

was stored in the north-west part of the site "...and forms a neat stack confined to an area of approximately 14 by 6 metres". To my mind, if anything, rather than supporting the Council's stance, the presence of materials, some of which are identified as "perhaps bricks/blocks", in a stack, adds further weight to the appellant's case.

24. The information supplied by Mr C Williams is not sworn. Nevertheless, I attach a good deal of weight to the content of his letters. They are on Council letter-headed paper and are signed in his official capacity as a Principal Building Control Officer. To my mind it is highly unlikely that a Principal Officer in the same department of the Council as the one in which the action was initiated would have chosen to commit himself in this manner, if he had not been reasonably certain about the factual basis of his recollections. I find the information supplied in his letters wholly consistent with the rest of the evidence submitted in support of the appellant's case. To my mind it strongly suggests that the material change of use of the land did occur more than 10 years before 16 July 1989 as is claimed.
25. I accept that the first evidence regarding an operating centre for heavy goods at the site only dates back to 1995. Nevertheless, on the basis of the other evidence put forward, I am satisfied that on the balance of probability there has been a main use of the land at No.37 Adeyfield Road as a builders' yard for more than 10 years prior to the date when enforcement action was taken, in which case the use is now immune.
26. In the light of the foregoing, the appeal on ground (d) succeeds in respect of those matters which, following the correction of the notice, are stated in it as constituting the breach of planning control. In view of the success of the appeal on legal grounds, there is no need therefore for me to consider the appeals on grounds (f) and (g).

#### Other Matters

27. In a letter to the Council dated 8 December from the appellant's agent it is stated that he has been instructed to pursue the costs of any continued enforcement action from them. Despite this however, no formal application for costs has been made to the Department. In these circumstances, I do not propose to take any further action in respect of this.
28. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations which have led me to my conclusions.

#### Formal Decision

29. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the enforcement notice be corrected in Article 3 by the deletion of all the words after "without planning permission" and the substitution therefor by "use of the land as a dwellinghouse and as a builders' yard." Subject thereto, I allow the appeal and quash the notice as corrected.

#### Rights of Appeal against the Decision

30. This decision is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed.



Inspector

Furthermore as ground (d) is a legal ground of appeal, the onus on proving this lies with the appellant. That said, I find the documentary evidence which has been put forward provides a good deal of help in shedding light on the manner in which the land was used in the past, both prior to and after the relevant date.

19. I acknowledge that the earliest indication that the land was being used as an operating centre is the licence issued in May 1995. However, in the light of my conclusion regarding the relationship of this activity to builders' yard use, I do not consider this shows that the latter use began less than 10 years ago.
20. Sir David Madel MP does not expressly mention a builder's yard in his letter and his involvement with the appellant may not extend to the whole of the relevant 10 year period. Nevertheless, the information in his letter is consistent with the contention that the land has been in continual use for business purposes. I accept that, in his letter, Mr McKelvey does not elaborate upon what sort of building materials were delivered to the appeal site, or how frequently these deliveries were. Nor does he comment on the extent of any storage there. However, invoices from his company covering the period from August 1987 to March 1988, a good number of which are annotated 'deliver to 37 Adeyfield Road', point to a fairly regular pattern of deliveries to the site at that time. Moreover, from the invoices that are legible, the items involved appear to be consistent with those used by a building company. I accept that other invoices include small individual items and other equipment that would be unlikely to be found stored outside. But, as it is claimed that the garage in the building was used for storage too, as I also noted on my site inspection, it seems to me that the invoices lend support to the claim that the disputed use was in existence more than 10 years before the enforcement notice was issued.
21. Other items of correspondence are also consistent with the appellant's contention. In particular, the letters from Mr Blount concerning the period 1985 to 1986 and that from 'Shopfronts of London' referring to an event in late 1988. So too are Mrs Clarke's comments about kitchens having been stored at the garage at No.37, even though she does not elaborate upon how the rest of the land was used.
22. As is also the case with the letters, the contents of the statutory declarations cannot be tested by cross-examination in this instance. The individual declarations also display marked similarities in style, suggesting that they may have been composed on behalf of, rather than prepared directly, by the respective signatories. Be that as it may, they have all been sworn, in which case I see no reason to question their reliability. They include references to the outdoor and indoor storage of materials and the use of part of the 2 storey-building as offices. There are some inconsistencies between the length of time some of the individuals are said to have known the site and the length of time the disputed use is said to have taken place, but the particular dates in question are all more than 10 years before the notice was issued. Although one of the declarations only covers the period from 1991 onwards, my view is that the rest strongly suggest that the use in question is immune from enforcement action.
23. As regards the aerial photographs, I acknowledge that the Council sought expert guidance from an independent expert in respect of those taken in July 1990. His findings, as opposed to the conclusion derived therefrom by the Council, have not been questioned. Contrary to the Council's view, I do not consider they show the site was not in use as a builders' yard. The 1992 photograph is not particularly distinct and I am reluctant to draw any firm conclusion from it. However, according to the analysis of the 1990 photograph, material

the plan attached to the notice, since 1988. The garages below the office had been used for storage connected with the businesses since 1988 too. The land to the side and the rear of the building had been in continual use as a builders' yard since 1984; its use for this purpose pre-dated the detached building which was erected in 1987. Materials stored on the land were usually in association with an upcoming contract, or left over from past contracts. On occasions, there will have been times when there would appear to be very little outdoor storage.

14. The other declarations refer to the presence of 2 first floor rooms in the 2 storey outbuilding, used as office accommodation as well as the use of the garages at ground floor level for the storage of building materials. Reference is also made to the use, on a continual basis, of the land to the side and rear of the building as a builders' yard involving the storage of building materials, the parking of site vehicles, the loading and unloading of vehicles, and the storage of used building materials prior to disposal. The declarations also mention the presence of a skip.
15. There are also letters from individuals. These include correspondence from Mr C Williams, a Principal Building Control Officer in the Council's Planning Department. He indicates that he had visited the site once or twice a year and his first visit to the site was prior to the construction of the rear annexe. He indicates that storage had been taking place there since 1986. He was always aware that the site was being used as a builders' yard; the materials stored at the site prior to the erection of the annexe were not used solely for the construction of that building. According to Mrs M E Clarke, she started working for the appellant in 1986 as an office employee; materials, including kitchens, had been delivered to and stored at the appeal site. The former Sales Manager of another company, a Mr Blount, advises that he regularly visited the appellant at 37 Adeyfield Road in the mid 1980s and that the company delivered goods there on a regular basis throughout 1985 and 1986 when the rear of the premises were used as storage for building materials. A former builders' merchant, a Mr McKelvey, (whose company name appears on some of the invoices submitted) indicates that his involvement with 37 Adeyfield Road started around 1984-5 and lasted until December 1988. He states that he supplied the appellant with building materials, some directly to sites and some to his home address. He also purchased second hand materials from the appellant. Sir David Madel MP states that he has been a customer of the appellant for approaching 10 years; the trading address has always been the rear of 37 Adeyfield Road.

*For the Council – Main Points*

16. The Council have not commented upon the statutory declarations. Their view, based upon the letters, delivery notes, invoices and other documents to which consideration has been given, is that there has been a progression from a perhaps relatively low-key activity to a division of the planning unit and a material change of use.
17. The letters do not confirm the existence of a builders' yard. While invoices confirm delivery to 37 Adeyfield Road, they do not confirm storage there. The items bear no relation to what is stored there now. Aerial photographs taken in 1990 and 1992 show that the land at the rear of the house was not in use as builder's yard then. By the appellant's own admission, the use as an operating centre for heavy goods vehicles only began in 1995.

*Appraisal*

18. In order for the appeal to succeed on this ground, it has to be shown that the breach of planning control occurred more than ten years before the enforcement action was taken.

satisfied that the use on its own, as inferred by the allegation amounts to a materially separate main use of the land.

8. As regards the question of the transfer of waste, it is not disputed that waste material is brought to the land, kept there for a while and then transported away by skip lorry. However, the evidence does not point to this being a single main purpose of the use of the land; the waste appears to be more a by-product of the building activities conducted by the appellant. Again, in my experience, it is by no means unusual for waste materials to be brought back to a builders' yard pending their disposal. There is no evidence that the site is being expressly used as a focus for the accommodation and sorting of waste; the activity appears to be rather low-key, involving trade waste from the appellant's business and related to the builders' yard as opposed to an independent main use.
9. The Council refer to a substantial amount of material being stored on the land and my attention has been drawn to 2 sets of photographs taken on different dates in 1998. The scene depicted is not dissimilar from what I saw. While some waste was evident, much of the material, assorted bricks, roof tiles, timber items, scaffolding poles and the like appeared to me to be part of the general storage typically to be found in association with a builders' yard and which often characterises such a use. I do not consider this supports the contention that the land is being used as a waste transfer station in its own right.
10. As a matter of fact and degree, my opinion is that the nature of the business use of the land is such that it is materially different in character from the residential use at No.37 Adeyfield Road. I find therefore that there has been a breach of planning control. However, in my opinion, the breach is the use of the land as a builders' yard; in this instance the operating centre and waste transfer activities appear to be part and parcel of that activity rather than separate uses as the allegation implies. While I do not equate this concern with success on ground (c), as the activities form part of the overall breach, I consider the allegation should be confined to what I regard as the main use, that is the builders' yard. I shall correct the notice accordingly.
11. In the light of the foregoing the appeals on grounds (b) and (c) fail.

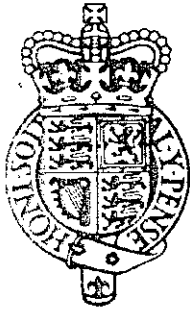
#### Appeal on Ground (d)

##### *For the Appellant - Main Points*

12. The basis of this ground of appeal is that the builders' yard use has occurred for more than 10 years, in which case the use is immune from enforcement action. Support for this comes from various documents, including 10 statutory declarations: One is by the appellant, another by his wife. Attached to the former is a bundle of copies of delivery notes and invoices spanning a period from August 1987 to June 1999. The other 8 declarations are by individuals said to have known and visited the site regularly for periods extending back as far as 1984. In addition, there is further evidence in the form of copies of letters from individuals purporting to have knowledge of the site in the past. A copy of a letter dated 8 November 1988 from 'Shopfronts of London' advises that a shopfront and a complete conservatory were to be delivered to the rear of 37 Adeyfield Road before 12 December 1988 and a copy letter from another firm dated 11 June 1991 refers to the collection of 100 pallets from the site.
13. According to the appellant's statutory declaration, he had worked as a building contractor running 3 businesses, the offices for which had been in the detached building identified on

**Appeals on Grounds (b) and (c)**

3. Although submissions have been made in support of these grounds of appeal under separate headings, it seems to me that the arguments advanced on behalf of the appellant are closely linked, in which case I deal with them together.
4. I have already indicated that the allegation is incorrect in that it ought to refer to a mixed use of the land including the residential element. While the claim that the latter has been confined exclusively to certain parts of the site has not been challenged, I do not consider this provides a basis for success on either of the 2 grounds. As I see it, the main considerations in this respect are the nature of the activities and their relationship to the residential use.
5. It is accepted that part of the site is used as a builders' yard, indeed this forms the basis of the appeal on ground (d). It is therefore difficult for me to do other than conclude that this use has occurred as a matter of fact, even if this activity has been confined to a part of the site as is claimed, and as appeared to be the case when I visited the site. Moreover, having noted that a Goods Vehicle Operator's Licence has been issued for 2 goods vehicles, this points strongly to the site having been used as an operating centre for heavy goods vehicles too. Similarly, it is not denied that the land has been used for the transfer of waste, or that a Licence has been issued in respect of this. From what is before me therefore, I am not satisfied there is any basis for success on ground (b). The evidence points to all the matters alleged in the notice having occurred as a matter of fact.
6. While the disputed uses take place in the grounds of the appellant's house, my view is that a builders' yard and the activity associated with such a use is materially different in character from a residential use. The detached building identified on the plan attached to the notice accommodates a covered over swimming pool and appeared to contain some other trappings of domesticity, but the garage portion was full of various building materials. It may be that the upstairs part of the same building is used for domestic purposes to a certain degree, but I saw that it contains accommodation for a secretary as well as various items which I would associate with a conventional office linked to the running of a business. My impression therefore was that part of the building is used in association with the business in question and forms an integral part of this use. Indeed the Council's submission that the appellant advised them that he operated his business from here has not been challenged. I am not satisfied therefore that the use is wholly ancillary or incidental to the dwellinghouse. As a matter of fact and degree, my opinion is that the use of the site, albeit not all of it, as a builders' yard constitutes a material change of use of the land. In the apparent absence of any planning permission for this, my conclusion is there has been a breach of planning control.
7. While I have concluded that the land has been used for the transfer of waste and as an operating centre, the evidence does not point to these activities having operated as separate individual main uses of the land in their own right. The Goods Vehicle Operator's Licence refers to the appellant by name, but after that it states trading as "MB Construction". In my experience it is customary for many operators of builders' yards to own goods vehicles in order to facilitate the running of such a business. This appears to be the case here; my view is that in this instance the operating centre in contention is a part and parcel of the overall builders' yard use. Although the use of land by goods vehicles forms part of an unauthorised use and is appropriately referred to in the requirements of the notice, I am not



# Appeal Decision

site visit held on 14 February 2000

by D H Brier BA MA MRTP

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

PLANNING DEPARTMENT	
COUNCIL	
Ref	
Received	23 MAR 2000
Comments	

Planning Inspectorate  
Tollgate House,  
Houlton Street  
Bristol BS2 9DJ  
0117 987 8927

22 MAR 2000

Appeal : T/APP/A/1910/C/99/1028445

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Mr A L Morrice against Dacorum Borough Council.
- The site is located at 37 Adeyfield Road, Hemel Hempstead, Hertfordshire.
- The Council's reference is 4/1522/99ENA.
- The notice was issued on 16 July 1999.
- The breach of planning control as alleged in the notice is without planning permission use of land as builders' yard and as an operating centre for heavy goods vehicles and as a waste transfer station.
- The requirements of the notice are:
  - (i) Cease the use of the land as:
    - a. a builders' yard.
    - b. an operating centre for heavy goods vehicles.
    - c. a waste transfer station.
  - (ii) Permanently remove from the site all building materials, fencing materials, plant, building equipment, rubbish skips and heavy goods vehicles, and any other materials, items of equipment or vehicles related to any or all of the uses referred to in requirement (i).
  - (iii) Cease the use of the first floor rooms of the building identified in blue on the plan attached to the notice for any purpose related to any or all of the uses referred to in requirement (i).
  - (iv) Cease the use of the garage on the ground floor of the building identified in blue on the plan attached to the notice for any purpose related to any or all of the uses referred to in requirement (i).
- The period for compliance with the requirements is 6 months.
- The appeal was made on the grounds set out in Section 174(2), (b), (c), (d), (f) and (g) of the 1990 Act.

**Decision: The appeal is allowed and the enforcement notice is corrected and quashed.  
The formal decision is set out at paragraph 29.**

## Procedural Matters

1. As the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations have not been paid to the Secretary of State and the Local Planning Authority within the period specified, the deemed application for planning permission under Section 177(5) does not fall to be considered.
2. The planning unit identified on the notice includes a dwellinghouse, No.37 Adeyfield Road, and the land attached to it. While I see nothing untoward in this, it seems to me that the allegation is incorrect in that it ought to refer to a mixed use of the land, including the residential component. It is within my power to correct the notice and to do so in this manner would not, in my view, cause injustice to the parties involved.