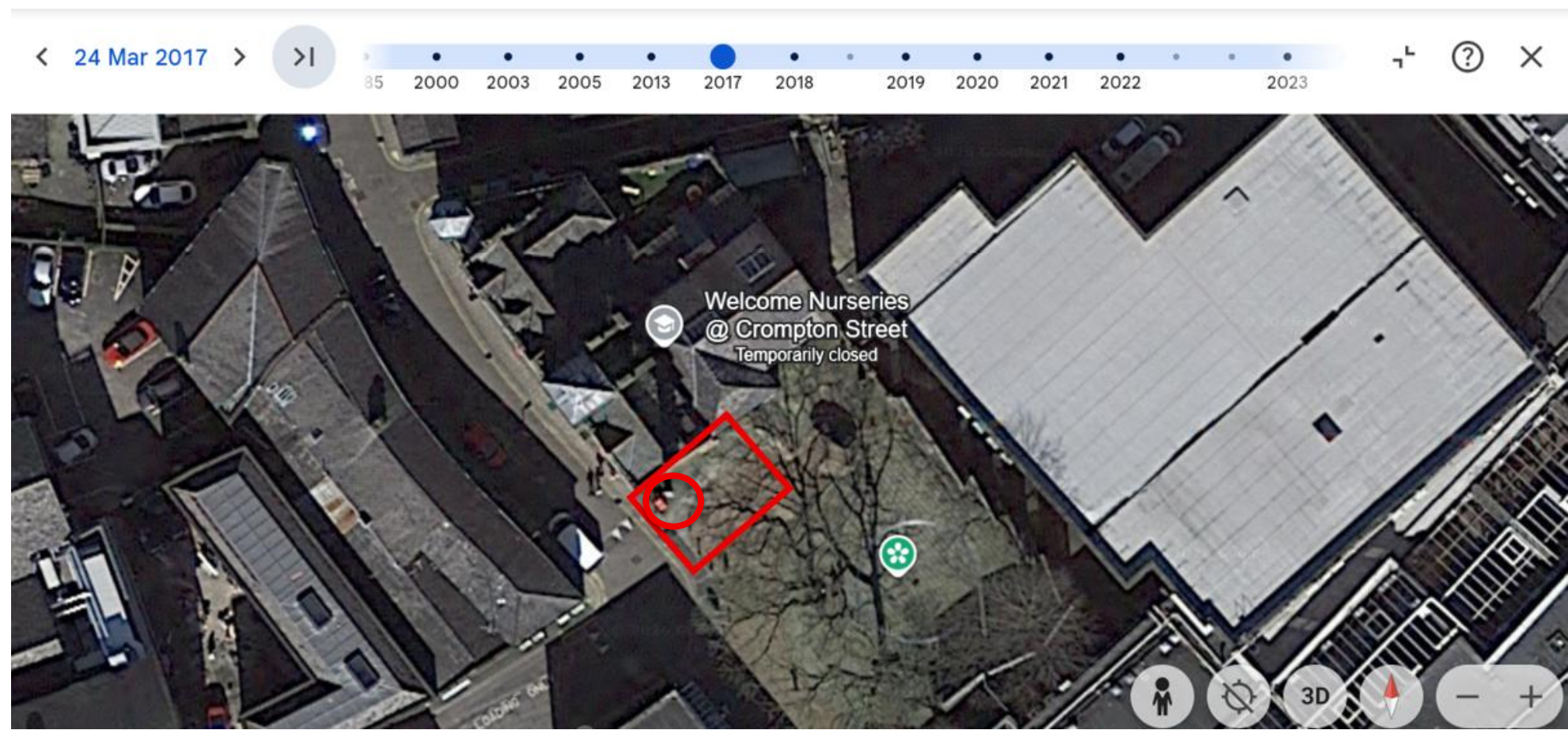


Figure 5 – May 2019

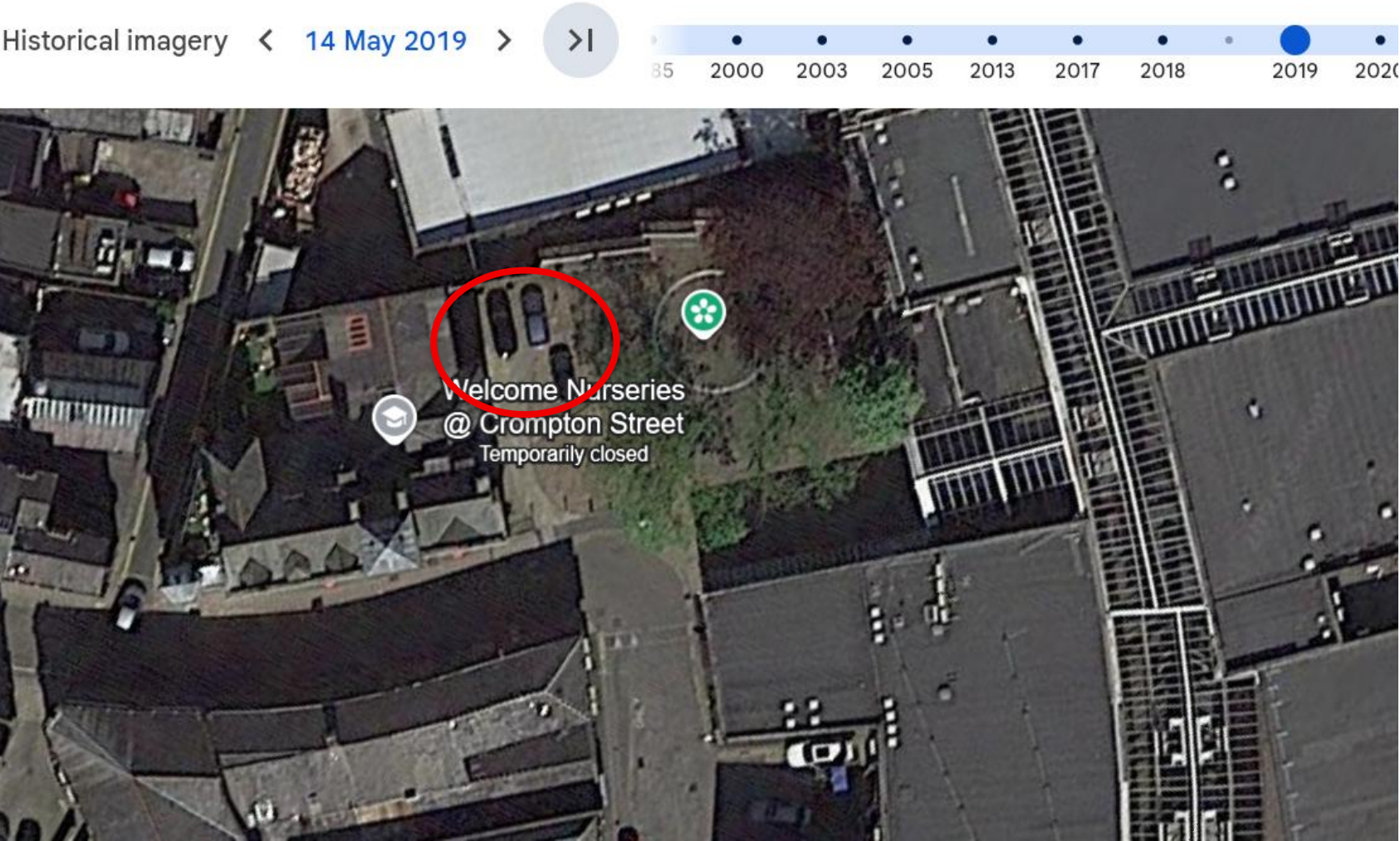


Figure 6 – April 2021

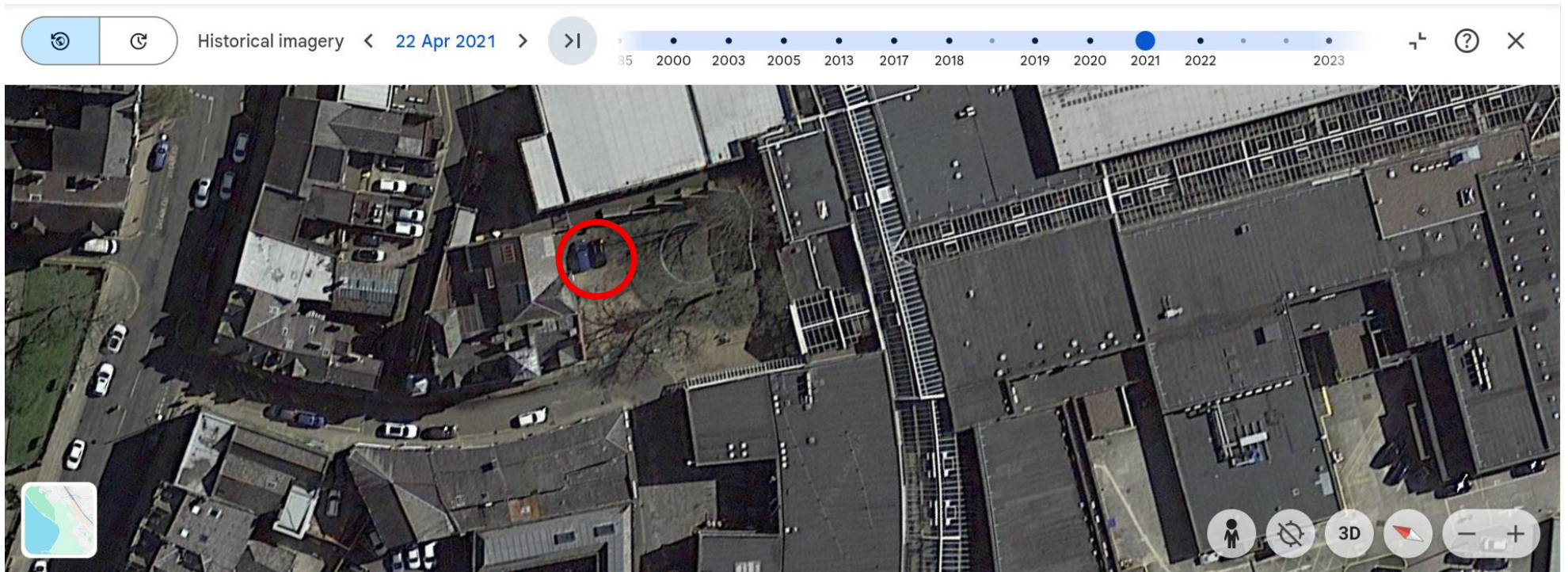


Figure 7 – April 2022

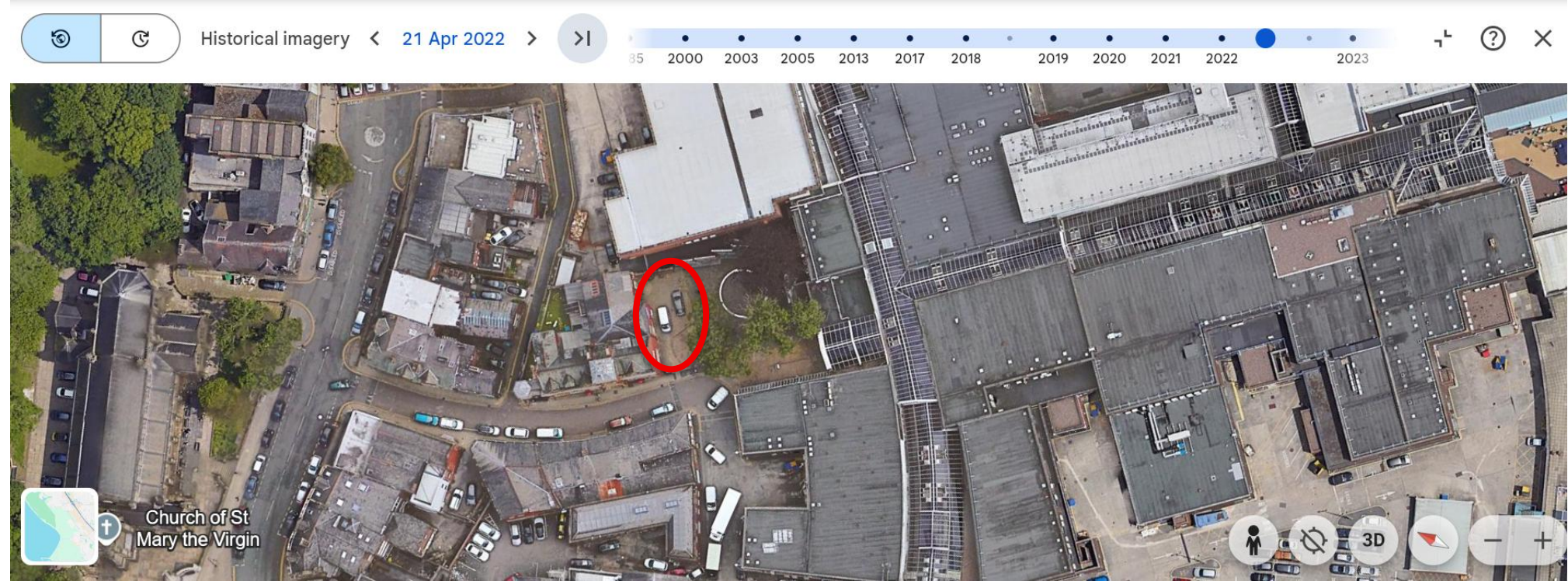


Figure 8 – June 2023

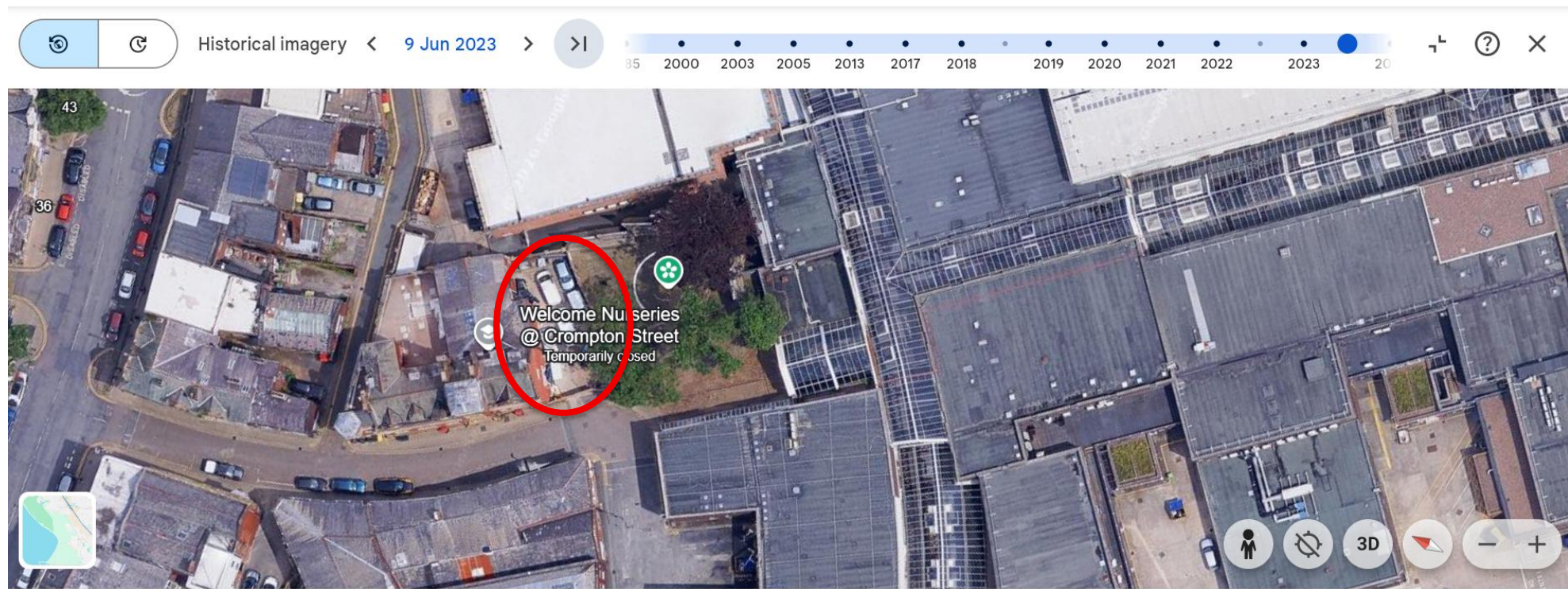
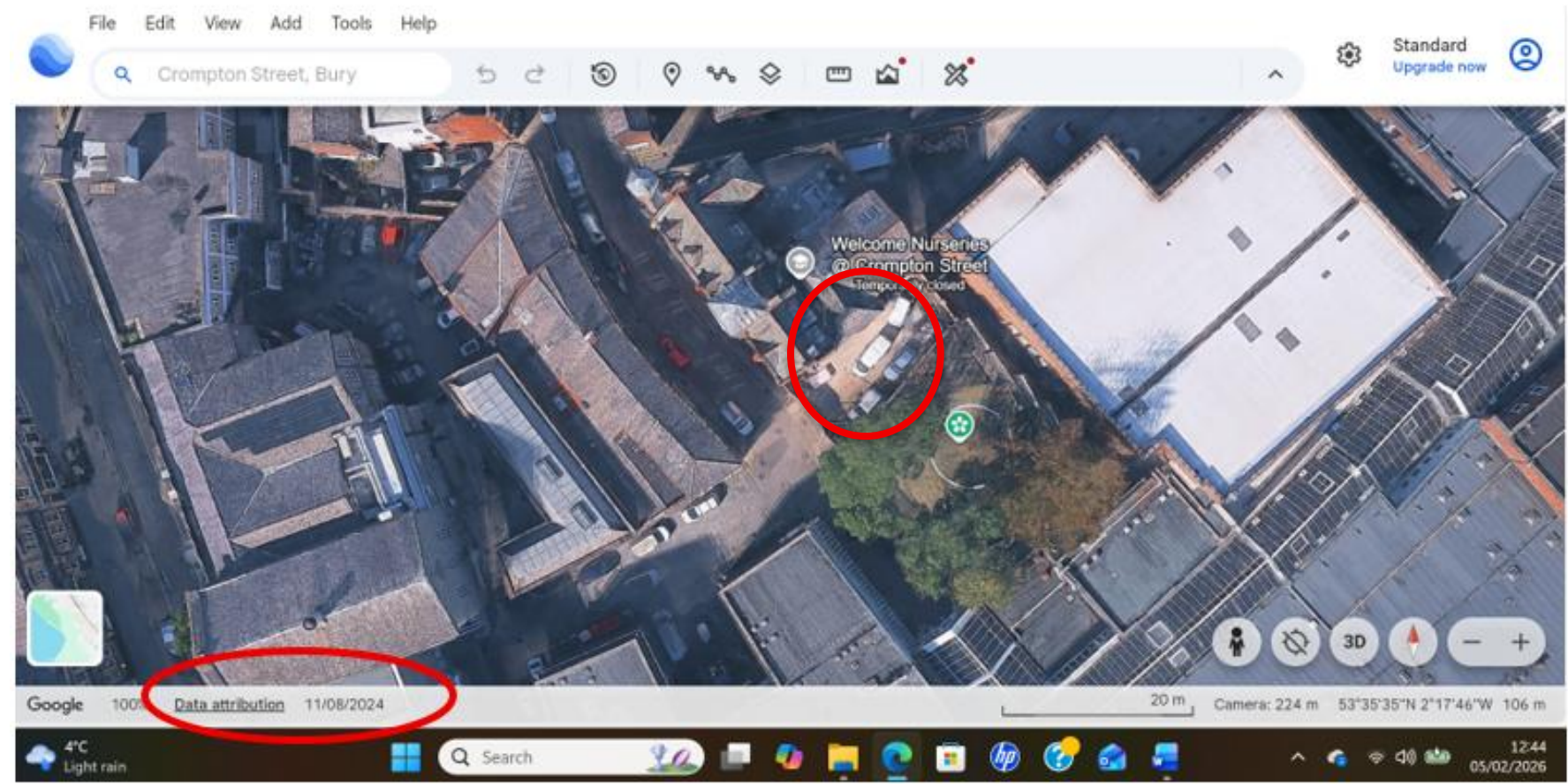


Figure 9 – November 2024*



* It is important to note that the date shown in Google Earth is in American format and therefore the date of the image is 08/11/2024 in UK format.

Site History Evidence

The planning history of the site and adjacent site (5 Crompton Street) is important as it further demonstrates the site being in use as a car park for over 10 years. More importantly, the Council have been aware of this use, however, they have never taken enforcement action. Application 59675/FUL was submitted on the 25th January 2016, by the previous occupants to authorise the site as a car park. It is clear that at this point, the site was used for parking. Paragraph 5 of the Applicants statement (**Appendix B**) advises that parents have been parking on the site. They state:

“Currently the nursery has been opened only 10 weeks and in this time we have already registered 60 children and employed 15 members of staff, if we are not allowed to park there is a good chance that parents may decide to move their children to a nursery with parking, and **although we have never advertised as having parking and we try to deter people from parking there we find it difficult to stop parents who are parking there** because it's safer for their children. If parents remove their children we would have to dismiss staff as there would be no job for them.”

Furthermore, the officers report in relation to application 59675/FUL (**Appendix C**) states:

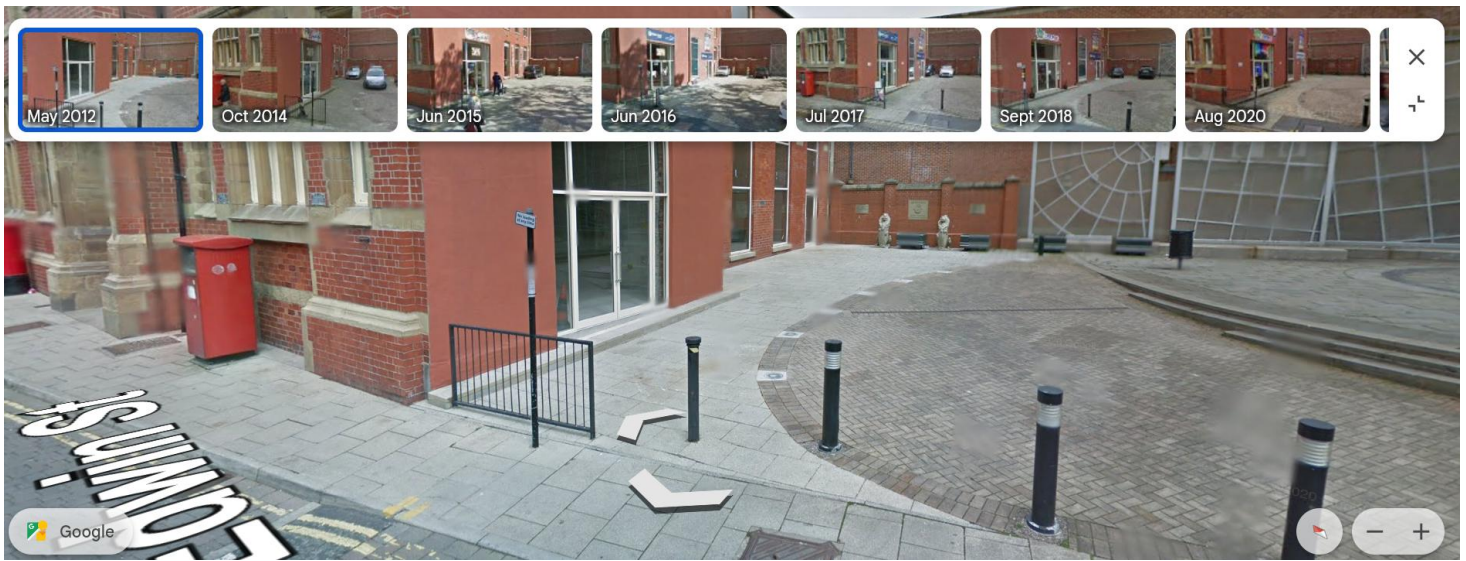
“Planning permission was granted in 2012 for a change of use of the building to a children's activity centre, with a subsequent application in 2015 for a mixed use, comprising a creche/nursery and play centre. A condition of this approval required the reinstatement of bollards which had been removed and which had previously restricted vehicular access to the application site.”

It is clear that the Council were aware of the parking on site and had previously tried to regulate it as early as 2015 by the attachment of a condition to reinstate bollards. **Appendix D** contains that highway recommendation which states:

“No development shall commence unless and until the missing bollards at the boundary of Lions Square with Crompton Street indicated on approved plan reference K691/01 have been reinstated to an agreed specification and to the written satisfaction of the Local Planning Authority”

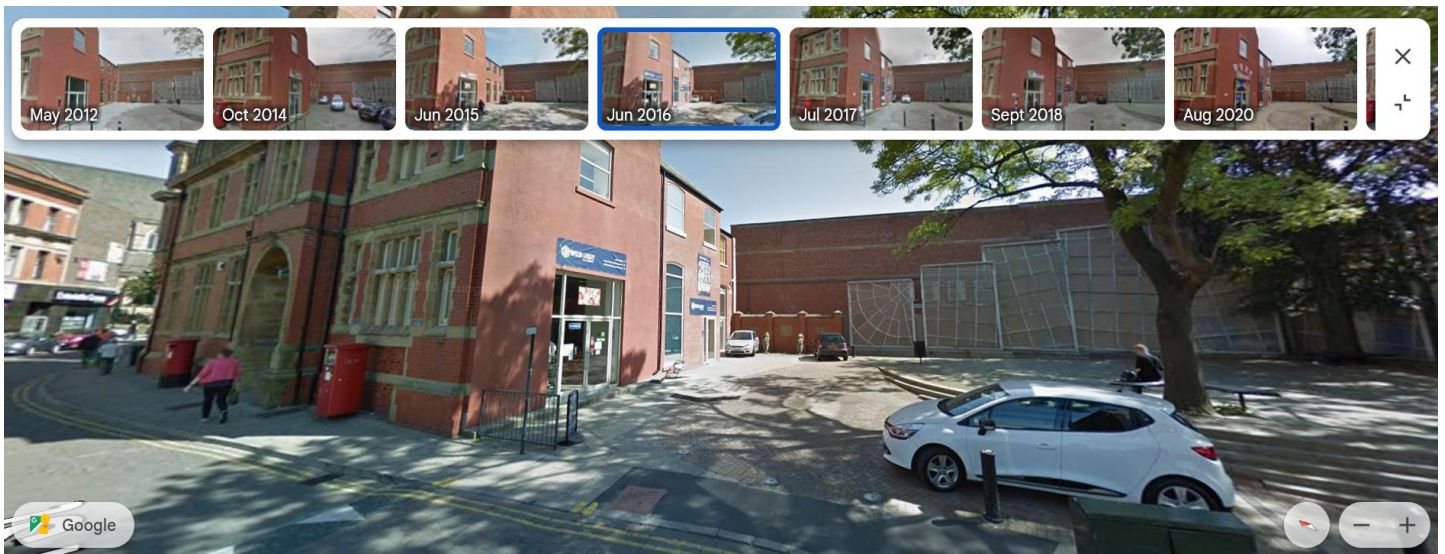
Figure 10 below shows the bollards in situ in 2012. Figure 3 shows these bollards being removed in 2014 to allow for parking on site.

Figure 10 – Bollards in 2012



Whilst it can be seen that the applicant attempted to discharge this condition through the submission of plans, it is clear from the officer's report (**Appendix B**) and the Google Earth imagery (Figure 11) that these bollards were not reinstated and private parking on the site continued for a period of more than 10 years.

Figure 11 – Site in June 2016



Given the planning history of the site and the Google imagery which shows a consistent use, there can be little dispute that the area in question has been used as parking for more than ten years.

5) Conclusion

In assessing the LDC application, the balance of probability test should be first and foremost in the case officer's mind. The evidence provided above is clear and unambiguous that the existing use of the site is as parking.

This material change of use occurred more than ten years ago, and has not been interrupted since then, nor has a subsequent material change of use occurred. There is no evidence available to contradict this. The balance of probability test is passed.

The application fee has been paid via the Planning Portal.

If you require any further information, please let me know.

Yours faithfully,

Deborah Day