

Planning Inspectorate

Department of the Environment

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2) CB
3) GPB
29990
CHIEF EXECUTIVE OFFICER

30 JUN 1989

McCarthy Bainbridge Partnership
Chartered Surveyors
Brook House
South Park
Wimbledon
London SW19 8RR

Received
Comments

30 JUN 1989

Your Ref

Our Ref

T/APP/C/88/A1910/12/P6

Council's Ref

4/1661/88E

File no.
Refer to
Cleared

Beresford-Webb & Co
Blackburn House
London Road
Coventry CV3 4AL

Your Ref

226/86

Our Ref

T/APP/C/88/A1910/10/P6

Council's Ref

4/1482/88E

29 JUN 89

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS (A) BY M6 DIESEL SERVICES LIMITED AND (B) BY J CURTIS AND SONS
LAND AT WATLING STREET FILLING STATION, FLAMSTEAD

1. I have been appointed, as you know, by the Secretary of State for the Environment to determine the above mentioned appeals, which are against 2 enforcement notices issued by the Dacorum District Council. I have considered the representations made by you and by the council, as well as those of interested persons. I inspected the site on Tuesday 6 June 1989.

THE NOTICES

2. The details of the notices are as follows:

Notice A, the subject of the appeal by M6 Diesel Services whose agents are the McCarthy Bainbridge Partnership:

- a. The date of the notice is 14 July 1988
- b. The breach of planning control alleged in the notice is failure to comply with conditions subject to which planning permission was granted on 20 September 1985 for a diesel filling station.
- c. The conditions alleged not to have been complied with are:
 - (2) No work shall be started until a comprehensive scheme of landscaping, including existing trees, for the site shall have been submitted to and approved by the local planning authority. This landscaping scheme shall be implemented strictly in accordance with the approved details in the first planting season following the occupation of the development



and shall be maintained at all times thereafter to the reasonable satisfaction of the local planning authority.

- (7) No works shall be started on the development hereby permitted until details of the boundary treatment of the site shall have been approved by the local planning authority.
- d. It is alleged that the conditions have not been complied with in that work has commenced on the development without a comprehensive scheme of landscaping or details of the boundary treatment of the site having been submitted to the local planning authority for approval.
- f. The requirements of the notice are:
 - (i) To submit a scheme of landscaping as required by Condition (2) within 3 months from the date on which the notice takes effect. and to implement the scheme as required by Condition (2) following approval of the scheme by the local planning authority.
 - (ii) To submit details of boundary treatment for the site to the local planning authority for approval within 3 months from the date on which the notice takes effect.
- g. The appeal was made on ground 88(2)(g) of the 1971 as amended.
- f. The reason the council considered it expedient to issue the notice is to maintain and enhance the visual amenity.

Notice B, the subject of the appeal by J Curtis and Sons whose agents are Beresford-Webb and Company.

- a. The date of the notice is 14 July 1988.
- b. The breach of planning control alleged in the notice is a material change of use of the land from a lorry park to a mixed use for the purchase and sale of pallets and the storage from time to time of pallet and trailer bodies and for the purpose of a lorry park.
- c. The requirements of the notice are:
 - (i) to cease the use of the land for the purchase and sale of pallets and any storage of pallets and trailer bodies associated with that use.
 - (ii) to remove from the land all pallets and any trailers and lorries associated with the sale of pallets.
- d. The period for compliance with the notice is 12 months.
- e. The appeal was made on ground 88(2)(a) of the 1971 Act as amended.
- f. The reason the council considered it expedient to issue the notice is that the site is in a rural area beyond the green belt on the adopted Dacorum District Plan wherein permission will only

be given for development for agriculture 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 use is therefore unacceptable.

3. The council pointed out in respect of Notice A that the date of the permission, 4/0808/85, had been stated in error as 20 September 1985. The correct date should be 16 August 1985. I was requested to use my powers under section 88A(2) of the Act to rectify the error. I am satisfied that I can do so without prejudice to the appellant, M6 Diesel Services Ltd.

THE SITE AND THE PLANNING BACKGROUND

4. The appeal site is a heavy goods vehicle park on the north side of the A5 London-Holyhead trunk road, about 500m to the west of Junction 9 of the M1 motorway. The site has a long history and is at present in a somewhat rough state with lorries moving and parking very much at random. It provides a stop, with diesel fuelling and catering facilities, for a large number of British and Continental lorries. There was a considerable turn over during the time of my visit. The site rises gently from the road. At the rear is a transport café. In the north-east corner of the site is the pallet business the subject of Notice B. At the time of my inspection there was an articulated unit partly loaded with pallets, with others on the ground, and another trailer whose main function appeared to be to advertise the business. Along the remainder of the northern boundary of the site in an area which has been cut and levelled are 10 large diesel tanks in two parallel rows of 5. At the front of the site is a 2-storey office building and diesel fuel pumps. A track on the eastern boundary of the site leads to Hill and Coles Farm. About half way along this length, some 70m from the north-east corner of the site this boundary angles away further to the east. The land to the east of the site is within the Metropolitan Green Belt.

5. Immediately to the west is Flamstead Filling Station, a unit of modern design. It is separated from the lorry site by Old Watling Street, now a purely local road which runs across the southern part of the lorry park before merging with the A5.

6. The present situation arises from planning permissions granted in 1984 and 1985 for a 2 phase redevelopment of the site. Phase 1 consisted of the separate development of the petrol filling station off the diesel site with which it had previously been combined. Phase 2 was granted permission under reference 4/0808/85 for the redevelopment of the diesel site. The approved plan included a new catering block on the area at present occupied by the pallet business and 8 diesel tanks in 2 rows of 5 across the rear of the site. Access was to be at the western end of the frontage in conjunction with a revised junction of Old Watling Street with the A5. The permission included the conditions requiring the submission of landscaping and boundary treatment proposals before work on the site commenced.

7. The council say that work started on the site in September 1987, with the excavation of an area for the installation of the diesel tanks. They consequently wrote to M6 Diesel Services requesting a landscaping scheme and boundary proposals. In a reply dated 3 December 1987 it was stated that a landscaping scheme was being prepared and that a bund wall totally enclosing the tanks would be constructed. This latter, I note, was the subject of a

separate Condition 14, to be carried out before the diesel forecourt facilities were brought into operation. It has therefore no bearing on the present appeals.

8. In the absence of landscaping or boundary details enforcement action, the subject of Notice A, was authorised on 26 February 1988 but the notice was not issued at this stage.

9. The company wrote in March 1988 to say that they needed to deviate from the boundary treatment at the rear of the storage tanks shown on the approved plan. Excavation had exposed a face some 4m in height at the rear of the site which required a retaining wall. A patent system of interlocking concrete sections was proposed and drawings showing this were submitted.

10. The council took the view that this was not covered by the permission and a fresh application was requested in a letter dated 30 March 1988. A further request was made for the submission of a landscaping scheme for the whole site.

11. On 20 May 1988 the agents for M6 Diesel Services wrote saying the work on the site as a whole had been delayed by negotiations with the Department of Transport over the new Old Watling Street/A5 junction. Revised proposals had been agreed with Hertfordshire County Council and copies were enclosed. The diesel storage tanks, 10 in number and not 8 as approved, had by then been installed. The agents stated that their screening would be carried out as soon as possible. Work commenced on the retaining wall shortly afterwards. Enforcement action relating to this wall and the associated excavation was authorised on 6 June 1988, subject to legal investigation. The notice has not yet been issued.

12. The council replied to the letter of 20 May, saying that the revised highway proposals had not been agreed by the planning authority and concern was expressed over the taking additional green belt land. If this were done they considered that substantial landscaping would be needed in that corner of the site. It was indicated that a revised planning application should be made.

13. In view of the continued failure either to submit a landscaping scheme and details of the boundary treatment, or a revised planning application, the council decided to implement the enforcement action already authorised and Notice A was issued on 14 July 1988. Notice B relating to the pallet business in the north east corner of the site was issued on the same date.

14. On 19 July a new application was submitted on behalf of M6 Diesel Services. This included the proposed catering block in the same position as before and showed the 10 diesel tanks which had been constructed. The frontage details varied from those on the approved plan, including the new access arrangements said to have been agreed with Hertfordshire County Council. No landscaping details were included apart from a note on the plan referring to "heavy screening to local authority approval" on the trunk road frontage.

15. In September 1988 the Department of Transport issued a direction that permission should be refused. In a covering letter they stated that alterations to the A5 trunk road through Flamstead had not been finalised and the new application was therefore premature. M6 Diesel Services have requested that the application be held in abeyance while alternative highway

schemes are discussed. The council have declined and state they intend to determine the application in accordance with the DTp direction.

THE PLANNING CASES IN RESPECT OF NOTICE A

16. The appellants submit that the original development can no longer be carried out because of the county council's revised highway proposals. The new planning application will require different landscaping when the highway matters have been resolved with the county highway authority and the DTp. In the circumstances, however, the company state that they are willing to enter into discussions with the council to agree such landscaping as can be achieved at this stage.

17. The council say that the resolution of the highway and access matters lies outside their control. They submit that whatever the final highway arrangements they will not affect the northern, western or much of the eastern boundaries of the site. The ground area covered by the 10 tanks is the same as that originally indicated for 8 and it is considered that the 1985 planning permission has been implemented and Conditions (2) and (7) should be implemented.

18. The council are supported by the occupiers of Hill and Coles Farm to the north. On their behalf it was submitted that the absence of landscaping scheme and boundary details means that there is no protection for the existing trees around the site and no guarantee that an acceptable landscaping scheme will ever be carried out.

INSPECTOR'S CONCLUSIONS ON NOTICE A

19. In my opinion the initial work for the installation of the diesel tanks was in pursuance of the 1985 permission. I do not consider the fact that the excavations subsequently went further than those approved, or that 10 and not 8 tanks were installed, alters the position. I accept therefore the council's contention that the permission was implemented without complying with the prior conditions on the submission of landscaping and boundary details.

20. The appeal against the notice has been made solely on ground (g), that is that the requirements of the notice exceed what is necessary. I have nevertheless a deemed application before me for the development approved in 1985 to proceed without compliance with Conditions (2) or (7), which I have to determine. From the representations made and my inspection of the site and surrounding area I consider that the central issue is whether, in the interests of local amenity, it is desirable and reasonable that the conditions should be implemented, in whole or in part, at the present time.

21. Watling Street Filling Station is a busy site fulfilling an important support function in relation to the international road transport industry. It also occupies a prominent and exposed site and I consider it to be an important planning objective that there should be landscaping and boundary treatment of a high quality as soon as possible. I can find from M6 Diesel Services' case no obstacle to the early implementation of appropriate works over most of the site. The problems in this case have not been all of the appellants' making and there is apparently now a large measure of agreement between the company and the council. The formal deemed application to continue development without compliance with the conditions must however

fail on its merits.

22. This brings me to ground (g), the requirements of the notice, which in this particular appeal lies at the heart of the matter. I consider that these requirements could be varied so as to require submission now of proposals relating only to the northern and western boundaries and the northern 70m of the eastern boundary, to the point where it breaks further to the east and towards the A5. The appeal on ground (g) therefore succeeds to this extent.

23. These variation would not, from the plans before me, prejudice any access and highway arrangements on the frontage of the site which are likely to be the subject of a future application, to appropriate appropriate conditions can be attached. Should there be any conflict or overlap I have no doubt that the council, as planning authority, would act in a reasonable and responsible manner.

THE PLANNING CASES IN RESPECT OF NOTICE B

24. The agents for Curtis and Sons, who operate the pallet business from the north east part of the site, submit that temporary permission should be granted for the continuation of the business which is in the process of growing. When established the company will be able to relocate to an industrial site. It is important and in accordance with Government policy that small businesses should be encouraged. The council have made no attempt to discuss possible relocation.

25. M6 Diesel Services, as owners of the site, have not appealed against the notice and say that they have every intention of complying at the end of the period.

26. The council's basic objection is based upon local plan policy which is against new development in rural areas beyond the green belt. They also object on the grounds that the business occupies the area proposed by M6 Diesel Services for the proposed new catering block, for which permission has been granted. They wish there to be no conflict with the overall improvement of the site. They recognise, however, that the use has been on the site since 1986. Bearing in mind that it may be some time before this part of the development is implemented and the needs of small businesses it was decided to give a long period, 12 months, to comply with the notice. This was considered preferable to a temporary permission, which would probably mean re-commencing enforcement proceedings on the expiry of the permission.

27. The council are again supported by the occupiers of Hill and Coles Farm, who in this case are concerned about fires, for the disposal of waste material, and plastic packaging endangering livestock.

INSPECTOR'S CONCLUSIONS ON NOTICE B

28. From the representations made and my inspection of the site and surrounding area I consider that the central issue is whether there are any special circumstances to justify the continued use of part of the Watling Street Filling Station site for a separate unrelated business use, whose location is contrary to the policies of both the Hertfordshire Structure Plan and the Dacorum District Plan.

29. I recognise that the pallet use is on a relatively small scale and occupies only a small part of the site and, like the council, I am sympathetic to the needs of small businesses. The use is however unrelated to the important function of the land as a lorry park. It is not stated how it came to be established on the site in the first place, although it was clearly with the site owners' agreement. I appreciate that they are not opposed to the notice and have their own plans for this particular part of the site in connection with the lorry park, which limits the life of the pallet use. In my opinion, however, an unfortunate precedent would be set for the subdivision of this and similar sites if permission were to be granted for the continuation of this separate and unrelated business use.

30. I consider that the council's decision to enforce with a long period of compliance is a reasonable approach. This will allow the business further time to develop and to find an alternative site. It may be that the council will be able to provide some advice or guidance in this respect.

31. I have taken into account all the other matters raised in respect of the appeals against both notices but do not find that they outweigh the factors which lead me to my decisions.

FORMAL DECISIONS

32. For the above reasons and in exercise of the powers transferred to me I hereby:

Notice A:

Direct that the notice be corrected and varied as follows:

(a) by deleting line 3 of paragraph (2) and substituting the words

"on 16 August 1985 (reference 4/0808/85) for"

(b) by deleting steps (i) and (ii) from Schedule 3 and substituting the following:

(i) Submit to the local planning authority within 3 months of the date of this decision letter a scheme of landscaping, as required by Condition (2) of permission 4/808/85, dated 16 August 1985, in respect of those parts of the site in the proximity of the northern and western boundaries and the northern 70m of the eastern boundary, to the point where it breaks further to the east towards the A5 trunk road and implement the scheme on its approval as required by Condition (2).

(ii) Submit within 3 months of the date of this decision letter details of the treatment of the northern and western boundaries and the northern 70m of the eastern boundary, to the point where it breaks further to the east and towards the A5 trunk road.

Subject to this correction and variation I dismiss the appeal, uphold the notice and refuse to grant permission for the application deemed to have been made under section 88B(3).

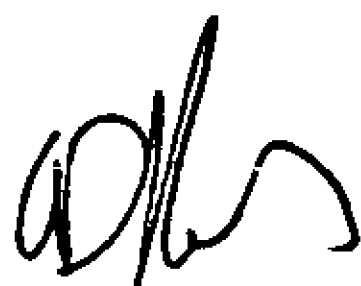
Notice B:

Dismiss the appeal ^{and} uphold the notice

RIGHTS OF APPEAL RELATING TO THE DECISIONS

33. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal to the High Court against the decisions are enclosed for the benefit of those concerned.

I am Gentlemen
Your obedient Servant



A D RABY BSc(Econ) MRTPI ARICS
Inspector

ENC

(a)

DACORUM BOROUGH

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice
Material Change of Use

(b) Land at Watling Street Filling Station London Road Flamstead
Hertfordshire

WHEREAS:

(1) It appears to the^(a) 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^(c)

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.^(d)

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

within [the period of twelve ~~days~~ [months] from the date on which this notice takes effect] ~~[the period specified in respect of each step in that schedule]~~.^(f)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 18th August 19 88 .^(g)

Issued 14th July 19 88 .

Council's address —
Civic Centre
Marlowes
Hemel Hempstead
Herts

(Signed) *Keith Hunt*

(Designation) BOROUGH SECRETARY
(The officer appointed for this purpose)

Compliance 29-6-90

CONTINUED OVERLEAF — P.T.O.

NOTES TO THE LOCAL PLANNING AUTHORITY

- Insert the name of the Council issuing the notice.
- Insert the address or a description of the land to which the notice relates.
- 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."
- See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- 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.
- 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.
- 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 at Watling Street Filling Station London Road Flamstead
Hertfordshire

shown edged [red] [

] on the attached plan.^(h)

SCHEDULE 2

Alleged breach of planning control

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

Change of use from lorry park to use as a mixed use:-

1. for the purposes of the purchase and sale of pallets and the storage from time to time of pallet and trailer bodies and lorries; and
2. for the purposes of a lorry park.

SCHEDULE 3

Steps required to be taken.^(k)

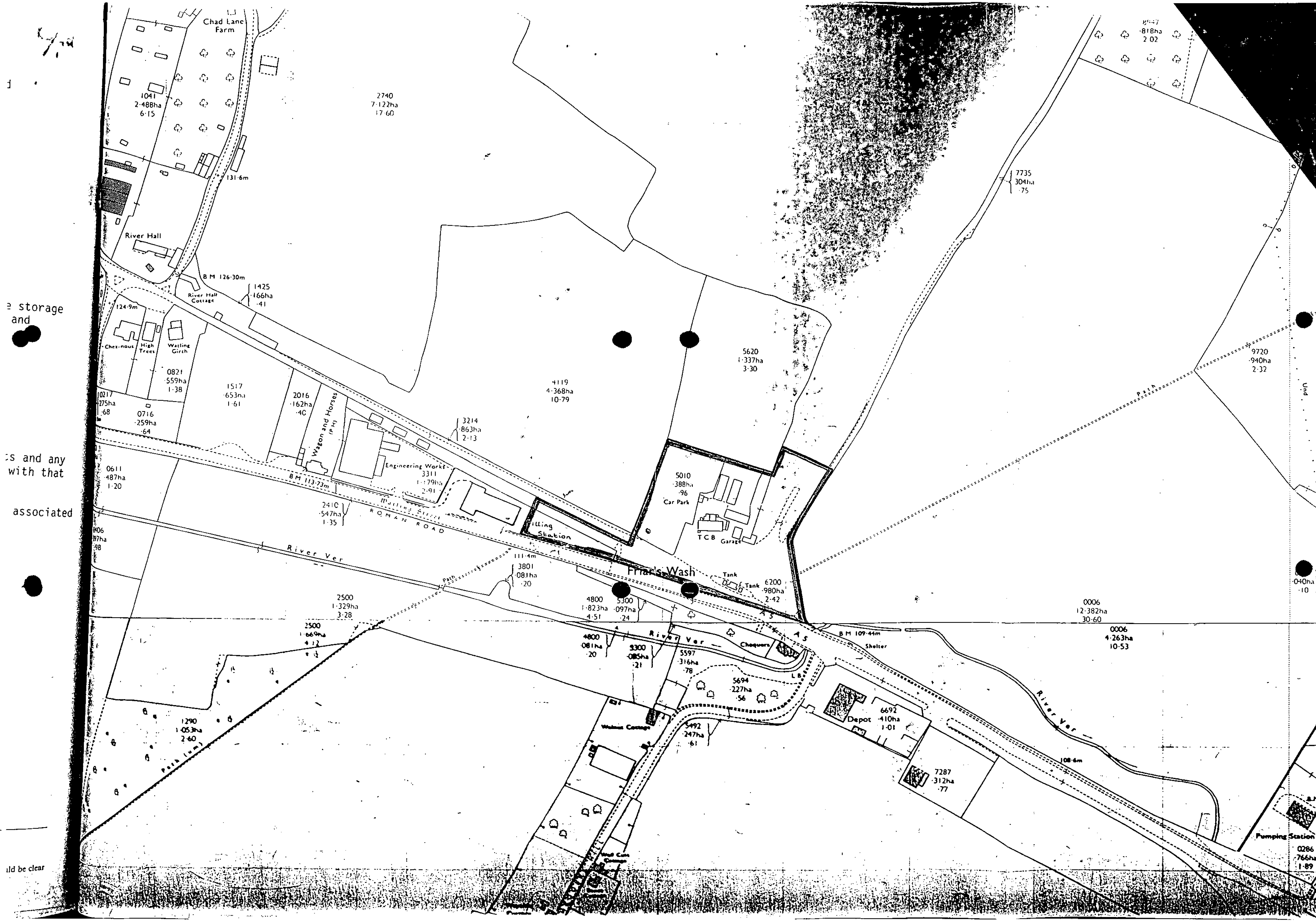
- (i) Cease the use of the land for the purchase and sale of pallets and any storage of pallets and trailer bodies and lorries associated with that use.
- (ii) Remove from the land all pallets and any trailers and lorries associated with the sale and purchase of pallets.

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: 14th July 1988

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 reason:-

The site is in a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for development for agriculture 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 use is therefore unacceptable.

AMB/TM/2447/280