



Appeal Decision

Inquiry held on 1, 2 and 10 November 2006

by P J Burke BA (Oxon)

an Inspector appointed by the Secretary of State for
Communities and Local Government

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date

14 Feb 2007

Appeal Ref: APP/J3910/C/06/2010602-5: the first notice

Land at Seagry Road Sutton Benger Chippenham

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr S P Hopley, Mrs J Hopley, Mr B Hopley and Mr A Hopley against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is 02/00051/ENF (B)
- The notice was issued on 10 February 2006.
- The breach of planning control as alleged in the notice is the unauthorised change of use from agriculture to a mixed use comprising residential occupation with associated domestic use and the carrying out of agricultural and landscaping contracting businesses and storage of demolition items. These uses involve the storing of materials, equipment, plant, machinery, vehicles and trailers and the use of buildings, containers and portable buildings.
- The requirements of the notice are (1) to cease the use for residential purposes, (2) cease the use for purposes associated with an agricultural contracting business, (3) cease the use for purposes associated with a landscaping contracting business, (4) cease the use for storage purposes, (5) remove all materials equipment, plant, machinery, vehicles, trailers, waste, scrap, skips, containers, portable buildings, caravans and all accoutrements, chattels and other such paraphernalia associated with the uses referred to in (1), (2), (3), and (4) above and (6) restore the land back to a state suitable for the reinstatement of its authorised use for agriculture.
- The period for compliance with the requirements is 6 months.
- All the appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
- In the case of the appeal by Mr S P Hopley there is a ground (a) appeal to be considered and an application for planning permission deemed to have been made under section 177(5) of the amended Act.

Summary of Decision: the appeals are dismissed, the notice is upheld as corrected and varied and planning permission is refused.

Appeal Ref: APP/J3910/C/06/2015615-7 & 2015598: the second notice

Land at Seagry Road Sutton Benger Chippenham

- The Council's reference is 02/00051/ENF (C).
 - The notice was issued on 10 February 2006.
 - The breach of planning of planning control alleged in the notice is the unauthorised carrying out of building and engineering operations comprising the construction of buildings and the erection of a fence and gates
 - The requirements of the notice (in summary) are (1) to demolish all the buildings and remove resultant materials and debris; (2) to finish the areas disturbed due to demolition
-

with top soil; (3) to take down the fence and gates or reduce them to 1m in height; (4) restore the land to a state suitable for agricultural use.

- The period for compliance with the requirements is 6 months.
- All the appeals were made on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. At the inquiry a ground (d) appeal was added.
- In the case of the appeal by Mr S P Hopley there is a ground (a) appeal to be considered and an application for planning permission deemed to have been made under section 177(5) of the amended Act.

Summary of Decision: the appeals are dismissed, the notice is upheld as varied and planning permission is refused.

Procedural Matters

Application for Witness Summons

1. Before the inquiry Mr S P Hopley had applied for the issue of witness summonses. It was left that I should deal with this at the inquiry. Mr Hopley wished to secure the attendance at the inquiry of Mr J D Porter, the previous owner of the land, so that he could give evidence under oath about the use of the land during his period of ownership. Alternatively, if Mr J D Porter were not fit to attend, he applied to have his son, Mr J Porter, required to attend in his place.
2. At the inquiry I asked Mr Hopley what other (voluntary) witnesses he was intending to call. He told me that Mr Harris, Mr Cotter and Mrs Cotter were willing to attend. They had lived in the area for a number of years and were in a position to give evidence as to the use of the site for a period more than 10 years prior to the issue of the notice. As these witnesses were willing and able to attend and give evidence about the use over the relevant period, I decided that the issue of a witness summons for Mr J D Porter or his son was not justified. I refused the application.

Additional Evidence

3. Before the inquiry the Council had submitted additional proofs of evidence. These had been rejected by PINS as out of time. At the inquiry Mr Fletcher for the Council asked that I allow the presentation of the evidence. I eventually decided to allow this but only after an adjournment of the inquiry to a date that would allow Mr Hopley sufficient time to consider the evidence. In the event Mr Hopley offered to deal with the evidence after only a short adjournment. The inquiry proceeded on this basis and the additional evidence was admitted.

Costs Application

4. At the Inquiry an application for costs was made by Mr S P Hopley, Mrs J Hopley, Mr B Hopley and Mr A Hopley against North Wiltshire District Council. This application is the subject of a separate Decision.
5. Evidence was given on oath.

Statutory Provisions

6. Section 191(2) of the amended 1990 Act states that for the purposes of the Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. Section 181(1) states that compliance with an enforcement notice, whether in respect of – (a) the completion, removal or alteration of any buildings or works; (b) the discontinuance of any use of land; or (c) any other requirement contained in the notice, shall not discharge the notice. Subsection (2) states that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently.
8. The General Permitted Development Order 1995 permits the erection or construction of a gate or fence (Class A, Part 2, Schedule 2). Permission is not given however if the height of any gate or fence erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1m above ground level. If the gate or fence is not adjacent to such a highway the height limit is 2m.

Planning Background

9. The Council issued an enforcement notice on 7 October 1983 in respect of the appeal site ('the 1983 notice'). It alleged 'a material change in the use of the land from use for the purpose of agriculture to use for that purpose and in addition to storage purposes: by the laying of hard surfaces and the accumulation of building materials including doors, window frames, scaffold poles, galvanised sheet metal and steel girders'. The steps required to be taken were '(i) To cease the use of the land for storage purposes. (ii) To remove from the land the said building materials.'
10. Another enforcement notice was issued by the Council on 14 June 2002 ('the 2002 notice'). This alleged the material change of use from agriculture to a mixed use as agriculture and for: (1) breaking, repair and storage of vehicles, (2) deposit, transfer and processing of waste and (3) residential. An appeal against this notice was lodged but then withdrawn. Shortly before the inquiry into the current appeals the Council stated that the 2002 notice was issued without proper authority and was therefore a nullity. At the inquiry I was told that the power to issue the notice had not in fact been delegated to the person who signed the notice.
11. Applications for lawful development certificates for the appeal site were made in 2002 and 2005. The first concerned the bunds, access track and hardstanding areas and the use for the storage of waste containers empty and full. The second concerned the storage of demolition materials and the creation of hardstanding. Both were refused by the Council. In 2003 an application was made and refused for the use of the appeal site as an agricultural contractor's yard, the siting of twin-unit mobile homes for agricultural worker and the retention of the bund. In 2005 an application for the erection of a single dwelling was refused and a subsequent appeal dismissed.

The ground (b) appeals

12. The first notice alleges the change of use from agriculture to a mixed use comprising residential occupation with associated domestic use and the carrying out of agricultural and landscaping contracting businesses and storage of demolition items. These uses, the notice states, involve the storing of materials equipment, plant, machinery, vehicles and trailers and the use of buildings, containers and portable buildings. At the inquiry the Council indicated that they wished to withdraw the allegation concerning the contracting businesses. Subject to this Mr Hopley accepted that the residential and storage uses had occurred as a matter of fact. It is also clear that the appeal site was not in use for agriculture immediately prior to the change to the current mixed use. The second notice alleges the construction of buildings and the erection of a fence and gates. Mr Hopley accepted that these matters had occurred as a matter of fact.
13. I propose to correct the first notice by deleting the allegation about the contracting businesses and the change from an agricultural use. This can be done without injustice to the appellants or the Council. Subject to this correction to the first notice the appeals under ground (b) against both notices fail.

The ground (c) appeals

14. Mr Hopley does not dispute the allegation in the first notice that the change to a mixed use was carried out without planning permission at the time. He does dispute the allegation in the second notice that the erection of the fence and gates was carried out without planning permission. He argues that the fence and gate were simply a replacement for a fence and gate of similar size that had been there before. He also argues that, in any event, the fence and gate are not 'adjacent' to the highway and that, as they are not more than 2m high, they are permitted by the 1995 GPDO.
15. Whether the present fence and gate replaced a previous fence and gate is not relevant. The works involved in the erection of the new structure amounted to building operations that needed planning permission. The issue is whether those works were permitted under the 1995 Order.
16. It is not in dispute that the term 'highway' embraces not only the metalled carriageway of Seagry Road but also the verge. Mr Hopley argues however that not all the grassed area between the carriageway and the fence is verge. He contends the limit of the highway is defined by a line of small but well established trees. As the fence stands some distance behind this line it is not adjacent to the highway and the 1m height limit does not apply.
17. In my view however the trees do not define the limit of the highway. They stand within the verge not at its edge. As a matter of fact and degree, the highway verge includes all the grassed area between the carriageway and the fence and gate. These structures therefore are adjacent to a highway used by vehicular traffic and exceed the 1m height limit imposed by the 1995 Order. The fence and gate were erected without planning permission and this was a breach of planning control. The ground (c) appeals against both notices fail.

The ground (d) appeals against the first notice

The main issue

18. The main issue is whether the current residential and storage uses began before 10 February 1996 (10 years before the date of the notice) and achieved lawful status. It is up to the appellants to show this on the balance of probabilities.

The residential use

19. The appellants rely on two pieces of evidence. The first is a letter from the Valuation Officer of 10 July 2005. It gives notice of an alteration to the Valuation List by the making of a new entry. The reason given for the alteration is 'because your property comprises a dwelling for Council Tax purposes and is not shown on the Valuation List'. The entry describes the property as 'Springbok Seagry Road Sutton Benger Chippenham' and gives the effective date of the alteration as '1 April 1995'. According to a Council Tax Bill dated 30 September 2005, Council Tax liability began on 1 April 2005, the first payment being due on 15 October 2005. The second item of evidence is an aerial photo taken in 1993 showing a number of objects on the hardstanding on the upper part of the site.
20. The appellants argue that one of these objects is a mobile home and that the Valuation Officer's letter is good evidence that there has been a dwelling on the site since at least 1 April 1995.
21. Mr Hopley stated that there was no mobile home on the site when it was purchased from the previous owner, Mr J D Porter, in early 2002. Three statements from Mr Porter were before me. A letter sent to the Council on 5 October 2002, a statement attached to Mr Simmond's proof and finally a letter received by PINS on 26 October 2006. As the copy statement attached to Mr Simmonds' proof is undated and unsigned and the original now lost, I propose to ignore it.
22. In the two other statements from Mr Porter about the use of the property during his ownership there is no mention of mobile homes or of a residential use. Mr Porter himself is known to have lived in a house in Christian Malford. None of the three neighbours called as witnesses by the appellants gave evidence of any residential use of the site before that of the appellants. Mr Cotter, who was not aware of anybody living on the site before Mr Hopley, told me that when he visited the appeal site during the period of Mr Hopley's ownership he had to wait until Mr Porter arrived to unlock the gate. There is no evidence that Council Tax was paid in respect of a dwelling on the site until 2005. As to the 1993 photo, the object pointed out by Mr Hopley as a mobile home looks no different to me than the other objects in the group which had been labelled by Mr Hopley as skips.
23. There are two possibilities. Either the 1995 date mentioned in the Valuation Officer's letter can be relied on, the object in the 1993 photo is a mobile home and from 1995 to 2002 an unknown person or persons lived on the site despite the gate being locked and without the neighbours' knowledge. Alternatively the Valuation Officer's letter is wrong or misleading, the object in the 1993 photo is a skip and the evidence of the neighbours and of the former owner can be relied on. The first of these possibilities is less than likely. The appellants have not shown on the balance of probabilities that the current residential use began before 10 February 1996.

The non-residential use

24. Mr Porter, the former owner of the land, is in a good position to say what use was made of the land during his period of ownership which began in the mid seventies. In his letter of

- 2002 he states that it was used for 'Storage of Waste Containers' (sic) Skips empty' and 'Storage of Waste Containers' Skips full' and that this began in or around 1974. In his letter of 2006 he states that the land was sold to Mr Hopley as agricultural land, that there was 'no planning on it whatsoever' and that it was sold to him as such 'at land price'.
25. The three witnesses called by Mr Hopley (Mr Harris and Mr & Mrs Cotter) all stated that during the ten years before the notice was issued and while the site was owned by Mr Porter the site was used for the storage of waste and waste skips and that there was a good deal of vehicular activity.
26. There are letters dated 24 February and 4 March 2003 addressed to a planning firm in Bristol from the Environment Agency. These state that the Agency had not issued a waste management license for the disposal or transfer of waste at the site. The Agency had in its possession some photographs dated 12 May 2000 showing a number of skips on the site, an old JCB and a pile of building waste on the ground. Since the photos were taken the Agency had been aware that the site had been used from time to time for the storage of full and empty skips. Mr Smith at that time employed by Wiltshire CC remembered visiting the site in 1995. An entry in his pocket book stated that the site was being used for the storage of building materials and skips. Mr Smith also remembered visiting the site on a number of other occasions when it was being used for the storage of skips.
27. Mr Hopley also submitted an enlarged aerial photograph taken in 1993 which shows a group of large objects on the upper part of the site. An earlier aerial photograph taken in 1981 shows a single large object on this part of the site.
28. From all the evidence, that of local residents, the Environment Agency and aerial photographs, I conclude that during Mr Porter's ownership the site began to be used for the storage of skips and of waste. This use was almost certainly in existence in 1993 when the aerial photograph showing skips and waste was taken and may well have started long before this.
29. Mrs Cotter was asked whether she had ever noticed anybody actually moving material from one skip to another during the period of Mr Porter's ownership. She said that she had. When asked if she knew how often this happened she said 'Probably every day. Lorries were going in and out every day.' She did not say that that she had noticed the movement of materials between skips happening every day. In my view she surmised that this was the case because she knew the skip lorries were going in and out every day. Neither of the other two witnesses mentioned this activity. It is not mentioned by Mr Porter in either of his statements. Nor is it mentioned in the correspondence from the Environment Agency.
30. I accept that the appeal site was used in connection with Mr Porter's other site at Christian Malford. This other site was used, among other things, for the sorting and transfer of waste as evidenced by the grant of a lawful use certificate for these and other purposes. But the use of the Christian Malford site for sorting and transfer does not necessarily mean that the appeal site was also used for the same purposes. Mr Harris told me that the other site was quite small. It would make sense in these circumstances for waste to be stored at the larger appeal site until it could be moved to the other site for sorting and transfer. I conclude on the balance of probabilities that, if any 'waste transfer' did take place, it did so only occasionally and did not amount to a main use of the site.
-

31. Although the appeal site was used for many years for the storage of skips and waste, the 1983 notice and Section 191(2) of the 1990 Act have to be taken into account in determining whether the use became lawful. Section 191(2) states that uses are lawful at any time if two conditions are met. One of these is that they do not constitute a contravention of any of the requirements of any notice then in force. One of the requirements of the 1983 notice was to cease the use of the land for storage purposes. During the period of Mr Porter's ownership the land was used for the storage of waste skips and waste. It was used 'for storage purposes'. This use constituted a contravention of one of the requirements of the 1983 notice.
32. But was that notice 'in force'? In 1984 the Council's enforcement officer made a note to the effect that the requirements of the 1983 notice had been substantially complied with and that the site would be monitored at 4 monthly intervals. Mr Hopley argues that, as the requirements of the notice had been complied with, the notice was no longer 'in force'. But the Act makes it clear that compliance with an enforcement notice, including the discontinuance of any use of the land, does not discharge the notice (section 181(1)). Any requirement to discontinue a use operates as a requirement that it shall be discontinued permanently. As the 1983 notice had not been discharged, it follows that it was and is still 'in force'. Consequently the use of the land during Mr Porter's ownership for the storage of waste skips and waste did not become lawful.
33. In summary it has not been shown that the current residential use began before 10 February 1996 and, although it has been shown that the current storage use began before that date, this use did not achieve lawful status because of the 1983 notice. The ground (d) appeals against the first notice fail.
34. As to the second notice, no evidence was given that the construction of the buildings and the erection of the fence and gates alleged by this notice were substantially complete by 10 February 2002. The ground (d) appeals against the second notice fail.

The ground (a) appeals and the deemed planning applications

35. Policy C3 of the North Wiltshire Local Plan 2011 emphasises the need for new development to respect the local character of the area. It also states that new development should promote sustainable patterns of development that will reduce the overall need to travel and support increased use of public transport, cycling and walking. Policy C4 states that new business development will only be allowed in the open countryside if it is in keeping with the surroundings.
36. The appeal site lies in open countryside where, despite the proximity of the motorway in a cutting, the predominant characteristics of the area are rural. The first main issue therefore is whether the residential and storage uses and the buildings and fence and gates for which planning permission is sought are detrimental to this rural character. The second main issue is whether the location of the uses will reduce the overall need to travel and support increased use of public transport, cycling and walking.
37. The development for which planning permission is sought involves the stationing of mobile homes and associated structures on the lower part of the site and the storage of containers, vehicles and materials and the retention of the garage building on the upper part of the site. All these are at odds with the rural character of the area. The erection of the high close boarded fence and gate at the entrance draws attention to the site and imparts a suburban

character to the roadside frontage. I conclude that the development is out of keeping with and detrimental to the rural character of the area contrary to Policies C3 and C4 of the Local Plan.

38. As the site has no lawful use other than for agriculture it is not previously developed land ('a brown field site'). Moreover there are strict controls over the provision of new dwellings in the open countryside. These are only allowed if required in connection with the essential needs of agriculture or forestry or rural based enterprise. In this case there is no agricultural or forestry need and the enterprise is neither lawful or appropriately based in a rural area. The grant of permission for the mobile homes would therefore also be contrary to Policy H4 of the Local Plan.
39. As to the second issue, the site is some 8 km from Chippenham the nearest settlement of any size. The appeal site is served by buses (9 to and 5 from Chippenham every weekday). But the last bus from Chippenham to stop at the appeal site leaves the bus station at 14.15 hrs. Sutton Benger is better served, the last bus leaving the bus station at 17.45 hrs. But this small settlement is some 800m walk away from the appeal site. The footway (if it is such) marked along the metalled portion of the road to the village does not have the benefit of street lighting.
40. I accept that the Malmesbury Evening Boomerang provides a bookable taxi service at bus fare rates from Sutton Benger to Chippenham and back between 18.00 hrs and 22.00 hrs Monday to Saturday. However, whilst journeys by public transport or cycling to Chippenham and elsewhere are possible, in practice occupants of the mobile homes and those engaged in any storage business and their respective visitors are likely to rely on a vehicle for most journeys from and to the site. The approval of two homes and of a storage use at the appeal site is likely to increase rather than reduce the overall need to travel and unlikely to support increased use of public transport, cycling and walking.
41. I need also to take into account the impact of the requirement to cease the residential use on the appellants' home and family life. Mr Hopley told me that if this requirement were upheld he and his family would have nowhere to live. They would have to go on the road. He argues that in these circumstances the requirement is a violation of Article 8 of the European Convention on Human Rights.
42. I recognise that dismissal of the appeals and the upholding of the requirement to cease residential use would interfere with the appellants' home and family life. However this must be weighed against the wider public interest. The protection of the open countryside (by, among other measures, a strict control on new dwellings) is a legitimate objective of public policy that seeks to safeguard the legitimate interests of the wider community. Provided somewhat more time is given to find alternative residential accommodation (by extending the period for compliance from 6 to 9 months) the requirement to stop the residential use is the minimum necessary to secure that objective. On balance, I consider that the dismissal of the appeal and the upholding of the notice (as varied) would not have a disproportionate effect, for the purposes of the Convention, on the appellants.
43. For the same reasons given in respect of Article 8, I consider the interference with Mr Hopley's peaceful enjoyment of his property is proportionate and the requirement to cease the storage use within 6 months strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.

44. In summary the appeal development is in conflict the Development Plan and there are no other considerations that outweigh this conflict. The ground (a) appeals fail and planning permission will be refused on the deemed applications.

The ground (f) appeals

45. Requirements (b) and (c) of the first notice relate to the agricultural and landscaping uses and need to be deleted. Both notices require the land to be restored to a condition suitable for agricultural use, the only lawful use of the site. This restoration would involve primarily the removal of the hardstanding and the bund. But the Council made it clear that the notices were not intended to require this. In these circumstances the restoration requirements serve little purpose and will be deleted. To this extent the ground (f) appeals succeed.
46. I have taken into account all other matters raised with me but they do not cause me to alter the conclusions I have reached on the grounds of appeal before me.

Formal Decisions

The first notice (change of use)

47. For the above reasons, and in exercise of the powers transferred to me, I
- i. correct the notice by the deletion of the contents of paragraph 3 and the substitution of *'Without planning permission the change of use to a mixed use comprising residential occupation with associated domestic use and the storage of materials, equipment, plant, machinery, vehicles and trailers and the use for such purposes of buildings, containers and portable buildings'*.
 - ii. vary the notice by the deletion of the contents of paragraph 5 and the substitution of *'(a) Cease the use for residential purposes; (b) Cease the use for storage purposes and (c) Remove all materials, equipment, plant, machinery, vehicles, trailers, waste, scrap, skips, containers, portable buildings, caravans and all accoutrements, chattels and other such paraphernalia associated with the uses referred to in 5(a) and 5(b)'*.
 - iii. vary the notice by the deletion of the contents of paragraph 6 and the substitution of *'Nine months from the time this Notice takes effect for requirement 5(a) and for the removal requirement in 5(c) in so far as it refers to items associated with the residential use; six months for all other requirements'*.

Subject to this correction and these variations I dismiss the appeals, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The second notice (operational development)

48. For the above reasons, and in exercise of the powers transferred to me, I vary the notice by the deletion of requirement (d). Subject to this variation I dismiss the appeals, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Patricia Burke

APPEARANCES

FOR THE APPELLANTS:

Mr S P Hopley	Joint appellant
gave evidence himself and called	
Mr S Harris	Local resident of 7 Seagry Hill
Mr D Cotter	Local resident of 11 Seagry Hill
Mrs R Cotter	Local resident of 11 Seagry Hill

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Fletcher	of Counsel, instructed by Mr P Jeremiah, Solicitor, Team Leader Legal Services
He called	
Mr J Simmonds MA MRTPI	Principal Planning Officer, Planning Services
Mr A Brown	Investigations Officer, Planning Services
Mrs A Murphy	Investigations Officer, Planning Services
Mr S Chambers BSc(Hons) MA MRTPI	Director of LPC (Trull) Limited

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1/1-3	Lists of persons present at the inquiry
Document	2	Notice of inquiry
Document	3	Letter of Mr J D Porter received by PINS 26 October 2006
Document	4	Notification of registration of exempt activity on land at Hardings Lane Seagry Road from the Environment Agency
Document	5/1-9	Register of Electors 1992 -2001
Document	6	File note recorded 26 March 2002
Document	7	Letter to the Council from Mr & Mrs Hopley 5 March 2002
Document	8	Reply of the Council of 18 March 2002
Document	9	Letter from the Council of 27 March 2002 with Planning Contravention Notice
Document	10	Conditions suggested by the Council if planning permission granted
Document	11	Transcript of inquiry proceedings on 1 November 2006
Document	12	Transcript of inquiry proceedings on 2 November 2006

PLANS SUBMITTED AT THE INQUIRY

Plan A/1-2 Maps of the upper and lower parts of the site attached to Mrs Murphy's supplementary proof

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

Photo 1 Enlargement of 1993 Aerial photo

Photo 2/1-4 Of the appeal site taken from the road on 10 May 2002