

Town Planning 4/1830/80

Ref. No.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No.

THE DISTRICT COUNCIL OF DACORUM
 IN THE COUNTY OF HERTFORD

To M. Lutt Esq.,
 Mayfield,
 Maple Hill,
 Bovington, Herts.

..... Double garage,

 at Mayfield,
 Maple Hill, Bovington.

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 permit the development proposed by you in your application dated 12th December 1980
 and received with sufficient particulars on 12th December 1980
 and shown on the plan(s) accompanying such application, subject to the following conditions:-

- (1) The development to which this permission relates shall be begun within a period of ...5... years commencing on the date of this notice.
- (2) The materials used externally shall match both in colour and texture those on the existing building of which this development shall form a part.

The reasons for the Council's decision to grant permission for the development subject to the above conditions are:—

- (1) To comply with the requirements of Section 41 of the Town & Country Planning Act, 1971.
- (2) To ensure satisfactory appearance.

Dated.....22nd.....day of.....January.....19 81

Signed.....
Designation.....Director of Technical
Services.

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, Marsham Street, London, S.W.1.) 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 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 Common Council, or on the Council of the county borough, London borough or county district in which the land is situated, as the case may be, 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.

**Department of the Environment and
Department of Transport**

Common Services

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Council Ref: 4/0859-61/84

**CHIEF EXECUTIVE
OFFICER**

19 APR 1985

File Ref.

Refer to

Cleared



Pickworth and Company
Solicitors
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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.	D.C.	B.C.	Admin.	File
17 APR 85					
Received 18 APR 1985					
Comments Robert H.					

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 permission 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.

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.

APPEARANCES

FOR THE APPELLANTS

Mr D S Forbes LLM Solicitor

- Pickworth and Company,
37 Marlowes, Hemel Hempstead,
Herts, HP1 1LG.

He called:

Mr M Lutt

- Appellant.

Mrs S Lutt

- Wife of appellant.

Mr R Margrove

Mr P R Smitten

Mr M R Warner MSc ARICS

- Surveyor, Chilterns Estates.

FOR THE PLANNING AUTHORITY

Mr J Vaughan

- Assistant Solicitor, Dacorum
District Council.

He called:

Mr J E Knapp DipTP MRTPI

- Principal Assistant, Planning
Officer, Dacorum District Council.

INTERESTED PERSONS

On behalf of local residents

Mr A F Barker

- Solicitor, A F Barker and Co,
69 Marlowes, Hemel Hempstead,
HP1 1LE.

He called:

Mr J A Winwood

- Local resident.

Mrs G O Taylor

- Local resident.

Mr B R Skerry

- Local resident.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Notice of inquiry to nearby residents.

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 handwritten signature in dark ink, appearing to be 'A H T Clayton', written in a cursive style.

A H T CLAYTON MA(Oxon)
Inspector

ENC

PHOTOGRAPHS (CONTINUED)

- Photo 7 - Pallets at the Forge, New Grove Lane, 20 February 1984.
- Photo 8 - Pallets at the Forge, viewed from access, 20 February 1984.
- Photo 9 - Land adjacent to Game Farm, 20 February 1984.
- Photo 10 - Aerial photograph of Site A, 1972.
- Photo 11 - Aerial photograph of Site A, 1981.
- Photo 12 - Site A from the south.
- Photo 13 - Lane and hedge on east side of Site A.
- Photos 14-17 - Views of Site B from north, interior of site, and to the south.
- Photos 18-20 - Views of Site C from Leyhill Road, and from the east.
- Photos 21-24 - Views of Bovingdon Brickworks.
- Photo 25 - Bovingdon airfield showing construction of HM Prison.
- Photo 26 - Sewage Works, Shantock Lane.
- Photo 27 - Radio Mast visible in vicinity of appeal sites.
- Photo 28 - Pipeline station in vicinity of appeal site.
- Photo 29 - Storage at the Smiths Forge, Site A.
- Photos 30-31 - Views of pallets on Site B, from stables across the road.
- Photo 32 - View of storage of pallets, Site A, from drive of Maples Farm.

DOCUMENTS (CONTINUED)

- Document 3 - Planning history, Bovington Brickworks.
- Document 4 - Planning history, Meadhams Farm, Brickworks.
- Document 5 - Extract from Policy Statements, County Structure Plan.
- Document 6 - Extract from Policy Statements, Dacorum District Plan.
- Document 7 - Planning history of appeal sites.
- Document 8 - Letter dated 24 January 1985, from Mr and Mrs B C Bateman, nearby residents.
- Document 9 - Letter dated 27 January 1985, from residents of 1 Maple Cottages.

PLANS

- Plan A - 1/2500 Plan accompanying Notice A.
- Plan B - 1/2500 Plan accompanying Notice B.
- Plan C - 1/2500 Plan accompanying Notice C.
- Plan D - 1/2500 Plan showing areas of storage, sites A and C.
- Plan E - 1/2500 Land owned by occupier of Game Farm House.
- Plan F - 1/2500 Land owned by occupier of Maples Farm.
- Plan G - 1/2500 Land owned by occupier of Game Farm.
- Plan H - No scale. Location Plan of various uses in the Green Belt.
- Plan K - No scale. Location Plan of uses in vicinity of appeal site. (Appellant).
- Plan L - 1/2500 Land uses, vicinity of appeal site (Council).

PHOTOGRAPHS

- Photo 1 - Yard at Mayfield, 4 February 1985.
- Photos 2-3 - The Forge site, viewed from access, 4 February 1985.
- Photo 4 - Access to land adjacent to Game Farm, 4 February 1985.
- Photo 5 - Land adjacent to Game Farm, 4 February 1985.
- Photo 6 - Yard at Mayfield, 20 February 1984.