

file ADIDA/272
N/78/0920/F



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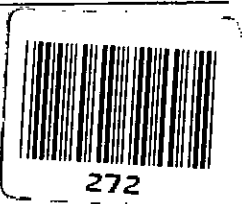
Council's reference McD/KJP

Messrs Davey, Son and Jones
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GL7 2AL

Your reference NA/CH

Our reference T/APP/5408/C/79/105/G4
A/79/03741/G4

Date
19 OCT 1979



Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
APPEALS BY MR A J CALVINHO
LAND AND BUILDINGS AT THE FORMER RAILWAY STATION, MINETY, NEAR MALMESBURY

1. I refer to your client's appeals, which I have been appointed to determine, against an enforcement notice served by, and against a refusal of planning permission by the North Wiltshire District Council concerning the above-mentioned land and buildings. I held an inquiry into the appeals at the Manor House, Wootton Bassett on Tuesday 14 August 1979.
2. a. The date of the notice is 7 December 1978.
 - b. The breach of planning control alleged in the notice is the making of a material change in the use of the land from use from railway purposes to use for the storage, renovation, preparation for sale, and sale of domestic furniture combined with use for railway purposes.
 - c. The requirements of the notice are:
 - i. To cease the use of the land and building for the storage, renovation, preparation for sale and sale of domestic furniture.
 - ii. To remove from the said land all domestic furniture and associated material.
 - iii. To restore the said land to a tidy condition.
 - d. The period for compliance with the notice is 2 months.
 - e. The appeal against the notice was on the grounds set out in Section 88(1)(a), (f) and (g) of the 1971 Act but at the inquiry those set out in Section 88(1)(b) and (d) were added.
3. The development for which planning permission was refused is the use of a warehouse at the Station Yard, Minety for the storage of antique furniture.
4. The evidence, apart from that solely on planning merits, was taken on oath.

SUMMARY OF DECISIONS

5. Both appeals succeed. The enforcement notice is being quashed, and planning permission is being granted.

THE SITE AND SURROUNDINGS

6. The appeals concern a former railway shed, in the yard of the now disused Minety and Ashton Keynes Station, to the west of a steeply-humped road bridge over the line. It is about 80 ft long and 12 ft wide, on a raised plinth, and was built so that it could be served by a siding which has now gone. The Enforcement Notice plan covers the building, and part of the abutment to the railway track, and an undefined section of the yard over which access would normally be gained. The application plan covers the building only.

7. At the time of my inspection the building was filled to the roof with second-hand furniture. There are no services, but your client has installed a calor gas lighting system. The railway, the line from Swindon to Gloucester, is operating but is now single-tracked. The yard is unused, except for one old trailer belonging to your client which is parked there. To the south-west is the straggling village of Minety, but to the north-east is mainly open country, with only 2 old houses and a disused coal yard served by the station approach, and 2 bungalows dating from the First World War further to the north.

8. A driver emerging from the access on to Station Road (B4040) has visibility to the south to the top of the railway bridge, and to the north for about 250 ft into a deceptive right-handed bend. Your client demonstrated with his Mercedes van that he could negotiate the sharp turn into the access from the south without backing, or crossing into the opposing traffic lane.

FACTS NOT IN DISPUTE

9. Minety and Ashton Keynes Station was closed on 2 November 1964. In 1968 a planning application was made for the use of the old station yard for light engineering purposes but this was subsequently withdrawn. On 1 August 1978 the appellant, who is a furniture dealer with a shop in Swindon, was granted a tenancy of the shed (79 sq yds) with a right of access over the yard by British Railways Board. The tenancy is determinable on 6 months notice by either side, and on 28 days notice by the Board if the premises are required for railway purposes, and the rent is £500 per annum.

GROUND(S) (B) AND (D)

10. On behalf of your client it was said that the planning unit was the unit of occupation, which was the building, although the notice covered land which was outside that the subject of the tenancy agreement. There was no evidence that any of the land outside the building had been used for the purposes enforced against.

11. Plan C, taken from the 1923 Ordnance Survey, showed the station as it was then, the appeal building having been an extension to the original goods shed, which was demolished in 1955. From 1953 to 1964 the shed was used jointly by Messrs Read Brothers and Messrs Silcocks, who each occupied one half of the space. The whole building was used for the storage and distribution of poultry and cattle feed. Silcocks were competitors of Read Brothers and stopped using the premises in 1964. Before the station was closed the rest of the yard was used by British Rail for the distribution of coal, and coal lorries were loaded direct from railway waggons on the sidings. After the closure the use by Messrs Reads and Silcocks still generated 8-12 vehicle movements a day on the access road.

12. The original use of the building may have been for railway purposes, namely as a station store. This was a storage use falling within Class X of the Schedule to the Town and Country Planning Use Classes Orders 1948 and 1972. When it ceased

to be used by the railway and was used by Messrs Silcocks and Messrs Reads there was no material change of use and no enforcement notice. Similarly there was no material change of use when your client began to use the building for the storage of antique furniture.

13. Your client's business involved buying furniture at local auctions, and this was brought to the appeal building and stored for anything between a week and 5 months. He also cleared houses, particularly when there were some items of antique interest. No repair work was carried on at the premises, apart from the occasional glueing of a chair or table leg. No power was available and no machinery, either bench or hand-held, was operated in the building.

14. He employed a full-time salesman at his shop in Swindon, and also had the services of a craftsman who renovated items at his own premises. They would only come to Minety if help was needed in loading the van. Occasionally a prospective buyer would ring him up at his home, close to the appeal premises in Minety, in answer to an advertisement. He would then take the customer to the appeal building. Not more than 8 items a week had ever been sold in this way, and since he had the shop he aimed to channel all sales through it so there would not be more than one visit a week to the appeal premises by prospective customers. He no longer advertised widely as he was now well known in the district. His tenancy agreement with British Rail (Document 5) limited the use to storage of furniture only.

15. Circular 67/49 said that a proposed change of use constituted development only if a new use was substantially different from the old. The governing factor was comparison with the previous use, and the effect on the neighbourhood was not relevant. The change from the storage of animal feedstuffs to the storage of antique furniture, a change only in the commodity stored, was not sufficient to constitute any material change. *Lewis v Secretary of State* (23 P and CR 125) and *Snook v Secretary of State* (33 P and CR 1) were authorities to the effect that if the activity carried out on the land remained the same, a mere change in the identity of the person carrying out the activity, or a mere change in the ownership or source of supply of articles stored on the land, did not amount to a material change of use.

16. Page 6061 of the Encyclopaedia of Planning Law set out guidelines for determining whether there had been a material change of use, arising from various cases on the subject. The decision reported at 1967 JPL 173 (Document 11) was relevant in that it said that a building used as offices by British Rail could be so used by any occupier other than a statutory transport undertaker, without there being a material change of use. In that case both the existing and proposed use were within Class II of the Schedule to the Town and Country Planning Use Classes Order 1948 and the change in the identity of the occupier was irrelevant.

17. The use had at all times remained within Class X of the Schedules to the Town and Country Planning (Use Classes) Orders 1948 and 1972 (use as a wholesale warehouse or repository). A "repository" was defined in the case of *Horwitz v Rowson* (1960, 11 P and CR 460 and Encyclopaedia of Planning Law 6-100) as "a building where goods were kept or stored in the course of a trade or business". In *Monomart (Warehouses) Ltd v Secretary of State* (1977, 242 EG 881) it was held that a warehouse was a place where goods were stored preparatory to their being taken elsewhere and sold, not a building where retail sales were carried out. This accorded with the physical description of the use of the appeal premises as carried on by British Rail, by Messrs Silcocks and Reads, and by your client. In the decision noted at 1969 JPL 419 the former Minister had noted that a building could still be a wholesale warehouse notwithstanding that the occupant was in fact carrying on a retail sales business. Even though there had been some small element of repairs and retail sales at the appeal premises, these were ancillary to the

primary storage use, and were not themselves sufficient to amount to a material change of use.

18. It was irrelevant that there had been an interval between the date when Messrs Read Brothers gave up that use, and that when your client first occupied the building. In *Fyson v Buckinghamshire County Council* (1958, 9 P and CR 301) a resumption in 1956 of a use for storage which had last subsisted 7 years before was held not to be a material change of use, because the original use had never been abandoned.

19. Mr Anderson said that he bought his home "Forli Acres" in 1970, "Forli" standing for "Formerly the Old Red Lion Inn". At that time the yard was bordered by tall grass, which was cut once a year by British Rail, but unofficially they let him graze his goats there. The yard was also used as a depot for track maintenance. When he first came to Minety, Mr Fred Read was still operating his business as a miller and grain merchant, using both the appeal building, and an old red painted shed to the west of the approach road into the yard. The latter was part of the Forli Acres property, and Mr Read paid him rent. Mr Read used the buildings for storing sacks of grain and cattle feed. His brother, Mr Stephen Read, used a little yard next to the red shed for storing coal. Shortly after he came to Forli Acres British Rail said they would not renew Mr Fred Read's agreement, although he asked if he could go on using the shed. About 1971 however the business of Read Brothers closed down, and Mr Read concentrated on farming.

20. In 1970 he had correspondence with British Rail about the future of the yard, including the appeal building, as he would have liked to have rented it himself. On 7 July 1970 they wrote to him that it would be placed on the open market, "for a use for which planning consent can be obtained" (Document 13). After Mr Read left the building it was not used for any purpose until your client took over in December 1977.

21. As well as storing furniture in the building, your client had also dumped old cars and rubbish in the yard, and on 23 March 1978 Mr Anderson wrote to British Rail complaining about this (Document 14). He had seen advertisements which your client inserted in the local newspaper relating to furniture for sale, which appeared to come from his private address. He assumed that customers were directed to the appeal premises, where the furniture was. The telephone and electricity authorities had asked him to grant wayleaves over his land for cables to be connected to the appeal premises, and the Electricity Board had referred specifically to a power cable. He had refused consent. During the early part of 1978 a Bedford van full of logs had been parked alongside the appeal building, and a low-loader had been left rusting in the yard. There had also been a car axle, some planks, and a bin full of paint pots and other rubbish dumped there.

22. The Planning Authority accepted that until 1971 the premises were used for storage. However this was storage closely connected with the operation of the railway. The present use was materially different in character. In any event when Messrs Read Brothers gave up their use of the building this constituted abandonment of the previous storage use. Your client had recognised the need for planning permission by making the application the subject of the Section 36 appeal.

23. My conclusions are firstly that the planning unit occupied by your client does not include any part of the yard, although he may have trespassed upon it in the past. The unit is the building by itself, and had I upheld the notice I would have amended the plan to make this clear. The plan accompanying the S36 application shows the correct boundary of the site edged in blue, and my following comments in respect of the enforcement notice refer to this smaller area only. The building is not used for "railway purposes" and this wording is inappropriate in any event. Had I upheld the notice I would have deleted these words in the allegation.

24. Furthermore on the evidence I am not satisfied that there has been any renovation, preparation for sale, or sale of furniture in the building, sufficient to justify the inclusion of these activities in the overall description of the use. The present conditions in the building itself make it virtually impossible for such activities to be carried out there. I consider that the present use is for storage only, and any occasional visits by purchasers, or minor repairs, have only been ancillary to that main storage use. Had I decided to uphold the notice, as well as the use for railway purposes (see para 23), I would have deleted the references to the renovation, preparation for sale and sale of furniture in any event, and the appeal ground (b) succeeds to that extent.

25. As to the remaining allegation in respect of the storage of furniture, the evidence and documents indicate that the building was put up sometime between 1923 and 1953, and that it formed part of the railway station yard until 1953, when it began to be used independently for storage. It seems to me that the change from operational land of the railway to an independent storage use did amount to a material change (the railway use being sui generis) and that since it took place after the appointed day, 1 July 1948, the appeal on ground (b) must fail in this respect.

26. On ground (d) I agree that the storage of grain and feedstuffs and the storage of furniture pending re-sale are both wholesale warehouse uses within Class X of the Schedules to the Town and Country Planning Use Classes Orders 1948 and 1972, and that by virtue of Section 22(2)(f) of the 1971 Act the change between them does not involve development. Although the sporadic encroachments on to the yard may have been tiresome for Mr Anderson, they do not affect the planning position. As to whether the use was abandoned the correspondence indicates that British Rail were prepared in 1970 to let the premises for any purpose for which planning permission could be obtained. That does not indicate any conscious steps towards abandoning the use previously carried on by Mr Read, and the Board appeared unwilling to let Mr Anderson take over the building for use in connection with his smallholding. I do not consider that 8 years of non-use justifies by itself a finding of abandonment, especially in the case of a somewhat passive use such as storage. It seems to me that there was a material change of use in 1953 and no further material change since then, so your client's appeal against the enforcement notice succeeds on ground (d).

GROUND A AND SECTION 36 APPEAL

27. On behalf of your client it was said that the application related solely to the use of the building itself for storage only. Minety and Silver Street formed a straggling village noted in paragraph 4.78 of the Planning Policy Review for North-East Wiltshire (February 1977, Extract, Document 7) as having "few strong environmental constraints on development" and "a dispersed village form". The railway station, when open, would have been the social if not the physical centre of the village. There was new development in Station Approach, to the south-west of the railway, and some houses along the Malmesbury-Cricklade Road to the north-west of the bridge. The site was not in a rural area but within the village.

28. On the Review Development Plan (1970) the site was shown within an area where existing uses were to remain undisturbed. Since the use existing at that time was storage, the present storage use was in conformity with the Development Plan. As to the draft Structure Plan, Policy E11 quoted by the planning authority was not applicable so much as Policy E12 (see Document 8). This provided that light industry in existing buildings should normally receive favourable consideration unless there were overriding amenity, highway, design or servicing objections.

29. The building had been there for 25 years, and the storage use in no way altered its appearance. There was no demand on services. There was no prospect of Minety Station being re-opened, although this was the hope of the Parish Council. The

vehicles and rubbish which had been left in the yard from time to time had belonged to your client, and he now recognised that he should not use any part of the yard. The storage facility was essential to his business, as he had no storage space at the shop in Swindon, and the loss of it could lead to the closure of the shop and the salesman losing his job. Paragraphs 6 and 7 of Circular 69/49 stated that the possibility of creating a precedent should not on its own justify a planning refusal, and in any event there were no similar buildings nearby. Circular 71/77 invited planning authorities to adopt a flexible approach and be sensible to the needs of small firms in urban and rural areas.

30. The access was one which had been in use for many years. A vehicle turning into it from the south was not obliged to swing into the opposing carriageway, nor did a driver leaving it in a northerly direction have to look through his rear window to see traffic coming over the bridge. The visibility for an emerging driver (400 ft to the north, 500 ft to the south) although slightly less than that laid down in DCP Note 6 were perfectly adequate for the average speed of traffic using the B4040. In order to negotiate the railway bridge northbound traffic would have to reduce speed to 20-25 mph, and southbound traffic negotiating the bend to the north would not exceed 50 mph.

31. The B4040 was defined on page 151 of the Consultation Document for the draft Structure Plan as a minor distributor road. The design speed was 40 mph. A visibility standard of 295 ft equated to a minimum stopping distance for a vehicle travelling at that speed. The visibility in fact available from the access to the appeal site was appropriate to a 24 ft carriageway road, with a design speed of 50 mph and a design capacity of 9,000 pcu's per day. A 12 hour traffic count on the B4040 recorded only 816 vehicles. As to the junction itself it was admittedly a little unusual, but DCP Note 6 indicated the site difficulties might sometimes make it impossible to improve existing junctions to the recommended standards. Your client offered to accept a condition limiting the use to storage, occupying the interior of the building only, in accordance with his tenancy agreement.

32. For the planning authority it was said that the railway line formed the limit to development on the north-eastern side of Minety village and any new proposals other than those which were essential to agriculture should not be permitted. The building was not one of those "of traditional design and appearance" the use of which for employment purposes would accord with Policy E11 of the draft Structure Plan. The storage of goods in the open was detrimental to the amenity of the countryside, and there had been complaints from neighbours about car breaking and burning of waste in the yard. If permission was granted it would be a precedent for similar uses on this and other vacant sites in the countryside. The Minety Parish Council had objected to the development on the grounds of the potentially dangerous access, the burning of unsaleable furniture in the yard, and because it might prejudice the re-opening of the station as a Halt. If permission was granted there was a danger that the causes of the previous complaints would recur, and it would be very onerous for the planning authority to enforce any conditions aimed at preventing these.

33. The Highway evidence was that the access was a private road, surfaced but in poor repair, with a 9 ft carriageway and an overall width of 30 ft. It was almost parallel to and only 40 ft from the Class II Malmesbury-Cricklade Road (B4040) which it joined at an acute angle. The carriageway of the B4040 in the vicinity of the junction was 19-20 ft with 3 ft verges, and hazard lines in the centre. No accidents had been recorded in the vicinity of the junction.

34. In order to turn into the access vehicles coming from the south first had to swing over on to the opposing carriageway of the B4040, where forward visibility was restricted to less than 200 ft by the bend. Recommended forward visibility

for a road with a design speed of 50 mph was 600 ft and for 60 mph it was 700 ft, so this was well below standard. The turning manoeuvre was also likely to cause confusion to following traffic. The acute angle of the junction and the inadequate radius on its southern side also caused difficulties for larger vehicles when emerging as they would have to stop, reverse and go forward again, and this would also cause inconvenience and danger to traffic on the Class II road.

35. Mr Anderson said that soon after your client came to the site 2 old vehicles had been broken up in the yard. Assorted furniture, car wheels, petrol cans, tarpaulins, scaffolding planks and an old arm chair had been dumped there. A van was driven in and out at high speed, causing danger to children and animals. Rubbish had been burnt on the site. He did not object to the building itself being used for storage, so long as your client did not spread rubbish into the yard, and provided he was prepared to behave reasonably and considerately towards his neighbours.

36. My conclusions are that since the appeal succeeds on ground (b) in respect of the allegations other than storage, the deemed planning application relates to the storage use only, as does the Section 36 application. Whilst I agree there is only sporadic development in the countryside to the north-east of the railway line at Minety, this building within the station yard is something of a special case and it is desirable that it should be put to good use if this can be done without damage to amenity or traffic safety. As to amenity, the proposal is for storage of furniture in the building only, and this does not cover any use of any part of the yard. It is unfortunate that your client should have antagonised his neighbours by trespassing on the yard, but this is not a planning consideration, and indeed the activities complained about do not in the main seem to have related to the storage of furniture. This is an innocuous use, and it is better that this redundant building be used for this purpose than be allowed to become derelict and an eyesore.

37. On the traffic issue whilst the configuration of the junction is somewhat restricting, your client demonstrated that a medium sized furniture van can negotiate it without backing and turning, and I do not consider that the forward visibility or the visibility for an emerging driver is so defective as to justify a refusal of permission on highway grounds alone. I propose therefore to grant planning permission and the appeals against the enforcement notice on grounds (f) and (g) do not therefore need to be considered. I also propose to grant permission on the section 36 Appeal, the Application being in slightly different terms. It is not appropriate to impose conditions restricting the use, in view of the success on ground (d) of the appeal against the enforcement notice. The permission does however relate only to the building. I have considered all the other matters raised at the inquiry, but find they do not affect my decisions.

FORMAL DECISIONS

38. In Exercise of the powers transferred to me, and for the reasons given above, I hereby allow both your clients appeals.

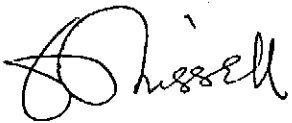
On the Section 88 Appeal I hereby direct that the enforcement notice be quashed and I hereby grant planning permission for the Use of the former goods shed at the Railway Station, Minety, for the storage of domestic furniture.

On the Section 36 Appeal I hereby grant planning permission for the Use of the same building for the storage of antique furniture, in accordance with the application dated 19 June 1978 (Ref N78/0920/F) and the plan accompanying the same.

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

40. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

I am Gentlemen
Your obedient Servant



C RUSSELL, Solicitor
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

Mr W N Anderson

He called:

Mr A J Calvinho

Mr D C A Allberry FRICS

- Solicitor, of Messrs Davey,
Son and Jones, 10/12 Dollar
Street, Cirencester, Glos
GL7 2AL.

- Appellant, of White Horse
House, Minety, Malmesbury, Wilts.

- of Messrs David Allberry and Co,
Chartered Surveyors, Old Bank
Chambers, 18 Castle Street,
Cirencester, Glos.

FOR THE PLANNING AUTHORITY

Mr I F McDonald

He called:

Mr L Prebble

Mr J M Lewis

- Committee Secretary.

- Development Control Officer.

- Assistant Engineer, Wiltshire
County Council.

INTERESTED PERSONS

Mr A Anderson

- Forli Acres, Minety,
Malmesbury, Wilts.

DOCUMENTS

- Document 1 - List of persons attending inquiry. .
- " 2 - Notification of inquiry, list of addressees, and plan showing premises where occupiers notified.
- " 3 - Planning application the subject of Section 36 appeal, 19 July 1978.
- " 4 - Refusal of permission (Ref N78/0920/F) 16 October 1978.
- " 5 - Tenancy agreement, British Railways Board and appellant, 1 August 1978.
- " 6 - Letter supporting appellant, British Rail Property Board to Secretary of State, 13 February 1979.
- " 7 - Extract from Wiltshire County Council Planning Policy Review, February 1977.
- " 8 - Extract from draft North-East Wiltshire Structure Plan, June 1979.
- " 9 - Extract from "Roads in Rural Areas".
- " 10 - Law Report. *Fyson and Another v Buckinghamshire County Council* (1959, 9 P and CR, 301).
- " 11 - Extract from JPL, 1967 pp 173-5 referring to decision affecting British Railways Board property at Deepdene House, Dorking.
- " 12 - Letter British Railways, Western Region to Mr A Anderson, 27 May 1970.
- " 13 - Letter, Same Parties, 7 July 1970.
- " 14 - Letter, Mr A Anderson to District Estate Surveyor, British Rail Western Region, 23 March 1978.
- " 15 - Letter British Rail Property Board to Mr A Anderson, 6 April 1978.
- " 16 - Letter Mr A Anderson to British Rail Property Board, 22 May 1978.
- " 17 - Letter Mr and Mrs A Anderson to Inspector, 27 July 1979.
- " 18 - Letter Mr M A Mackinnon to Secretary of State, 31 July 1979.
- " 19 - Letter, Minety Parish Council to Secretary of State, 4 August 1979.

PLANS (Scale 1/2500)

- Plan A - Plan attached to enforcement notice.
- " B - Attached to planning application.
- " C - Extract from 1923 Ordnance Survey with notes by Mr Allberry.
- " D - Plan attached to appellant's tenancy agreement.
- " E - Plan showing viewpoints of photographs.
- " F - Plan of site and surroundings produced by planning authority, showing planning decisions affecting properties in the vicinity.

PHOTOGRAPHS

Photos 1-5 - Produced by Mr Allberry, on behalf of appellant.