



Planning Inspectorate
Department of the Environment

Room 1120(6) Tallgate House

Houlton Street Bristol BS2 9DJ

PLANNING DEPARTMENT
DACORUM BOROUGH COUNCIL

38301

Direct Line 0272-218448
Enquiries 0272-218075
GTN 1374

Ref.						Ack.		
Fac.	CRG	JCP	MP	D.P.	D.C.	B.C.	Adm.	Pln.
49 High Street								
KINGS LANGLEY								
Received	16 DEC 1991					13 DEC 1991		
WD4 9HU						Refer to ... 13.1.2		
Comments						Cleared		

Your reference:
PRF/DEP/2/13587
Council reference:
4/0563/91EN
Our reference:
T/APP/C/91/A1910/608209/P6
Date: 10 DEC 91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
APPEAL BY MR J YULE
LAND AT HOLLYBUSH FARM, FRITHSDEN

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land. I held an inquiry into the appeal on 5 November 1991.
2.
 - a. The notice was issued on 26 March 1991.
 - b. The breach of control alleged in the notice is:- The construction of a horse schooling area, within the area hatched green on the plan attached to the enforcement notice, by the excavation and deposit of large quantities of soil.
 - c. The requirements of the notice are:-
 1. Remove deposited soil and use to refill excavations.
 2. Restore slope of the land to that which existed prior to commencement of the works.
 3. Spread not less than 150 mm top soil over all regraded land.
 4. Turf or plant grass over all regraded land.
 - d. The period for compliance with the notice is six months.
 - e. The appeal was made on the grounds set out in Section 174(2) (a) (b) and (h) of the 1990 Act.

The Site and Surroundings

3. Hollybush Farm is of about 10.3ha, and is sited on the northern side of Frithsden valley, which is a dry valley within the Chilterns Area of Outstanding Natural Beauty. The farmhouse, a Grade II Listed Building, is set back a short distance from the highway, within an area which has defined boundaries and contains a garden and range of outbuildings. To the south-east of the garden area is a stable block. This stable block is separated by gates from the land which has been made into the horse schooling area.

4. The main part of the horse schooling area is about 20m by 40m. It is level, and surfaced with wood bark or shavings of a dark, orange-brown colour. In order to create this level area, some of the valley side has been cut away, and the material used to form a bank on the south side of the level area. Fast growing evergreens have been planted around the perimeter of the level area, and deciduous trees and shrubs have been planted on the top and sides of the bank. An open paddock lies between the horse schooling area and the highway. Most of the remainder of the farm is apparently used for grazing.

5. The small hamlet of Frithsden is a Conservation Area. This Conservation Area includes the southern part of the land where the work was carried out to construct the horse schooling area.

6. There are public footpaths alongside the western and northern boundaries of Hollybush Farm. On the opposite, southern, side of the valley is some woodland owned by the National Trust.

Appeal on ground (b)

7. In January 1989 the appellant's wife wrote to the council about a proposal to construct a horse schooling area. A sketch plan was enclosed, which showed that the project was to be carried out on land in the front paddock, close to the road. It was stated that this "will require very little levelling." Subsequently, further details, on an OS plan, were sent to the council, although it seems that this plan was never received by the relevant officers. The council accepted later that the January 1989 letter was an application for a determination whether planning permission was required.

8. In April 1989, a council officer informed the appellant's wife by telephone that planning permission was not required. No notes of this telephone call were kept by either party. However, I am satisfied that at this point the council officer considered he was dealing with what was referred to in the January 1989 letter. I also accept that the appellant and his wife genuinely thought that the "determination" could apply to horse schooling areas elsewhere on the farm. In my view, it is important that the decision to put the horse schooling area on the valley side was not made until many months later. The project that was actually carried out was an engineering operation involving considerable earth moving, as is shown by the photographs submitted at the inquiry. It was materially different from the project described in January 1989. Whatever "determination" was made in April 1989 could not, in my opinion, apply to what was in fact done in 1990.

9. In addition, I have considered Western Fish Products Ltd v Penwith District Council and Ano. (1981) 2 All ER, cited by the council. In my opinion, the telephone conversation was not a formal determination that planning permission was not required. I do not think that the council was bound by this "informal determination" in a telephone conversation. Furthermore, from the information available, it does not appear that the particular officer concerned had delegated powers to make binding "Section 64 Determinations" on behalf of the council. I do not consider that the fact that he made the telephone call was a sufficient basis on which to assume that he had such delegated powers. I conclude for all these reasons that the council was not estopped from arguing that planning permission was required for the works described in the notice.

10. You also referred to Schedule 2 Part 1 Class E of the General Development Order. This class deals only with development within the curtilage of a dwellinghouse. It appears to me that the horse schooling area was constructed

on pasture or paddock land, clearly separate from the part of the property, comprising garden and outbuildings, which forms the curtilage of the dwellinghouse at Hollybush Farm. The development is not therefore permitted by virtue of Class E. The appeal on ground (b) fails.

The Appeal on ground (a) and the Deemed Application

11. From the representations made at the inquiry and in writing and my inspection of the site and surrounding area, it is my opinion that there are two main issues. These are:

- (1) whether the development does material harm to the character or appearance of this part of the Area of Outstanding Natural Beauty; and,
- (2) the effect on the character and appearance of the Conservation Area.

12. Policy 2 of the approved Local Plan deals generally with development in rural areas beyond the Green Belt. It was agreed that the type of development now being considered falls into one of the categories permitted by that policy. However, the Hertfordshire Structure Plan provides that the preservation of the beauty of the Area of Outstanding Natural Beauty will be a "prime consideration". This approach is broadly reflected in Policy 23 of the Local Plan. The new draft Local Plan is at the deposit stage, and carries less weight than the current Plan. It seeks to restrict built facilities for equestrian activities in the Area of Outstanding Natural Beauty.

13. From the evidence and my own inspection, I am of the opinion that Frithsden valley is an interesting and attractive piece of countryside, very worthy of its inclusion in the Area of Outstanding Natural Beauty. Bearing in mind the objectives of relevant local planning policies, I consider it important that its character and appearance are preserved as far as possible.

14. The level part of the horse schooling area cannot be seen from the highway along the bottom of the valley. However the embankment in front of that level area is evident. From some angles at least, part of the "cut" into the valley side on the northern side of the level area is also visible. You argued that the front embankment might be further forward than the original valley side, but the gradient was similar. Nevertheless, taken as a whole, the works are, in my view, a conspicuous and obviously artificial feature.

15. From certain points on public footpaths it is possible to look down, towards the horse schooling area. The orange-brown wood shaving surface shows up markedly in the context of the colours of surrounding land. Even more importantly, the levelled area on the otherwise fairly steep valley side appears incongruous and intrusive.

16. The appellant has made very commendable efforts to improve the appearance of the works with landscaping. I agree with the council that in this landscape deciduous trees and shrubs are appropriate. It would be several years before the deciduous trees which have been planted have a major effect. In any event, I doubt that landscaping could fully disguise the alteration to the natural contours of the valley side. It would not deal effectively with the impact of the works when seen from higher points on public footpaths. My overall conclusion on this issue is that the works do material harm to the appearance and character of this part of the Area of Outstanding Natural Beauty.

17. In considering this proposal special attention is to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area within which part of the development is situated.

18. The character of the Frithsden conservation area is defined by the presence of interesting older buildings, including Hollybush Farm itself, which are seen in close association with the attractive valley side. It appears to me that, by adversely affecting the appearance of the valley side, the appeal development as a whole is detrimental to the setting of the buildings, and causes material harm to the character of the conservation area. Dealing specifically with the part of the works which are actually within the conservation area, I accept that the harm to appearance is limited. Nevertheless, this part of the development does not in my judgement either preserve or enhance the character or appearance of the conservation area.

19. You suggested that an alternative siting for the horse schooling area, nearer the valley bottom, would be more conspicuous. I doubt that this would be the case. In any event, I am primarily concerned with an assessment of the current scheme. I appreciate that genuine misunderstandings may have contributed to your clients' decision to proceed with the works. This does not alter my opinion of the merits of the development. The appeal on ground (a) fails, and planning permission will not be granted on the deemed application.

Appeal on ground (h)

20. I accept that it is important to carry out the steps required by the notice at times of suitable weather and soil conditions. To ensure that this can be achieved, the period for compliance will be extended to nine months.

Other Matters

21. I have considered all the other matters raised at the inquiry and in writing but they are not sufficient to outweigh the reasons which have led to my decision.

FORMAL DECISION

22. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the period for compliance be varied by deleting the words "six months" and substituting the words "nine months". Subject to this variation, I hereby dismiss your client's appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST DECISION

23. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

R. L. Muers

R L MUERS BA DipSocAdmin DipSocWork Solicitor
Inspector

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

ENFORCEMENT NOTICE

Operational Development

LAND AT HOLLYBUSH FARM FRITHSDEN HERTFORDSHIRE

W H E R E A S:

- (1) It appears to the Dacorum Borough Council ("the Council") being the local planning authority for the purposes of s.172 of the Town and Country Planning Act 1990 ("the Act") in this matter that there has been a breach of planning control within the period of 4 years before the date of issue of this Notice on the land or premises ("the Land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of the building engineering mining or other operations described in Schedule 2 below without the grant of planning permission required for that development.
- (3) The Council considers it expedient having regard to the provisions of the development plan and to all other material considerations to issue this Enforcement Notice in exercise of its powers contained in the said section 172 for the reasons set out in the Annex to this Notice.

NOTICE IS HEREBY GIVEN that the Council requires that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of six months from the date on which this notice takes effect

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of
s.88(10) of the Act on 7th May 1991

SCHEDULE 1

LAND OR PREMISES TO WHICH THIS NOTICE RELATES:

Land at Hollybush Farm Frithsden Berkhamsted Hertfordshire
shown edged red and hatched green on the attached plan

SCHEDULE 2

ALLEGED BREACH OF PLANNING CONTROL:

The construction of a horse schooling area within the area
hatched green on the attached plan by the excavation and deposit
of large quantities of soil.

SCHEDULE 3

STEPS REQUIRED TO BE TAKEN:

1. Remove deposited soil and use to refill excavations.
2. Restore slope of the land to that which existed prior to
commencement of the works.
3. Spread not less than 150 mm top soil over all regraded
land.
4. Turf or plant grass over all regraded land.

Issued 26th March 1991

Council's address:

Civic Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(signed) _____

K. M. Pugh
DIRECTOR OF LAW AND
ADMINISTRATION

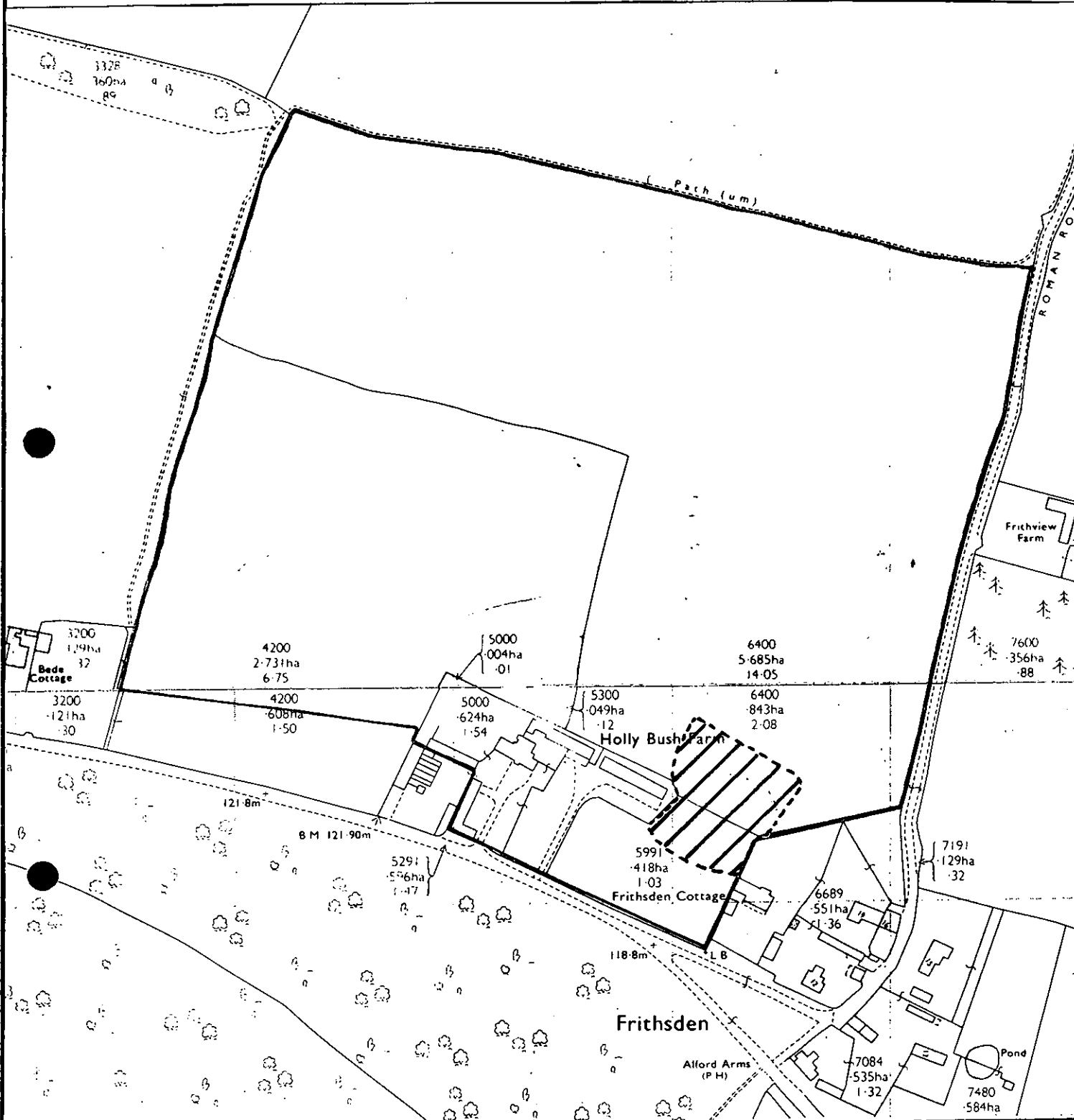
(Designation) _____

(The Officer appointed for this purpose)

File Ref: 2.91/ENF/HOLLY/NP/SMR/AC/BS.5

LOCATION

HOLLYBUSH FARM, FRITHSDEN.



Plan referred to in Enforcement Notice
dated

C.G.B. Barnard
Chief Planning Officer
Dacorum Borough Council
Hemel Hempstead

Scale 1:2500

Plan no.

ANNEX

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

The Council as the local planning authority considers it expedient to serve this Notice upon you for the following reasons:

The land is situated in an area of specially attractive landscape and the quality of the landscape has been recognized by its designation as part of the Chilterns Area of Outstanding Natural Beauty. Furthermore Frithsden Village, including part of the land subject of this Notice, has been considered of such attractive character and appearance as to warrant its designation as a Conservation Area.

In dealing with land in Conservation Areas the local planning authority is required to have regard to the desirability of preserving or enhancing the character or appearance of that area.

The work involved in forming the horse schooling area has obliterated the natural ground levels on this part of the valley side, replacing them with an artificial excavation, levelled area and embankment. These works fail to preserve or enhance the Frithsden Conservation Area and detract from the natural rural character and appearance of the area.

The tree and shrub planting which has been carried out (including Leylandii conifers which are themselves inappropriate to the rural area) fails to overcome the basic objection to the obliteration of the natural contours and does not enable the local planning authority to come to the view that the development as a whole either preserves or enhances the character of the area.

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

ENFORCEMENT NOTICE

Operational Development

LAND AT HOLLYBUSH FARM FRITHSDEN HERTFORDSHIRE

W H E R E A S:

- (1) It appears to the Dacorum Borough Council ("the Council") being the local planning authority for the purposes of s.172 of the Town and Country Planning Act 1990 ("the Act") in this matter that there has been a breach of planning control within the period of 4 years before the date of issue of this Notice on the land or premises ("the Land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of the building engineering mining or other operations described in Schedule 2 below without the grant of planning permission required for that development.
- (3) The Council considers it expedient having regard to the provisions of the development plan and to all other material considerations to issue this Enforcement Notice in exercise of its powers contained in the said section 172 for the reasons set out in the Annex to this Notice.

NOTICE IS HEREBY GIVEN that the Council requires that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of six months from the date on which this notice takes effect

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of
s.88(10) of the Act on 7th May 1991

SCHEDULE 1

LAND OR PREMISES TO WHICH THIS NOTICE RELATES:

Land at Hollybush Farm Frithsden Berkhamsted Hertfordshire
shown edged red and hatched green on the attached plan

SCHEDULE 2

ALLEGED BREACH OF PLANNING CONTROL:

The construction of a horse schooling area within the area
hatched green on the attached plan by the excavation and deposit
of large quantities of soil.

SCHEDULE 3

STEPS REQUIRED TO BE TAKEN:

1. Remove deposited soil and use to refill excavations.
2. Restore slope of the land to that which existed prior to
commencement of the works.
3. Spread not less than 150 mm top soil over all regraded
land.
4. Turf or plant grass over all regraded land.

Issued 26th March 1991

Council's address:

Civic Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(signed)

K. M. Purdy
DIRECTOR OF LAW AND
ADMINISTRATION

(Designation)

(The Officer appointed for this purpose)

File Ref: 2.91/ENF/HOLLY/NP/SMR/AC/BS.5

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

The Council as the local planning authority considers it expedient to serve this Notice upon you for the following reasons:

The land is situated in an area of specially attractive landscape and the quality of the landscape has been recognized by its designation as part of the Chilterns Area of Outstanding Natural Beauty. Furthermore Frithsden Village, including part of the land subject of this Notice, has been considered of such attractive character and appearance as to warrant its designation as a Conservation Area.

In dealing with land in Conservation Areas the local planning authority is required to have regard to the desirability of preserving or enhancing the character or appearance of that area.

The work involved in forming the horse schooling area has obliterated the natural ground levels on this part of the valley side, replacing them with an artificial excavation, levelled area and embankment. These works fail to preserve or enhance the Frithsden Conservation Area and detract from the natural rural character and appearance of the area.

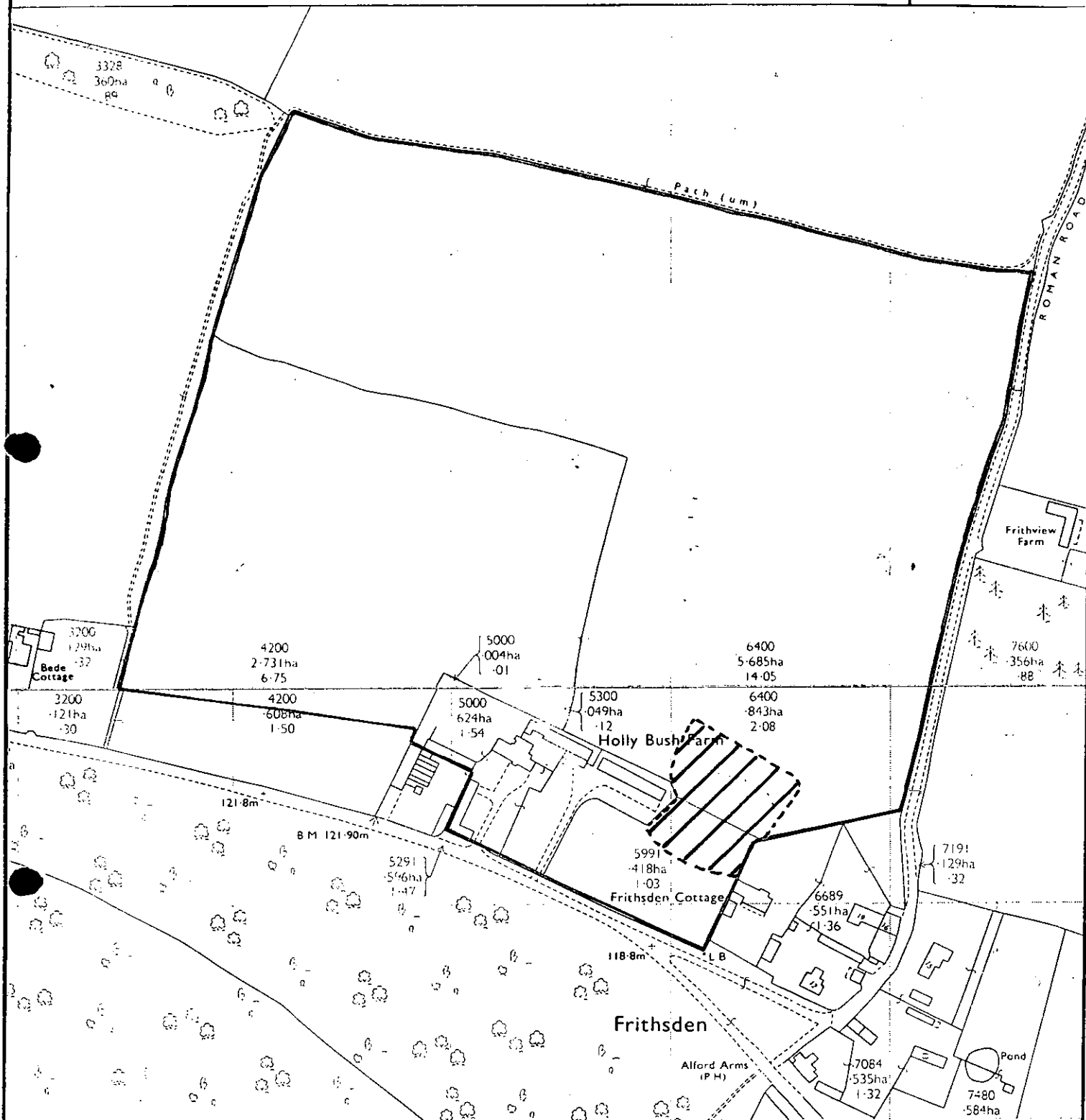
The tree and shrub planting which has been carried out (including Leylandii conifers which are themselves inappropriate to the rural area) fails to overcome the basic objection to the obliteration of the natural contours and does not enable the local planning authority to come to the view that the development as a whole either preserves or enhances the character of the area.

LOCATION

563/91



HOLLYBUSH FARM, FRITHSDEN.



Plan referred to in Enforcement Notice
dated

C.G.B. Barnard
Chief Planning Officer
Dacorum Borough Council
Hemel Hempstead

Scale 1:2500
Plan no.