



Appeal Decision

Site visit made on 07 August 2000

AD 2258

The Planning Inspectorate
Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927



99/245

by R L Muers BA DipSocAdmin DipSocWk Solicitor

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

Date

9 OCT 2000

Appeal Ref: APP/J3910/C/00/1038848

Highway, Beech Road, Box Hill, Corsham, Wilts

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr T A Johnson against the decision of North Wiltshire District Council to issue an enforcement notice.
- The Council's reference is E99/0245.
- The notice was issued on 10 February 2000.
- The breach of planning control as alleged in the notice is: 'Without planning permission, change of use from residential use to a mixed use for that purpose and for the purpose of vehicle repairs'.
- The requirements of the notice are: (a) Stop using any part of the land for vehicle repairs; (b) Remove all vehicles, vehicle parts, and all machinery and equipment, including hydraulic lifting equipment, associated with the unauthorised use from the land and reinstate the land to a condition appropriate to its use and enjoyment for residential purposes'.
- The period for compliance with the requirements is: Step (a) 3 months; Step (b) 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) (d) and (g) of the 1990 Act. Since the prescribed fees have been paid, the deemed application for planning permission can also be considered.

Summary of Decision: the appeal succeeds on ground (d) and the notice is quashed.

Appeal on Ground (c)

1. The appellant says that 'the last alterations made to the site were during 1982'. I believe this is a reference to the construction of the stables for which planning permission was granted in that year. The construction of the stables may have been the last significant building operation carried out at the site. However, in this case, what the council alleges is an unauthorised, material change of use of the site. That would not necessarily include any building work.
2. The appellant also states that he was under the impression that, as his son lives at home and does not advertise at the premises, no planning permission is needed. In fact, if the business is such that it causes a material change of use, it makes no difference that the operator lives on the site. The appeal on ground (c) must fail.

Appeal on Ground (d)

3. It is for the appellant to establish this ground of appeal on the balance of probability. In order to assess whether a material change of use has taken place it is necessary to consider any change that has occurred in relation to the appropriate 'planning unit'. In this instance the planning unit appears to be the whole of the 'shaded area' indicated on the enforcement notice. It is for the appellant to show that the alleged material change of use had taken

place by 10 February 1990. In that connection it may be observed that it is not sufficient to show merely that some car repairs took place before February 1990. For example, normal repair and maintenance of a resident's private car or cars would generally be considered incidental to the primary, residential use of the property. Similarly, restoring old cars as a hobby, at any rate if it is within reasonable bounds, would generally be considered 'incidental'. Even repair of other people's cars to make money does not *necessarily* indicate a 'material change of use' of the planning unit. The question is whether, at the relevant time, it was on a sufficient scale to have introduced a new primary use.

4. The appellant's representations state that his son has repaired motor vehicles at the site since June 1988. The evidence in support of this contention falls, broadly, into two types. First, there is a series of letters from neighbours, customers and business contacts. The letters were all written subsequent to the appeal being lodged, and were obtained in order to support the appeal. It can also be noted that not all the letters are very specific, and not all of them relate to the whole of the relevant period. Nevertheless, taken as a whole, the letters do give, at the least, a very strong indication that commercial car repair has been taking place at the premises since 1988. One or two of the letters are from persons who were in a good position to know what was occurring at the appeal site. For instance, one letter is from a next-door neighbour; another is from someone who lives near at hand.
5. The second type of evidence consists of documents dating from prior to the lodging of the appeal. I am satisfied that this documentary evidence is genuine. Substantial weight can be attached to it. There is a copy of the document, of July 1989, relating to a 'small business loan' given by a bank to the appellant's son. The document does not state that the small business in question was based at the appeal site, but on the balance of probability I consider that was the case. There are also copy invoices for various kinds of car repair work carried out by the appellant's son. These invoices cover the whole of the relevant period. To judge from what is written on the invoices, there are cases where the work could have been carried out at the customer's premises rather than the appeal site. In other cases, that arrangement seems unlikely. I have no reason to doubt the appellant's statement that the invoices are a 'selection' i.e. rather than a complete set of all the invoices accumulated over 10 years.
6. The main, contrary evidence, supplied by the council, consists of a copy letter of October 1999 that reports on a discussion with the appellant about the business. The letter records the appellant's statement that his son operates the premises and has been self-employed for 10-11 years. On the other hand, the letter also says that it was 'explained' that much of the work is done 'elsewhere', that is, at other premises.
7. I note that the council has stated in correspondence that it 'has evidence available' to show that the use is not immune from enforcement action. However, this evidence has never been submitted, in spite of ample opportunity to do so. The appeal has to be determined on the basis of the evidence that has been supplied by the parties.
8. The responses received as a result of the council's letter of notification focus primarily on matters relevant only to the deemed planning application. There is some indication in the correspondence that the business has caused additional nuisance over the last 2-3 years. There is however nothing to contradict the evidence that the enterprise commenced long before that.
9. This appeal site consists of a detached house and its curtilage. Within the curtilage is the

stable building, now used as a workshop. Outside the workshop is a small yard. In my judgement, and bearing in mind what I saw at my site inspection, even a fairly modest level of 'commercial' car repair here would constitute a new, primary use of land that would bring about a material change of use of the planning unit. To my mind there is convincing evidence that 'commercial' car repair commenced on this site well before the beginning of the relevant period. On the balance of probability, by February 1990 it was sufficiently established to constitute a primary use of land. By that date, the alleged material change of use, to a mixed use of the planning unit, had occurred. This use has continued in being.

10. It follows that the appeal should succeed on ground (d). I make two additional observations. First, this decision is related to the history of the use of the site and does not indicate any approval whatsoever of the impact the use may have on neighbouring property or on the public highway. Second, the fact that a change of use, that occurred by 1990, is found to be 'immune' from enforcement action does not establish that any subsequent intensification of use, that might occur, is also immune.
11. As the appeal succeeds on ground (d), neither the deemed application nor the ground (g) appeal will be considered.

Formal Decision

12. I allow the appeal and direct that the enforcement notice be quashed.

Information

13. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

R L Miers

INSPECTOR

Chief Executive: Bob Marshall

Director: Bob Gwilliam
Director: Jeff Penfold

Legal Services
Monkton Park
CHIPPENHAM
Wiltshire SN15 1ER

North Wiltshire District Council

Tel: Chippenham (01249) 706111 Ext593
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DX No. 34208

10 February 2000

Enquiries to: R J Packer
Our Ref: RJP\CG E99.0245
Your Ref:

Dear Sir/Madam

ENFORCEMENT NOTICE AT HIGHWAY, BEECH ROAD, BOX HILL, BOX, CORSHAM, WILTSHIRE

The Council have issued an Enforcement Notice relating to the above Land and I now serve on you copies of this Notice, in view of your interest in the Land.

Unless an appeal is made, as set out in the Annex, the Notice will take effect on the date shown in Paragraph 7 of the Notice and you must ensure that the required steps for which you may be held responsible are taken within the period or periods specified.

Yours faithfully



for SOLICITOR TO THE COUNCIL

To James Robert Johnson
Highway
Beech Road
Box Hill
Box
Corsham
Wiltshire

Patricia Ann Johnson
Highway
Beech Road
Box Hill
Box
Corsham
Wiltshire

Timothy Arthur Johnson
Highway
Beech Road
Box Hill
Box
Corsham
Wiltshire



INVESTOR IN PEOPLE

E99.0245

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: North Wiltshire District Council

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at Highway, Beech Road, Box Hill, Box, Corsham, Wiltshire shown shaded on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use from residential use to a mixed use for that purpose and for the purpose of vehicle repairs.
4. **REASONS FOR ISSUING THIS NOTICE**
 - a) It appears to the Council that the above breach of planning control has occurred within the last ten years.
 - b) The Council considers that the site is too restricted to accommodate the unauthorised use, resulting in vehicles being reversed onto and being parked and unloaded within the carriageway of the A4 on a section of road which is downhill and where the speed limit is unrestricted, which is hazardous to road users and not in the interests of road safety, contrary to Policy C7 of the adopted North Wiltshire Local Plan as endorsed and amended by Policy RC9 of the emerging North Wiltshire Local Plan Review.

- c) The Council considers that additional turning traffic associated with the unauthorised use, on a downhill section of the A4 where the speed limit is unrestricted, exacerbates an existing traffic hazard associated with the authorised use of the land, and constitutes a danger to road users which is not in the interests of highway safety, contrary to Policy C7 of the adopted North Wiltshire Local Plan as endorsed and amended by Policy RC9 of the emerging North Wiltshire Local Plan Review.
- d) It is considered that a B2 (general industrial) use at this rural location, where adjacent land uses are predominantly residential, is likely to result in disturbance and loss of amenity to nearby properties, by noise and fumes from the unauthorised use, contrary to Policy C7 of the adopted North Wiltshire Local Plan as endorsed and amended by Policy RC9 of the emerging North Wiltshire Local Plan Review.

5. WHAT YOU ARE REQUIRED TO DO

- a) Stop using any part of the land for vehicle repairs.
- b) Remove all vehicles, vehicle parts, and all machinery and equipment, including hydraulic lifting equipment, associated with the unauthorised use from the land and reinstate the land to a condition appropriate to its use and enjoyment for residential purposes.

6. TIME FOR COMPLIANCE

- Step a) 3 months after this notice takes effect.
- Step b) 4 months after this notices takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 11 March 2000 unless an appeal is made against it beforehand.

Dated : 10 February 2000

Signed : *P. L. Jeremiah*

on behalf of North Wiltshire District Council

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be **received**, by the Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

- (a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.
- (b) The second copy of the appeal form should be sent to the Council.
- (c) The third copy is for your own records.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

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NORTH WILTSHIRE DISTRICT COUNCIL - LA078840 1996

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Director: Bob Gwilliam
Director: Jeff Penfold

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Wiltshire SN15 1ER

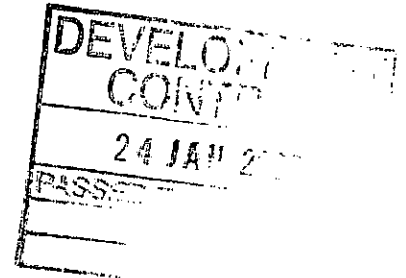
*North
Wiltshire
District
Council*

D Auld

Tel: Chippenham (01249) 706111 Ext593
Fax: Chippenham (01249) 443152
DX No. 34208

21 January 2000

Enquiries to: R J Packer
Our Ref: RJP\CG E99.0245
Your Ref:



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6. TIME FOR COMPLIANCE

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- Step b) 4 months after this notices takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 3 March 2000 unless an appeal is made against it beforehand.

Dated : 21 January 2000

Signed : *P.L. Jeremiah*

on behalf of North Wiltshire District Council

ANNEX

YOUR RIGHT OF APPEAL

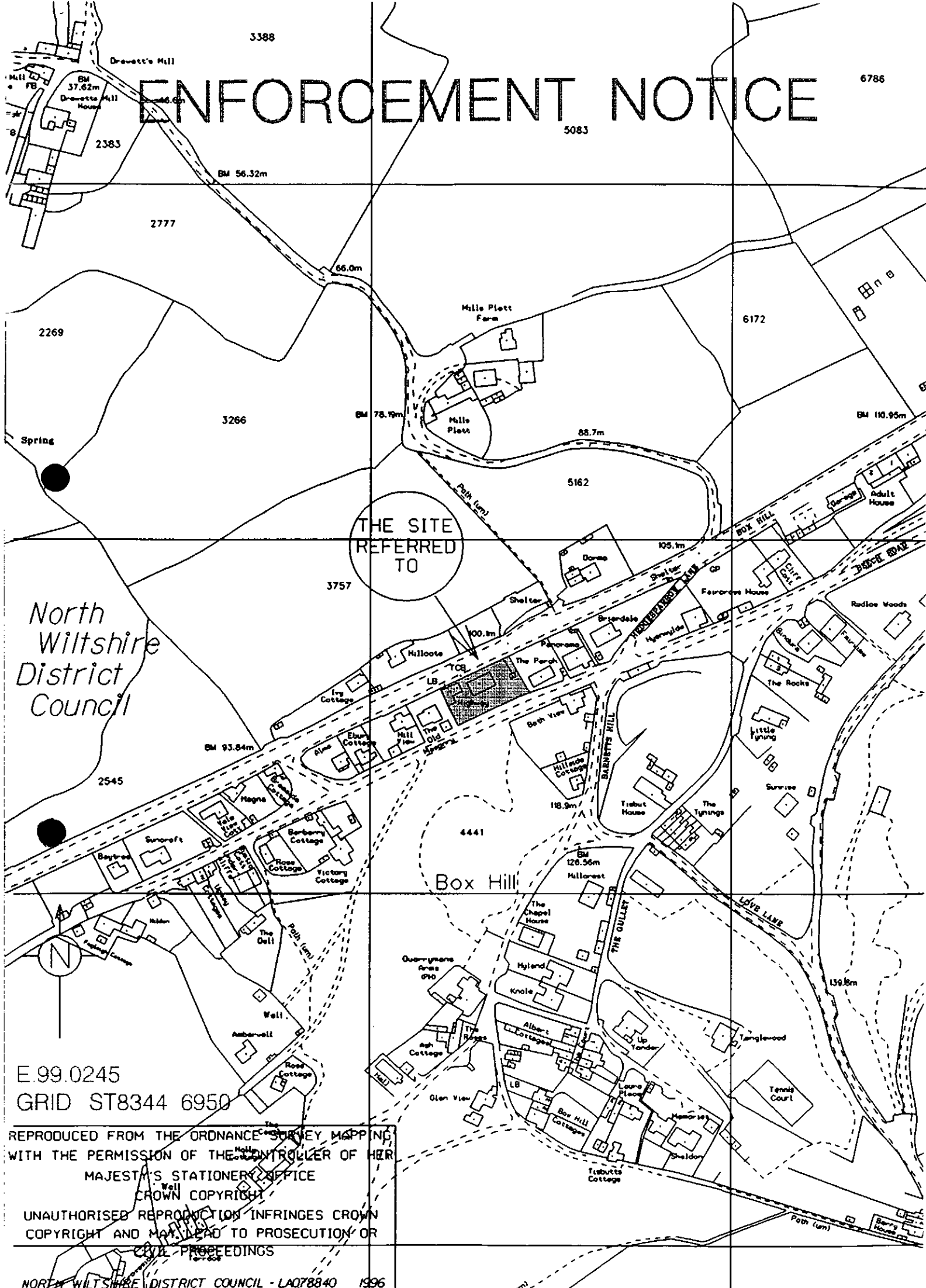
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ENFORCEMENT NOTICE



North
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District
Council

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