

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To M Lutt Esq  
"Mayfield"  
Maple Hill  
Bovingdon  
Herts

...Erection of building for storage of hay and straw.....  
.....  
at Land adjacent Game Farm Shantock Lane Bovingdon.....  
.....

Brief  
description  
and location  
of proposed  
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated ..... 10th May 1983 ..... and received with sufficient particulars on ..... 10th May 1983 ..... and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:—

1. The site is within an area without notation on the Approved County Development Plan and in an area referred to as being within the extension of the Metropolitan Green Belt in the Approved County Structure Plan(1979) and the Dacorum District Plan, wherein permission will only be given for use of land, the construction of new buildings, changes of use or extension of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

Dated ..... 21st ..... day of ..... July ..... 19 83...

Signed.....

Chief Planning Officer

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

**IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY**

(a)

DACORUM BOROUGH

Council

**TOWN AND COUNTRY PLANNING ACT 1971**  
(as amended)

**Enforcement Notice**  
Material Change of Use

(b) Land adjacent to Game Farm off Shantock Lane, Bovington, Hertfordshire

**WHEREAS:**

(1) It appears to the<sup>(a)</sup> Dacorum Borough Council ("the Council"), being the local planning authority for the purposes of section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control after the end of 1963<sup>(c)</sup>

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 development by the making of the material change in the use of the land described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider 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 their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.<sup>(d)</sup>

**NOTICE IS HEREBY GIVEN** that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] <sup>(e)</sup>

within [the period of six [days] [months] from the date on which this notice takes effect] [the period specified in respect of each step in that schedule].<sup>(f)</sup>

**THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88 (10) of the Act, on 24th February 1986.<sup>(g)</sup>

Issued 21st January 1986

Council's address —

Civic Centre

Marlowes

Hemel Hempstead

Hertfordshire HP1 1HH

(Signed) Keith Hunt

(Designation) BOROUGH SECRETARY

(The officer appointed for this purpose)

**CONTINUED OVERLEAF — P.T.O.**

**NOTES TO THE LOCAL PLANNING AUTHORITY**

- (a) Insert the name of the Council issuing the notice.
- (b) Insert the address or a description of the land to which the notice relates.
- (c) Where section 87(4)(c) of the Act applies insert "and within the period of 4 years before the date of issue of this notice."
- (d) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- (e) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
- (f) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
- (g) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

## **SCHEDULE 1**

### **Land or premises to which this notice relates**

*(Address or description)*

Land adjacent to Game Farm, off Shantock Lane, Bovington, Hertfordshire

shown edged [red] [

] on the attached plan.<sup>(h)</sup>

## **SCHEDULE 2**

### **Alleged breach of planning control**

*(description of the material change of use alleged to have been made) (j)*

The change of use of the land from use for agricultural purposes to use for the siting of a caravan for residential use.

## **SCHEDULE 3**

### **Steps required to be taken.<sup>(k)</sup>**

(i)

The discontinuance of the use of the land for the siting of a caravan for residential use.

## **NOTES TO THE LOCAL PLANNING AUTHORITY**

(h) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).

(j) If the new use is a mixed use, include all the uses comprising that mixed use.

(k) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear and precise. See also notes (e) and (f) overleaf.

Annex to Enforcement Notice dated 25 January 1986

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, consider it expedient to serve this Notice upon you for the following reason(s):-

The site lies within the Metropolitan Green Belt on the County Structure Plan and Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use or extensions of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the development is unacceptable in the terms of this policy.

## EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

### Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

- (a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or
- (b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

- (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or
- (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
- (c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or
- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

may be issued only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

- (a) any steps which are required by the authority to be taken in order to remedy the breach;
- (b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

- (a) of restoring the land to its condition before the development took place; or
- (b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—
  - (i) the demolition or alteration of any buildings or works;
  - (ii) the discontinuance of any use of land; and
  - (iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

- (a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
- (b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

- (a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and
- (b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

- (a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
- (b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and
- (c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

### Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;
- (e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;
- (f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;
- (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;
- (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section\*, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

- (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

\*NOTE: The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) may specify the matters to be included in such a statement;
  - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
  - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
  - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.
- (7) Subject to subsection (8) below, the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.
- (9) If—
- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
  - (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,
- the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.
- (10) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

**88A.**—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal the Secretary of State may correct any informality, defect or error in the enforcement notice, or give directions for varying its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or to the local planning authority.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**88B.**—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and any planning permission granted by him under that subsection may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the Secretary of State thinks fit;

and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(3) Where an appeal against an enforcement notice is brought under section 88 of this Act, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (1) of this section—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
- (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

(4) On an appeal under section 88 of this Act against an enforcement notice relating to anything done in contravention of a condition to which section 71 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.

#### **Penalties for non-compliance with enforcement notice**

**89.**—(1) Subject to the provisions of this section, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £1,000 or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under subsection (1) of this section has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in this section referred to as "the subsequent owner") brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—

- (a) on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £1,000, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference to this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith of such extended period as the local planning authority may allow for compliance with the notice.

**Note.**—Attention is also directed to section 91 relating to the execution and costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.



# Department of the Environment and Department of Transport

Common Services

Room 1408

Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 938

Switchboard 0272-218811

GTN 2074

12386

CHIEF EXECUTIVE  
OFFICER

19 APR 1985

File Ref. ....

Refer to ....

Cleared .....

Council Ref: 4/0859-61/84

Pickworth and Company  
Solicitors  
37 Marlowes  
HEMEL HEMPSTEAD  
Herts  
HP1 1LQ

Your reference PLANNING DEPARTMENT DSF/JLL/LUTTUM DISTRICT COUNCIL					
Our reference Ref. T/APP/A1910/C/84/1914-17/P6					
Date	D.P.	B.C.	S.C.	Admin.	File
17 APR 85					
Received				19 APR 1985	
Comments					

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
APPEALS BY MR AND MRS M LUTT  
LAND AND BUILDINGS AT THE FORGE, SHANTOCK LANE, ADJACENT TO GAME FARM, SHANTOCK  
LANE, AND AT MAYFIELD, MAPLE HILL, BOVINGDON

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. The appeals are against 3 enforcement notices issued by the Dacorum District Council concerning the above land and buildings. I held an inquiry into the appeals on 12 February 1985. I have considered all the representations made by you and by the Council and also those made by interested persons and I inspected the site on 13 February 1985.

NOTICE A

2. a. The date of the notice is 17 May 1984.

b. The breach of the planning control alleged in the notice is failure to comply with condition No 4 subject to which planning permisison was granted on 20 October 1970 in that the land is being used for the storage and repair of wooden pallets and for the parking of motor lorries in association with the transportation of wooden pallets.

c. The condition which is alleged not to have been complied with is "the premises shall be used as a Smith's Forge" and for no other purpose whatsoever including any other purposes in Class 4 of the Schedule of the Town and Country Planning (Use Classes) Order 1963.

d. The requirements of the notice are:

i. The discontinuance of the use of the land for the storage and repair of wooden pallets and for the parking of motor lorries in association with the transportation of wooden pallets.

ii. The restoration of the land to its condition before the breach of the planning condition took place.



- e. The period of compliance with the notice is 3 months.
- f. The appeal was made on grounds 88(2)(a), (b), (c), (d), (g) and (h).

NOTICE B

- a. The date of the notice is 17 May 1984.
  - b. The breach of the planning control alleged in the notice is the change of use of the land from use for agricultural purpose to use for the storage of wooden pallets and for the parking of motor lorries in association with the transportation of wooden pallets.
  - c. The requirements of the notice are:
    - i. The discontinuance of the use of the land for the storage of wooden pallets and for the parking of motor lorries in association with the transportation of wooden pallets.
    - ii. The restoration of the land to its condition before the unauthorised change of use took place.
  - d. The period of compliance with the notice is 3 months.
  - e. The appeal was made on grounds 88(2)(a), (c), (g) and (h) but at the inquiry ground 88(2)(c) was withdrawn.
- Supp 28/10/85 — no lorry  
or pallets.*

NOTICE C

- a. The date of the notice is 17 May 1984.
  - b. The breach of the planning control alleged in the notice is the change of use of land from use for residential purposes to use for the storage of wooden pallets the parking of motor lorries and residential purposes?
  - c. The requirements of the notice are:
    - i. The discontinuance of the use of the land for the storage of wooden pallets and the parking of motor lorries.
    - ii. The restoration of the land to its condition before the unauthorised change of use took place.
  - d. The period of compliance with the notice is 3 months.
  - e. The appeal was made on grounds 88(2)(a), (b), (c), (g) and (h).
3. The evidence was taken on oath.

SUMMARY OF DECISION

- 4. The appeals against all 3 notices fail, and the notices are upheld, subject to variations including the period for compliance.

## THE SITES AND THEIR SURROUNDINGS

5. All 3 sites are in generally open countryside to the south-west of Bovingdon village. Notice C refers to the curtilage of your client's semi-detached dwelling, Mayfield, on the south-east side of Leyhill Road. Most of it is garden, but at the south-west corner with separate access from the road is an enclosed yard with a workshop on the north side. The workshop, which abuts a domestic garage to the north is used for maintaining your client's lorries and repairing wooden pallets, and contains tools for this purpose including a small circular power saw. A flat lorry about 5½ m long and about 150 pallets were in the yard at my inspection. The highway verge opposite the yard entrance has been worn away by continuous parking of vehicles. Beyond the semi-detached dwelling abutting 'Mayfield' the narrow Shantock Lane leads from a 'T' junction south-east through open fields except for 4 semi-detached cottages at the north-east corner of the 'T' junction.

6. The site of Notice A ("The Forge") covering a rectangular area of about 0.27 ha is on the south side of Shantock Lane about 160 m from the junction. Its eastern boundary is a tall holly hedge on the west side of an unmade track leading south-west from the Lane. On the far side of the track is the detached dwelling Maples Farm. Access to the brick forge building in the centre of the site, and a brick outhouse on the southern boundary is from the farm track. Most of the open part of the site is used for storing carts, farm implements, vehicles and various materials. The south-east corner just inside the access is used for storing pallets up to 3 or 4 m high. There were about 1200 in all. To the south and west, and to a lesser extent from Shantock Lane, the Forge site is open to the surrounding agricultural land.

7. Notice B site (adjoining Game Farm) is about 70 m to the south of the Forge site on the west side of the narrow farm track which runs between tall hedges. Its close boarded access gates are set back and the entrance splayed to admit lorries. The site about 30.5 m by 69 m deep is surrounded by a high close boarded fence and has been concrete surfaced. It is in use for storage of pallets, in total about 1500. The site adjoins open land to the north and west, and to the south a shrubbery in which are various outbuildings, belonging to one of a pair of semi-detached dwellings 90 m to the south. The other dwelling is attached to a dairy farm whose buildings are on the east and south side of the track where it turns back to Leyhill Road. On the east side of the track almost opposite site B is the entrance to stables and kennels to the south of Maples Farm.

## FACTS NOT IN DISPUTE

8. Your client buys used wooden pallets from firms in the Hertfordshire area and resells them after repairing and reconditioning where necessary, sometimes to farmers as well as commercial and industrial concerns. About 10% of his stock has to be repaired. Repair work involves only the use of a hammer, a small powered handsaw, and staple and nail guns. There are 2 flat lorries about 5.5 m and 6.1 m long used for transportation, and also a Ford transit van. 5 permanent staff, including your client and his 2 sons, work in the business. There are in addition 2 youths who work part time.

9. Mr Lutt first occupied Mayfield in 1971 and has lived there ever since. Repairs to pallets have mainly been carried out at Mayfield (Notice C) in the yard or workshop where no more than 200 pallets have ever been stored at any one time. They are usually piled in stacks about 3.5 m high. There is no electrical power at either of the other 2 sites (Notices B and C). One lorry is normally parked in the yard at Mayfield and the other in the unofficial 'layby' outside the house on the opposite side of the road.

10. Your client purchased the Game Farm site (Notice B) about 2 years ago when it contained a few old chicken sheds used for storing foodstuffs. He erected screen fencing all round and gates, about 2 m high, and planted some fast growing conifers along the western boundary but desisted when the notice was served. He surfaced the site and has since used it for pallet storage; his vehicles have a right of way over the farm track to the site from Shantock Lane. There have at times been as many as 2500 pallets on this site.

#### CASE FOR THE APPELLANT

11. After occupying Mayfield, in 1972 and 1973 your client started his pallet repairs business on the premises, and initially only stored pallets on site C. At that time he also ran a greengrocery business, but by about 1973 or 1974 he was working full time on the pallet business. By 1972, in order to obtain more storage space, he had already entered into an informal agreement (not in writing) to rent part of the Forge site (Notice A), and since that time the main activity at Mayfield has been the repair of broken pallets, with such incidental storage as was necessary. Only broken pallets were stored there. Your client obtained permission from the Council to improve a dilapidated garage and an old outbuilding in about 1977, and the other business activities at Mayfield include only those already mentioned, namely the parking of one lorry and a transit van, and the use of the kitchen table occasionally for office work together with the telephone.

12. The use of part of the Forge site (Notice A) for storage of pallets has continued unbroken since it was first occupied, as the testimony of 2 independent witnesses who visited it in the period 1975 to 1980 on several occasions proves. The number of pallets has fluctuated, since for about 9 months of the year they are in demand and loads vanish soon after they are delivered, but there have never been less than about 100 or 150 on site, and sometimes there have as many as 1500. In the early years when only your client was working in the business and had no staff, there were fewer, but in the period of 5 years ending in 1980 there were regularly 400 pallets there, about a quarter of the present figure. Pallets were never as low as 100 for more than a week at a time.

13. No repairs have been carried out at the Forge site although sometimes a loaded lorry has been parked there overnight when it has not arrived in time to be unloaded the same day. However this is not a regular practice and has occurred, only about 6 times since 1972 at the 'Forge' site (Notice A) and about 5 times at the Game Farm site (Notice B). At present the lorries visit the Forge site 3 or 4 times a day on about 2 or 3 days a week, and the Game Farm site similarly 6 times a day (= 12 trips) but not every day. They never stay overnight except at Mayfield if it can be helped, because of the risk of theft and vandalism.

14. Very occasionally the pallets when they are unloaded at the Forge and the Game Farm sites are repaired on the spot by a hammer and nails, but this is only if pallets need slight repairs and it is not worthwhile taking them to Mayfield. Loading and unloading may be carried on 7 days of the week at these 2 sites if necessary, but the small repairs to pallets take up only about an hour of the day, and then not every day.

Legal grounds (b), (c) and (d) Notices A and C

15. Your client's case against Notice A on these facts under ground (b) is that what has been done at the Forge site does not amount to development and hence not to a breach of planning control. In the absence of any legal ruling the definitions of a Smith and Forge in Websters Dictionary can be taken as authoritative. These show

that a Smith is primarily an artisan who works in hard materials, but does not expressly confine the hard materials to metals, and thus can include substances like wood. There have been no repairs to pallets at the Forge site, nor parking of lorries save for unloading to any material extent. The storage of pallets which are of hard materials on a small part of the site is the same as storage of many of the materials used by the Smith and can be regarded as similar to the authorised use of the site as a Smith's Forge, and not a different type of use. There was therefore no material change of use, or development, when your client started to store pallets at the site in 1973, and as a consequence no breach of planning control so that the appeal succeeds on ground (b).

16. Ground (c) is pleaded because the notice incorrectly states that the repair of pallets and the parking of motor lorries has taken place. The facts show that the repairs which have occurred infrequently have been of a very minor nature, and do not amount to a separate use of the site because if they were at all extensive, they would be carried out at the Mayfield site. Similarly, the number of occasions on which a lorry was parked at the site shows this use to have been de minimis.

17. If the argument under ground (b) is not accepted, the evidence proves that there was a continuous storage of pallets for the purpose of your client's business and hence a breach of condition No 4 of the 1970 planning permission from at least 1973 onwards. The evidence from interested persons does not convincingly show that the storage use was de minimis from when it began until about 1981; in fact it does not conflict with the testimony of your client's witnesses, since none of the interested persons has been able to state with conviction that there could have been no pallets at all at the site before 1981. Bearing in mind that the storage of any number of pallets from "one" upwards would have been sufficient to breach the condition, and that your client's independent evidence establishes that this began several years previously, the appeal must succeed under (d) because the notice was not served within 4 years of the breach. Although the condition itself does not refer to the carrying out of buildings or engineering operations etc, the judgement in *Peacock Homes v Epsom and Ewell Borough Council* 1983 JPEL p 541 shows that this is immaterial. The 4 year rule can apply to a breach of any condition attached to a planning consent provided that the permission is for carrying out building, engineering or other operations.

18. The appeal against Notice C on ground (b) is that the planning unit as defined in the notice is all the curtilage in which the dwelling Mayfield stands. If this is correct, what has been done at the site, as a matter of fact and degree, is insufficient to amount to a material change of use. The small area of land used and the minor nature of the repairs to pallets (to which the storage of pallets is ancillary) are de minimis for the purpose of the notice. The parking of the single lorry on the site and minimal use of the house as an office are similarly insignificant matters, which have caused so little comment from neighbours and objection, that it is completely different from 2 cases reported in the JPEL of 1977 and 1980. In these, where the parking of an ice cream van, and a lorry in a residential curtilage were held to be a material change of use, the locations were different, a larger area for parking was involved and there was noise and disturbance which has never been experienced by any one living near the appeal site.

19. In this connection it is significant that although in 1975 the Council were contemplating enforcement action against the storage use carried on at Mayfield, the activities were scaled down and no action was taken. There has been no material change in the position and if no action was necessary then, none is necessary now. Therefore there has been no material change of use on the area covered by Notice C, although in your client's view, the notice incorrectly refers to the wrong planning unit. It should have referred only to the small area of the yard, and outbuildings,

and the notice is therefore incorrect as it refers to a greater area than that in which the alleged uses have taken place. However, the argument in respect of this reduced area is the same, that what has occurred is insufficient to amount to a material change of use.

20. The appeal under ground (c) is that the matters as alleged have not taken place since only one lorry has ever been kept on the appeal site, the other having been parked in the layby. The allegation is therefore beside the mark and the appeal should succeed.

21. The same arguments under ground (g) apply to all 3 notices. No works other than those with permission have been carried out on the sites of Notice A and Notice C that require to be removed and in respect of all 3 notices the requirement of restoration is too sweeping and vague in relation to the allegations in the notices. In particular, your client does not know in relation to Notice B whether he is to remove his surfacing, gates and fencing, and in relation to Notice C, whether any building is to be demolished. To ensure compliance with what is alleged in the notice, only cessation of the uses enforced against is necessary.

#### Planning considerations

22. Although the site is within an area of the approved green belt, to which the normal restrictive policies apply, this part of the countryside is not as open and undeveloped as one might expect. The character of the neighbourhood is influenced in the first place by 3 main sites of brick workings from  $\frac{1}{2}$  to 2 miles distant. These may be long established, but have expanded over recent years and appear to be part of the local scene. New offices, buildings and installations of additional equipment all requiring planning permission have been permitted in recent years.

23. Secondly, less than a mile away part of the old Bovingdon airfield has become the site of an open prison now under construction, and a number of buildings associated with the former airfield in another place are the site of businesses where car repairs and coachbuilding are carried on. Thirdly, there is an abattoir, sewage works, fire works, a tall radio mast and other development all in the vicinity of the appeal site.

24. In view of the various permissions granted, including offices at the brickworks, and for the erection of the abattoir, and despite the provisions of circular No 42 of 1955 on Green Belts, the policy for control of development in such areas seems to be exercised in favour of non-conforming uses. There therefore seems to be no reason which could justify enforcement action in this particular case, since the other uses for which permission was granted are on a far larger scale.

25. Your client's uses of the land at Mayfield and the Forge have continued for many years without causing unacceptable disturbance and no action has been taken by the Local Planning Authority for many years, although they were aware of what was being done at Mayfield in 1975. There would obviously have been greater grounds for taking action then than at the present time, since circular No 22 of 1980, which urges Local Authorities to encourage small businesses of the type run by your client, had not yet issued.

26. The land at the Forge had already been subject to a grant of permission for a building and an industrial activity which many would think inappropriate in the Green Belt. Your client's use at the same premises is less noticeable and intrusive, since it is not industrial in character, and has been continuing for

almost as many years as the other without doing harm. It resembles other storage uses carried on at the site against which no enforcement action is contemplated. It does not therefore appear that in this instance the planning authority have followed the guidance of circular No 22 of 1980 only to resort to such action when absolutely necessary. The fact that your client's uses were permitted to continue at Mayfield, with the knowledge of the Council, and at the Forge for about 14 years proves there is no compelling reason for action at the present time. The fact that a use is non-conforming is no reason of itself, according to the circular.

27. Your client's business is precisely the small type of enterprise which circular No 22 of 1980 asks local authorities to encourage. It is located in a rather mixed area of the Green Belt, and nearby are stables, the blacksmiths forge, a boarding kennels and cattery and a dairy farm, all of which have as much effect on the surroundings as your client's business. The circular emphasises the need to provide employment in rural areas, which your client does, and his services is also partly for the benefit of the local community as he supplies pallets to farmers. To permit the business to remain at the Forge and at the Game Park site would be in accordance with the policy of the circular for allowing small businesses in rural areas to occupy redundant buildings and to use derelict sites, and appropriate since others use the Forge site for storage. Since there has been no change in the relevant policies throughout the period your client's use has existed, there does not now seem to be any reason to resort to enforcement action.

28. The objections which have been made by the 3 interested persons who live close to the Game Farm and Forge sites are not so weighty that they cannot be overcome by attaching certain conditions to any consents granted.

29. Your client has personally received no complaints about noise and disturbance from activities at Mayfield, and the nearest residents to his own property support him. The resident at Game Farm house to the south is too far away in any event to be much affected by whatever happens there, particularly as he is on lower ground. The main objections to the uses at the Forge and the Game Farm site appear to be on account of the use of the farm track by your client's lorries, over which he has a right of way. His vehicles are not as large as those which visit the farm, and their visits are not as frequent; other uses such as the kennels and stables generate a good deal of traffic. There is no evidence that his lorries damage the track or the verges at the junction with Shantock Lane more than anyone else's vehicles, and he has done his share in repairing it.

30. It is apparent that the use of the Game Farm site has given most concern, but your client has taken care to screen the site well, and constructed a good access to the track. The screening can be further improved by the planting of conifers which has already started, and such little noise as may occur from the occasional hammering of pallets at either location can be confined to daylight hours. The written complaint in this respect is much exaggerated. Although the occupier of Maple Farm complains about the visual intrusion of pallets at the Forge, they do not seriously affect her property of which the main aspect is in another direction. Your client also occasionally burns broken pallets, but the fires are far enough away from other properties not to be a risk and other neighbours light bonfires as well, without giving cause for complaint.

31. These representations from interested persons can be met by the imposition of suitable conditions and they are not so serious as to justify discontinuance of your client's use. He is willing to limit the visits of the lorries to 3 per site, daily, and the total number of pallets stored to 150 at Mayfield, 1500 at the Forge

and 2000 at Game Farm. Hours of work can be limited to 9 am to 4 pm each day, and the areas of land used for the business can be limited to those presently in use at the Forge and at Mayfield if the whole of the Game Park site is retained. These should ensure that neighbours will not be troubled by any future use. Your client seeks permission for light repairs to pallets only on the Mayfield site, together with the storage, and at the 2 other sites only wishes to be granted permission for storage, subject to whatever conditions may be thought proper. These could include a landscaping condition to provide better screening at Game Farm.

32. If any or all of the notices are upheld, the period for compliance should be extended to at least one year, in order for your client to find alternative accommodation. The Council have not helped in this regard, but agents have searched in the surrounding area, and applications have been made to British Rail and others for a disused site, without success. All the builders' yards that have been considered were too small, as your client needs the comparatively large space of at least  $\frac{1}{2}$  an acre. This would cost over £250,000 in the immediate area of Hemel Hempstead which is absolutely prohibitive. Even if a period of a year is granted, your client will be likely to find a site in that time and his business, on which his livelihood and the jobs of his employees depend, may have to be wound up. This would cause hardship for all concerned, particularly his 2 sons who are hoping to obtain their own homes. Whether or not your client knew of any impending enforcement action by the Council in 1983 or not until 1984 is irrelevant in assessing what the period for compliance should be. There is no obligation to start looking until the notice is upheld.

#### CASE FOR THE PLANNING AUTHORITY

##### Legal grounds (b), (c) and (d) Notices A and C

33. The Council have no direct evidence of when the uses alleged in the notices started on their respective sites, although they confirm that in about 1975 your clients are owners of land at Mayfield for storing pallets was noted, and he was asked to reduce the scale of his operations or face enforcement action. This was done and no enforcement notice was issued until the present ones.

34. The Council rely on the evidence of interested persons to prove that there was no material use of the Forge site for storing pallets until 1981, but an aerial photograph taken in October 1972 shows there was no storage of pallets at the Forge at that time, and another taken in 1981 shows no more than a few on the part of the site which your client now uses.

35. The Council's interpretation of the facts as they see them is that the legal grounds of appeal against Notice A must all fail. They cannot accept the somewhat far fetched argument that the storage and occasional repair of pallets is akin to a use of the premises as a Smith's Forge because they are both said to be pursuits in which articles are made from hard materials. This argument in any case is contradicted by the claim made elsewhere that pallets are not being repaired at the Forge, or that the repairs are de minimis. In addition the definitions of Smith and Forge cited by your clients are suspect.

36. His use of the site in an entirely separate business from that of the Forge which is industrial in nature rather than for storage purposes cannot be ancillary to the permitted use, and as a matter of fact and degree there has been a material change of use to another purpose in breach of the condition. The appeal under ground (b) therefore fails. Ground (c) must also fail because on the same facts the matters as referred to in the notice have clearly taken place, and are in breach of the existing condition.

37. It is possible that the storage of pallets may have started more than 4 years before 17 May 1984 but evidence from persons living nearby and having occasion to visit the site shows that it was not noticeable and could only have been minimal. The evidence of photographs, such as it is, supports this view, and it is significant that complaints about the use have only been made in recent years.

38. No legal grounds are pleaded against Notice B, but the Council's view, in regard to Notice C, is that ground (b) must fail. The facts show that a commercial business has been carried on within a residential curtilage. Office records are kept. Repairs to pallets take place at Mayfield, a lorry is parked and 2 lorries are maintained there, and as the storage of some 150 pallets has continued for several years which makes an appreciable visual intrusion, the use of the property has changed from residential to a mixed use. There is no need to reduce the area to which the notice applies, since the whole site is a residential curtilage in one ownership, and the change of use which is in breach of control can only relate to the larger area which contains the dwelling.

39. The Council recognise that there may be a slight difficulty in interpreting what is meant by the second part of the requirements in each notice but they require the hard surfacing on the Game Farm side to be removed, (Notice B) as well as the fencing, since these were constructed expressly for the storage of pallets. It will be sufficient on the 2 other sites if the alleged uses cease, since no permanent alterations have been made to the land.

#### Planning Considerations

40. The Council's reason for serving all 3 notices on planning grounds is that the appeal sites are within the approved Metropolitan Green Belt in both the County Structure Plan and the adopted District Plan. Except in very special circumstances no changes of use or buildings for purposes other than agriculture, small scale facilities for participatory sport and recreation or other uses appropriate to a rural area, will be permitted, and there are no exceptional reasons in the present case for doing so.

41. The Forge site (Notice A) originally formed part of Maples farm, and permission was presumably granted in 1970 for a Smith's Forge because the application was supported by the Ministry of Agriculture and historically, such a use serving the agricultural community was appropriately located in the Green Belt. This would be the reason for the imposition of condition No 4. The present situation (apart from your client's use of the site) is not entirely satisfactory since the blacksmith appears to have allowed other storage at the site and to be engaged in making horse drawn vehicles rather than repairing ploughs and shoeing horses. The Council do not accept such uses, or that carried on by your client in such a predominantly rural area of the Green Belt, especially as the piling of pallets up to a height of 4 m, is no less intrusive than the other storage in the open on this site. The notice refers to the unit of occupation of which only part is used by your client but the area he uses is sufficient to have its own impact on the surroundings, and is not in any way secondary to the visual effect of the use of the site as a Forge. The condition was attached to the original permission for the very good reason that the Council did not want the site to be used for any other purpose, like your client's, that could not be accepted or justified under the Green Belt policies.

42. The site of Notice B is in a similar location well outside any designated commercial area, and in spite of the various brickworks and installations mentioned by your client the surroundings are still predominantly open and rural; the area is one of the most undeveloped parts of the district. In general all development



except for genuine agricultural purposes in such areas is precluded under the District Plan. While there is also provision for industrial uses in special circumstances to be permitted outside "commercial" areas in the Borough, the current use of the site has no particular features which would warrant the consideration as a special case. No reasons for overriding the presumption against development have been given and the use ought therefore to be located in an appropriate urban area. Whilst the actual use of the site may not be wholly industrial, its character is at least partly so, because of the considerable movement of lorries and activity that takes place there frequently. It is unfortunate that your client needs a good deal of room if he is not to stack pallets very high, but that does not entitle him to operate in the countryside. The use of this site has affected too many peoples living conditions, giving rise to complaints, and can be seen too much from most directions, to be acceptable in the Green Belt.

43. As regards Notice C, it would be quite wrong to grant permission for storage and repair of pallets and a lorry or lorries within the curtilage of a dwelling, especially within the Green Belt. It is in no sense ancillary to the domestic uses of the site, and the use of the property for mixed purposes is not acceptable under the terms of the policies in the Development Plan. In planning terms the use is the same in principle as those in the 2 appeal cases from which your client seeks to distinguish it, and the fact that there have been no strong complaints about noise or disturbance is not sufficient to justify its continued existence. Irrespective of this consideration, the use would still contravene the Green Belt policies.

44. Thus the use of all 3 sites causes loss of visual amenity because it detracts from their appearance, and generates traffic to an extent which affects the amenities of the persons living nearby. Notwithstanding the provisions of circular No 22 of 1980, the Green Belt presumption against development is the overriding consideration. The inherent untidiness and vehicle attraction of the uses is incompatible with the nearby residential uses and the surrounding countryside.

45. Your client has emphasized the existence of other non-agricultural uses in the locality, especially brickworks. In the first place, none of these except an aerial mast are visible from the appeal site, where the surroundings are completely rural in their aspect. One of the brickfields is in the Chiltern District, and the Dacorum Council do not see such uses as objectionable in the countryside as they have to exist where clay is available. Nevertheless, the development at the various brickworks is controlled and not all planning permissions sought have been granted. The other uses mentioned also are of the type which either have to be located in the countryside or are acceptable there because they are closely related to country activities.

46. Although circular No 22 of 1980 advises Councils to encourage small industries in rural areas, the Forge site does not fall within the type of derelict or unused premises which the Circular suggests might be used for such purposes. There is no existing building available, and the planning objections to the carrying on of the storage of pallets in the open are too strong to set aside in favour of your client. The sites are outside any designated area where industrial related development would be permitted and remote even from any rural settlement. No special reasons have been advanced to override the general presumptions against development on the Green Belt, and there is no particular need of the rural area which your client's business serves.

47. As regards the period for compliance, since your client was aware of the Council's views on his business in 1983, or at the latest by early 1984, the 3 months period granted in the notice is not unreasonable to enable him to find more suitably

located premises. The commercial property register which is maintained by the County Council indicates that there are properties of less than 2,000 sq ft on the market which might prove suitable for your client's business, and small industrial units used to be available at a Council site in Apsley and at another private site at Bourne End Mills.

48. If nevertheless planning permission for use of any or all of the sites is granted, it should be subject to conditions restricting the numbers of vehicles visiting each site per day, the hours of working, the numbers of pallets at each site and the height of the stacks, and limiting the areas of land to be used to those occupied at present. The Game Farm site should also be subject to a landscaping or screening condition.

#### THE CASE FOR INTERESTED PERSONS

##### Legal grounds of appeal (b) and (d), Notice A

49. Residents at 3 properties near the appeal sites have never observed any storage of pallets at the Forge site before about 1981 and at the Game Farm site before 1983. They consider that your client was probably too much occupied with his green-grocery business and later his transport and car repair business at Mayfield to use the Forge site to any material extent for storing pallets before 1981. One who lives at Maples Farm opposite and used to visit the Forge regularly from 1973 to 1977 never noticed any pallets there until 1981. On that occasion the pallets were pointed out by a guest who noticed them at once on arrival, because they had not been at the Forge when she visited Maples Farm in 1980. The owner of Game Farm who regularly uses the track past both the Forge and the Game Farm site never observed any pallets at the former until about 4 years ago (from the present time), and the resident at Game Farm House had not observed them before this either. The probability is that with his other interests, your client's use of the Forge site for storing pallets before 1981 was so occasional and on such a small scale that it was unnoticeable, and therefore de minimis for the purpose of Notice A. The legal grounds of appeal against this advice should therefore fail.

##### Planning Considerations

50. The general and collective objections of the residents at Maples Farm, Game Farm and Game Farm House who have given evidence, and at the dwelling adjoining Game Farm from whom a letter has been received, are that your client has brought disturbing a quasi-industrial use into an area of open countryside, where they had acquired properties in order to be able to lead peaceful and secluded lives. This has detracted from the visual amenities because of the intrusive effect of the piles of pallets, and the constant noise and disturbance of traffic using the unmade farm track. It is significant that these persons who own all the land in the vicinity of the 3 sites object to the continuation of the present uses.

51. Their individual objections, first from the resident at Game Farm House are that your client has used the track past his house over which he has no right of way, to reach both the Game Farm and the Forge sites. This has created additional hazards to the pedestrians using the track. This resident has also found that his enjoyment of his garden has been affected by the noises of sawing, hammering and clattering of pallets when being unloaded, which have come from the Mayfield site. The lorry parked on the highway outside that property is also unattractive visually in the countryside.

52. The resident at Maples Farm is concerned at the visual impact of the high stacks of pallets at both the Forge and the Game Farm sites on the views from the lane, her house and the stables to the south, and at the loss of open agricultural land since the latter site was occupied in 1983. The use of both these sites has changed the character of the surroundings and has added a degree of noise and disturbance to the everyday life of residents at Maples Farm which is unacceptable, through the noise of hammering and unloading of pallets, which continues sometimes on Sundays.

53. On the Game Farm site broken pallets are sometimes burned and this creates a fire risk when the wind is blowing because there are stables less than 200 m away. The additional traffic to the site, which exceeds that to the other premises in the lane, has damaged the hedges belonging to Maples Farm and the surface of the track, and your client's attempted repairs have made matters worse, not better. Noise of unloading and hammering also comes frequently from the Game Farm site and high stacked pallets are visible over the fencing which is in itself intrusive.

54. The owner of Game Farm whose only access is the farm track from Shantock Lane or Leyhill Road objects to the increased use of the track by your client since the Game Farm site was opened as it sometimes obstructs his vehicles. More seriously, it is a hazard to the safety of pedestrians using the lane, and affects the enjoyment of his property. The traffic generated is greater than that from his farm; there can be as many as 20 visits of lorries a day. There may well be an especial danger to children in the lane when they go to school.

## CONCLUSIONS

### Legal grounds of appeal

55. Notice A. On the information given at the inquiry, and bearing in mind that the authorised use of the land is restricted by condition solely to that of a Smith's Forge, in my opinion as a matter of fact and degree your client's business is materially different from such a use and cannot in any sense fall within the generally accepted meaning of the term. Although there is an element of repair work common to both uses, in your client's business this is incidental to the main characteristic of his use which is storage. The main characteristic of a Smith's Forge however is the making or forging of articles, any storage of materials etc being merely ancillary to the principal use. Your client therefore was in breach of the condition restricting the use of the site, when he started to use part of it for storing pallets, and his appeal fails on ground (b). It must also fail on ground (c), since the allegation in the notice correctly describes both the breach of control, as non-compliance with a condition of the planning consent of 1970, and the manner in which the breach of control has taken place. In my opinion no variation of the allegation in this respect is necessary.

56. Under ground (d) your client, relying on the judgement in Peacock Homes Limited v Epsom and Ewell Borough Council, claims that the notice is invalid because it was not served within 4 years of the date of the breach of the condition. I accept that the weight of evidence is in favour of the storage of pallets having started at the Forge before 17 May 1980 but distinguish the present case from the one cited. The condition in the earlier appeal related to the demolition of a building, but the condition referred to in Notice A is concerned with the use of the land, and the provisions of section 87(4)(b) of the Act do not apply in these circumstances. The appeal under ground (d) therefore fails.

57. In Notice C the units of ownership and occupation are the same and correspond to the curtilage of the dwelling Mayfield, as shown in the plan attached to the notice. The curtilage includes the yard where your client's business is carried on, I see no reason therefore to vary the area covered by the notice. The extent of the storage of pallets, parking of a vehicle or vehicles and repair work within a building is sufficient to amount to a material change in the use of the land as alleged, notwithstanding the comparatively small part of the curtilage of Mayfield used for the purpose. My view is reinforced by the fact that the use appears to be an indispensable part of your client's business operation, and is unconnected with the residential use of the rest of the premises. The appeal therefore fails under ground (b), as no planning permission has been granted.

58. Although the allegation in the notice refers to lorries, and only one is habitually kept on the site I consider your client would not suffer any injustice if I were to correct the notice under Section 88A(2) to refer to a single vehicle, and this I propose to do. The notice will then refer accurately to the breach which has actually taken place, and the appeal must fail under ground (c).

59. The appeals under ground (a) in respect of all 3 notices A, B and C turn on the same planning issues which are, what effect the various uses have on the surrounding countryside and the amenities enjoyed by the nearest residents, whether they are in accord with the Green Belt policy and if not whether there is any case for an exception to be made.

60. At the Forge site (Notice A) the condition which your client seeks to have discharged (if possible in respect of part of the site only) was imposed in order to ensure that no use of the site contrary to the Green Belt policies would take place. The part occupied by your client is next to a thick hedge and provided the height of the storage was limited I do not think it would detract from the rural surroundings more than other materials stored apparently in connection with the authorized use. But the activity of regular visits by lorries, and the noise from unloading are sufficient to disturb the nearest resident to an unacceptable extent, and to discharge the condition would remove the general protection from inappropriate non-agricultural uses which the local authority intended to give to the whole site, because of its Green Belt location. There are no sufficient reasons for doing so.

61. The site in Notice B, although mostly screened by fencing, covers a much larger storage area and stacks of pallets more than 2 m high would be a visual intrusion in the open countryside, thus further detracting from its pleasant rural character. The additional activity of lorries using the narrow farm track to this site, over and above the existing farm and stable traffic, is a further intrusive and disturbing factor in the countryside, and is out of keeping with the surroundings.

62. At the Mayfield site (Notice C), the repairs, storage and parking of a lorry are fairly well screened though visible at the access to passers-by, and no serious complaints have been received about noise from the storage or repair work. However these activities and the parking of a lorry, with one outside on Leyhill Road introduce an alien commercial element into the roadside scene and to this extent are also an intrusion in the countryside and visually detrimental to the area.

63. The continuation of these uses on sites A, B and C, which are all part of your client's enterprise, is contrary to Green Belt policies because of the commercial and generally noisy nature of all of the activities, which have no connection with the land, and so do not need to be in this particular place. I have considered however whether there are any special reasons for making an exception to the Green Belt policies. I appreciate that your client's business is his sole livelihood and

gives employment to several persons, and that in circular No 22 of 1980 local authorities are advised to encourage small businesses in rural areas, where possible. However in this instance, I cannot see that the circumstances are so much in favour of your client that an exception could be made, because of the very strong policy objections. Your clients and his employees circumstances are more relevant considerations under ground (h).

64. As regards ground (g) in all 3 notices the requirement to restore the land to its former condition is vague and not sufficiently explicit to advise what exactly has to be done. It is also excessive, since none of the matters alleged in the notice are operations which have altered the character of the land. I shall therefore vary the notices accordingly.

65. Under ground (h) I note that your client has been unsuccessful in his attempts to find alternative accommodation and that his use of the Forge and Mayfield sites (Notices A and B) in the past continued for some years without notice. I therefore propose to extend the period for compliance with these 2 notices to one year, and to 6 months in respect of the Game Farm site (Notice B).

66. I have taken into account all the other matters raised at the inquiry, but they are not such as to affect my decision.

#### FORMAL DECISION

67. For the above reasons, and in exercise of the powers transferred to me, I hereby direct:-

##### NOTICE A

That the notice be varied 1. by the deletion of the words "three months" in paragraph 4 and the substitution therefor of the words "one year" 2. by the deletion of the whole of paragraph 11 of Schedule 3 of the Notice.

##### NOTICE B

That the notice be varied 1. by the deletion of the words "three months" in paragraph 4 and the substitution therefor of the words "six months" 2. by the deletion of the whole of paragraph 11 of Schedule 3 of the Notice.

##### NOTICE C

That the notice be varied 1. by the deletion of the words "three months" in paragraph 4 and the substitution therefor of the words "one year" 2. by the deletion of the words "motor lorries" in Schedule 2, and the substitution therefor of the words "a motor lorry" 3. by the deletion of the whole of paragraph 11 of Schedule 3 of the Notice.

68. Subject to these variations I uphold the notices, dismiss your client's appeals and refuse to grant planning permission on the applications deemed to have been made under Section 88B(3) of the Act.

RIGHT OF APPEAL

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

I am Gentlemen  
Your obedient Servant



A H T CLAYTON MA(Oxon)  
Inspector

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