

Appeal Decisions

Hearing held on 14 October 2003

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Turn
02/075
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Date

20 NOV 2003

Appeal A: APP/J3910/C/03/1119382

Land at Appleford, Thornhill, Broadtown, Swindon, Wilts SN4 7RX

- 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 Mrs S Harris against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is 03/01461/ENF/AD/2541.
- The notice was issued on 25 April 2003.
- The breach of planning control as alleged in the notice is without planning permission,
 1. The erection of a building partly outside of the residential curtilage.
 2. The construction of engineering works to form a ditch.
 3. The construction of engineering works to form a hardstanding and track areas with associated sub-surface works.
- The requirements of the notice are:
 - a) To remove the drainage ditch to the rear of the property and reinstate the land to its former state in terms of materials and compaction.
 - b) To remove all surface and sub-surface materials associated with the hardstanding and track and to return the land to its former state in terms of materials and compaction.
 - c) To remove the stables building and return the land to its former state in terms of materials and compaction.
- The time for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2) (a), (c), (f) and (g) of the 1990 Act.



02/075

Summary of Decision: The appeal is allowed, the notice is quashed and planning permission is granted in the terms set out in the Formal Decision below.

Appeal B: APP/J3910/C/03/1119383

Land at Appleford, Thornhill, Broadtown, Swindon, Wilts SN4 7RX

- 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 Mrs S Harris against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is 03/01462/ENF/AD/2542.
- The notice was issued on 25 April 2003.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses.
- The requirement of the notice is to cease any commercial use of the land associated with the trading or keeping of horses.
- The time for compliance with the requirement is 28 days.

- The appeal is proceeding on the grounds set out in Section 174(2) (b) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

1. At the Hearing applications for costs were made by North Wiltshire District Council against Mrs S Harris and by Mrs S Harris against North Wiltshire District Council. These applications are the subject of a separate Decision.

The Site

2. The appeal site is situated in open countryside on the north-east side of the C119 road, approximately 3.2 km north-west of the village of Broad Town. The site forms part of a small hamlet of dwellings at Thornhill. The site is adjoined to the north by linked dwellings, 16 and 17 Thornhill and to the south by a detached dwelling, 11 Thornhill. The site comprises a detached bungalow, Appleford, with a separate garage and an extended area of garden land to the rear consisting of two areas of hardstanding flanking a middle area under grass. Situated on the south-east side of the bungalow is a new stable block fronted by a concrete apron. The land to the rear of the site is open fields presently in use for the grazing of horses. A ditch has been constructed adjacent to the rear boundary of the extended garden area. A hardcored track has been constructed through a field south-east of the appeal property adjacent to 11 Thornhill, running from a gated access to the highway to the rear boundary of the extended garden area of Appleford. The track has been covered in top-soil and grassed over.

Ground (b) (Appeal B)

3. The **main issue** is whether the breach of planning control alleged in the notice has occurred as a matter of fact. A statutory declaration sworn by the appellant on 23 January 2003 states that she is the owner of the freehold property Appleford which she acquired on 5 November 1999 and that throughout her period of ownership the property has been in residential occupation and used for residential purposes only and not for trade or business purposes. The appellant states that her husband and daughter are keen horse riders and regularly participate in competitions and shows. There are therefore a total of 5 horses and the size of the building is necessary for the number of horses and the associated equipment required to be stored in connection with the use of the land. Press cuttings of advertisements in local papers have not all been placed by her. Horses were bought on a trial basis, found to be unsuitable and therefore sold or returned to previous owners. It did not constitute a material change in the use of the property to business use.
4. The Council said that it was first made aware of an allegation of a breach of planning control in respect of the site by the Broad Town Parish Council. The Parish Council had stated that there appeared to be an excessive number of horses kept at the premises than might be expected for domestic use and because of the observed groups of riders regularly coming and going from the premises. The District Council stated that following investigations a folio of advertisements was collated to illustrate the horsedealing activity. The Council considered that the level of activity over the six month period covered by the

known evidence was, on the balance of probability, sufficient to conclude that the alleged change of use had taken place.

5. A statutory declaration dated 25 July 2003 from Susan Moyles, 19 Rowton Heath Way, Freshbrook, Swindon states that she used to be acquainted with Mrs Harris and conducted business with her on her premises at Appleford. She states that she used to own a horse called Piglet, which she had at full livery with Sue Harris at the premises at Appleford between May 2002 and 7 June 2002 for which she paid £35 per week. In July 2002 she bought a horse called Butterfly from Sue Harris at a cost of £1,700. She inspected the horse before purchase at the same property, Appleford, and bought it from that yard. Again, she had the horse at livery with Sue Harrison on the same premises until November 2002 when she left Mrs Harris's yard. Susan Moyles states that she paid £20 per week until September 2002 and then £35 per week until November 2002. She refers to accompanying Mrs Harris to auctions on a number of occasions and to a horse dealer, being with her when she purchased horses from either and took them back to Appleford and being present when Mrs Harris sold on those horses from that yard. She states that when the horses were being sold, Mrs Harris would advertise them and would use her, Sue Moyles, telephone number in her advertisements. She was a go-between. When someone telephoned, she would take their telephone number and pass it on to Sue Harris who would then phone direct. She states that to all intents and purposes the appellant was running a business from the premises both as a horse dealer and the provider of liveries. On the basis of this evidence the Council was satisfied, on the balance of probability, that the site was being used for the purposes of two commercial enterprises – paid full livery and horse dealing.
6. In addition to the Council's evidence, representations made by the appellant's neighbours, Mr and Mrs S Love, 16 Thornhill, in a letter dated 27 July 2003, refer to a collection of advertisements from Trade It, Western Daily Press and local shops advertising Mrs Harris's horses, that were submitted to the Council, using her telephone number and that of a friend, and witnessing the arrival and/or departure of 15 horses in barely 5 months, with a lot of comings and goings of prospective buyers. These representations were supported by other local residents including a neighbour, Mr R Fox, 11 Thornhill, who referred in detail at the Hearing to the coming and going of visitors and horses to Appleford between July and November 2002, which he had noted in a diary. In addition to the appellant's own evidence of advertisements placed in "Trade It" magazine of horses offered for sale between December 2001 and October 2002, under her name and telephone number, evidence was submitted by the appellant's neighbours, Mr and Mrs M Stubbings, 17 Thornhill, giving details of advertisements and horses being offered for sale from the appeal premises between April and November 2002. This evidence was largely included in the details submitted in the folio of advertisements submitted by the Council. The appellant disputes all the claims made and contends that the visitors to the premises were mostly friends who came to ride the horses and that horses were bought on a trial basis for her daughter and sold or returned to previous owners if found to be unsuitable. Mrs Harris continued to maintain that a number of the advertisements referred to by the Council and local residents had not been placed by her.
7. I find the evidence submitted by the Council and local residents to be very precise and factual in detailing the movement of horses coming and going from the appeal site. While I note and accept the appellant's evidence of letters from equine auctioneers stating that she has not purchased any horses or ponies from them in 2002 and 2003, I conclude on the balance of probability from the advertisements of horses for sale between December 2001

and November 2002 and the precise evidence recorded by Mrs Stubbings and other neighbours, that a considerable number of horses have been brought to the appeal site and sold. I have no evidence that would lead me to conclude on the balance of probability that advertisements were placed by anyone other than the appellant. Making due allowance for a number of advertisements placed in respect of the same horse and for ponies on trial and/or bought and sold as unsuitable for the appellant's daughter, I conclude on the balance of probability from my consideration of the factual evidence submitted on the advertisements of horses for sale, the statutory declaration submitted by Susan Moyles, and the very precise and factual evidence submitted by local residents on the movement of horses and visitors coming and going from the appeal site, that the activity exceeds what might reasonably be considered ancillary to the enjoyment of the residential property as such.

8. I therefore conclude on the balance of probability and as a matter of fact and degree, that the material change of use alleged in the enforcement notice has occurred as a matter of fact, namely, that the use of the land has changed from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses. The appeal on ground (b) therefore fails.

Ground (c) (Appeal A)

9. The **main issue** is whether there has not been a breach of planning control because the development is permitted under the terms of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The appellant contends that as the hardstanding areas are constructed within the extended domestic curtilage of the property and no conditions were imposed on the planning permission granted for the change of use from agricultural land to domestic garden, they are permitted developments under the GPDO as they are ancillary to the domestic use of the property. Also, the hardstanding areas were constructed before the stable block and are required for the parking of vehicles independently of the need for the stables.
10. Unless otherwise permitted under the provisions of the GPDO, planning permission is required for the carrying out of any development of land. Under Schedule 2 Part 1 Class E of the GPDO the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, is permitted development. Under Part 1 Class F the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is also permitted development.
11. I find as a matter of fact from the evidence submitted by the Council and the appellant that part of the stable block erected on the appeal site falls outside the curtilage of the dwelling, Appleford, and has been built on land previously in agricultural use. I therefore conclude that the stables do not benefit from permitted development rights under Part 1 Class E of the GPDO. Furthermore, having regard to my finding on ground (b) under Appeal B above that the use of the land has changed materially from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses, I also conclude that the stables do not benefit from permitted development rights under Class E because the purpose for which they are used extends beyond that incidental to the enjoyment of the dwellinghouse as such. As the development has taken place without planning permission it constitutes a breach of planning control.

12. I find as a matter of fact that the two areas of hardstanding, the subject of the enforcement notice, have been constructed on land on which planning permission was granted on 13 March 2002 for the change of use of agricultural land to domestic garden. However, I conclude from the evidence submitted by the Council, which has not been disputed by the appellant, that the construction of the two areas of hardstanding and the stable block commenced within a five week period following the granting of planning permission for the change of use of the former agricultural land to domestic garden. Also, the appellant's statement acknowledges that during the construction of the hardstanding areas and the stable block, a temporary access track was created from an existing field access off the C119 in order to allow construction vehicles access to the rear of the site to construct the hardstanding areas and the stables. I therefore conclude that the developments were congruent with one another. I further conclude from the photographic evidence submitted by the appellant and by Mr and Mrs Love, 16 Thornhill, and what I observed on my site visit, that the area of hardstanding nearest to the stable block provides a direct access link between the land used for the grazing of horses to the rear of the appeal site and the stables, and the area of hardstanding extending to the rear of 16 Thornhill is used for the parking of motor vehicles including horse boxes and horse transporters.
13. Having regard to my finding on ground (b) under Appeal B above that the use of the land has changed materially from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses, I conclude that the areas of hardstanding do not benefit from permitted development rights under Part 1 Class F of the GPDO because the purpose for which they are used extends beyond that incidental to the enjoyment of the dwellinghouse as such. As the development has taken place without planning permission it constitutes a breach of planning control.
14. I find as matters of fact from the evidence given by the parties and my site visit that the construction of the ditch and the track are engineering operations for which planning permission is required. Neither development benefits from permitted development rights under the terms of the GPDO. As the engineering operations have taken place without planning permission the developments constitute a breach of planning control.
15. For the above reasons the appeal on ground (c) fails.

Ground (a) (Appeal A)

16. The **main issue** is whether the developments would give rise to nuisance to adjoining or nearby properties because of likely disturbance to the local drainage environment, contrary to Local Plan Policies RLF13 and RB25.
17. The **development plan** comprises the approved Wiltshire Structure Plan 2011 and the adopted North Wiltshire Local Plan 2001. Local Plan Policy RLF13 states that equestrian facilities in the countryside will be permitted provided, amongst other matters, that the proposal does not give rise to noise, smell, or other nuisances or pollutants that would be likely to have a serious detrimental effect on any residential or other sensitive properties or areas. Policy RB 25 states that development will not be permitted if proposals would be likely to cause demonstrable harm by virtue of being at risk from flooding, or causing any material increase in the risk of flooding to other properties.
18. PPG 25 advises on how flood risk should be considered at all stages of the planning and development process in order to reduce future damage to property and loss of life. It sets

out the importance the Government attaches to the management and reduction of flood risk in the land-use planning process, to acting on a precautionary basis and to take account of climate change. The susceptibility of land to flooding is a material consideration in determining planning applications. The guidance advises in para 60 that in preparing their proposals, applicants should discuss with the local planning authority the requirements they will be expected to meet to satisfy the authority on flood risk and the run-off implications of the development proposed.

19. I conclude from the evidence given by the land drainage experts representing the Council, the appellant and local residents, Mr and Mrs Stubbing, 17 Thornhill, and my site visit, that rainwater runoff at Thornhill follows the slight downward fall of the land from north-east to south-west and south-east to north-west towards the lowest point in the area. This encompasses the residential properties 11, Appleford, 16 and 17 Thornhill and the adjacent highway, and the Brinkworth Brook, which is situated on the opposite side of the road from the four properties. The water in the Brinkworth Brook flows with a slight fall in a north-westerly direction. Largely because of this the flow of water in the Brook is sluggish and therefore its ability to drain the area adequately is impaired. The underlying soil type in the locality is predominantly heavy clay, which has a very low permeability.
20. The existing drainage system at Thornhill includes a herringbone tile drainage system in the fields behind the residential properties 11, Appleford, 16 and 17 Thornhill, which takes water in a north-westerly direction downstream of the houses, adding to the surface water runoff. There is a bunded ponding area in the field south-east of Appleford. The Council and the appellant's drainage experts contend that there are 3 x 75 mm pipes installed under land to the rear of 11 Thornhill which drain water in a north-westerly direction towards the stable block at Appleford, though this is disputed by Mr R Fox, an occupant of 11 Thornhill, who contends that there is only a single drainage pipe. The appellant's drainage expert states that the drainage pipes were installed between September 2001 and March 2002 and that formerly low land at 11 Thornhill was raised by approximately 1,000 mm using crushed concrete. A drainage pipe runs parallel to the highway in a north-westerly direction through the rear gardens of Appleford and 16 to 17 Thornhill before turning in a west/south-westerly direction to pass under the highway and a paddock, to the Brinkworth Brook. The head of this pipe appears to be the new gully in the concrete apron fronting the stables at Appleford. It would also appear from the evidence of the drainage experts, that the size of this pipe reduces from 225 mm under the rear gardens of Appleford and 16 Thornhill to 100/150 mm under 17 Thornhill and then increases to 300 mm under the highway and the paddock leading to the Brinkworth Brook.
21. Local residents of Thornhill contend that the various developments carried out by the appellant at Appleford, namely the construction of the stables, the two areas of hardstanding and the hardcore track, have caused major flooding of their properties. Video and photographic evidence was submitted showing the severe flooding of Appleford, 16 and 17 Thornhill and the highway during storms on 31 July 2002, 15 October 2002, 6 November 2002 and 1 January 2003. Evidence submitted on rainfall data from readings taken locally at Wootton Bassett record 38.6 mm on 31 July 2002, 25 mm on 12 October 2002, 31 mm on 15 October 2002, 18 mm on 5 November 2002 and 31.1 mm on 1 January 2003. Data submitted showing rainfall over the period May to July 2002 indicates that above average rainfall amounts fell during that period. I therefore share the view of the drainage expert acting on behalf of the occupants of 17 Thornhill, that combined with below average temperatures reducing evaporation and the 12.4 mm that fell on 30 July 2002, it is

reasonable to conclude that by 31 July 2002 the catchment area was wetted and a high percentage of rainfall thereafter would run-off rather than be absorbed by dry soils. The rainfall total on 31 July 2002 was stated by the appellant's drainage expert to be a 1 in 20 year storm event.

22. I find that prior to the appellant's purchase of Appleford in 1999 there is at least one recorded instance of flooding at that property. In a letter dated 30 July 2003 the previous owner of the property, Mr Allan Oakes, who resided there for about 12 years from 1987 to 1999, states that the garden flooded on one occasion, caused by "an extraordinary downpour" in October 1993. Flooding is also recorded as having occurred at 16 Thornhill in October 2000 and February 2001, that is, prior to the construction of the building and engineering developments at Appleford in April/May 2002. The Service Master's report relating to the event on 12 February 2001 attributed the flooding to surface water run-off from fields, and drains into the property.
23. I conclude from the evidence of the drainage experts, that flooding in the Thornhill area is part of a catchment wide problem and that the drainage system in this locality is at best finely balanced. In this context I attach considerable weight to the evidence given by the appellant's drainage expert that it is possible that increased run-off resulting from high rainfall intensity storms caused by climatic change is contributing to greater discharge volumes from the highway and upper catchment and, hence, is causing flooding; and by the Council's drainage expert that the present pattern of rainfall is for a greater number of very intense short duration storms which are likely to test the best drainage systems. For these reasons I consider that it is highly probable that any alteration to the drainage system will have an effect and that as the system would appear to be operating at the limit of its capability, it is highly likely that in severe storm conditions such as occurred in July, October and November 2002 and in January 2003, the results could be dramatic and that flooding would have occurred in any event.
24. I conclude from the evidence on the balance of probability that because of their granular texture, the two large areas of hardstanding constructed of crushed rock over the original herringbone field drainage system, act as drainage routes for water flowing from the adjacent fields. The appellant's drainage expert acknowledged that it is possible that the underlying land drains may have been damaged during the construction of the hardstanding and water issuing from damaged pipes may contribute to the flooding problem. The Council's drainage expert said that he had observed water issuing from the side of the hardstanding to the rear of 16 Thornhill. I conclude from the evidence on the balance of probability that because of its closeness to the rear gardens of 16 and 17 Thornhill, it is highly likely that in severe storm conditions, when the existing drainage system is under greatest pressure, water will enter the area of hardstanding used for the parking of motor vehicles at Appleford and outflow into the rear gardens of 16 and 17 Appleford and that similarly, water will enter the area of hardstanding nearest to the stables and outflow in the direction of the stables.
25. I conclude from the evidence and my site visit that because of its location at the end point of the ditch in the adjacent highway and its construction of crushed rock overlaying a geomembrane over clay, it is probable that the access track crossing the field south-east of Appleford acts as a permeable drainage route for water flowing from the direction of the highway. The track is located in a low point of the field adjacent to a bunded ponding area. However, because the change in land level is very slight, I conclude on the balance of

probability that in severe storm conditions the track will act as a conduit for water flowing from the highway in the direction of Appleford. In this context I note that the bunded ponding area itself overflowed in October and December 2002 when the stables were flooded. I conclude from the evidence of the drainage experts that the stable block and associated concrete apron add little to the amount of surface water run-off flowing into the existing drainage system. However, I conclude from the evidence, including the video and photographs, that in severe storm conditions, the stables and garden at Appleford have been flooded by water draining from the highway to the south via the access track, the drainage pipes/pipe under the land to the rear of 11 Thornhill, and to a lesser extent, by water draining from the fields to the east via the area of hardstanding nearest to the stable block, as the existing drainage system under Appleford and 16 and 17 Thornhill is unable to cope with the sheer volume of surface water run-off in severe storm conditions.

26. I consider that construction of the drainage ditch to the rear of Appleford has been a positive development in seeking to manage the flow of water from the fields to the east and diverting it from Appleford and 16 and 17 Thornhill. However, no outfall has been provided for the water accumulating in this ditch and there is photographic and video evidence of water consequently overflowing in heavy rain conditions from this ditch into an adjacent ditch constructed by the occupants of 17 Thornhill, which is acknowledged to be too small to cope with significant additional flows, and hence has resulted in water flooding the rear garden of 17 Thornhill. I therefore conclude that in times of exceptionally heavy rainfall when the land is saturated, construction of the appellant's ditch has reduced the risk of flooding from the adjacent fields to Appleford and 16 and 17 Thornhill, but because no outlet has been provided for the water stored in the appellant's ditch, in instances when the water has overflowed into the adjacent smaller ditch, flooding has occurred in the garden of 17 Thornhill.
27. I therefore conclude on the balance of probability that the construction of the stables has not caused nuisance to adjoining or nearby properties through flooding, but that construction of the two areas of hardstanding, the access track and the ditch has disturbed the local drainage environment to the extent of aggravating an existing unsatisfactory drainage situation, and thereby causing nuisance by materially increasing the risk of flooding to nearby properties, contrary to Local Plan Policies RLF13 and RB 25.
28. I note, as already mentioned in part, that the appellant and the occupants of 17 Thornhill have already instigated works to manage the flow of water from the fields to the rear of Appleford and 16 and 17 Thornhill and to divert it from their properties. The appellant has constructed a length of bund on the edge of the ponding area in the field south-east of Appleford and an earth bund and an open ditch with culverts under access points adjacent to the rear north and north-eastern boundaries of the extended garden area of Appleford, though with no outfall. The occupants of 17 Thornhill have constructed a ditch running north-westwards from the northern boundary of the extended garden area of Appleford to link into an existing ditch. Following the flooding event on 31 July 2002 the appellant also installed a pump to the rear of the stable block, the outlet hose of which discharges into the ditch to the rear of the extended garden area. I note further that discussions have been ongoing between the appellant and the County and District Councils on how to resolve the drainage problem and that an agreement was reached between the appellant and the County and District Councils in July 2003 for highway ditch surface water to be diverted through a piped culvert beneath the highway at a point upstream from Appleford, and for the diverted

water to discharge into an open ditch, which would in turn discharge water into the Brinkworth Brook at its outlet.

29. I have weighed in the balance the consequences of upholding the enforcement notice varied to require the removal of the two areas of hardstanding, the access track and the ditch only and the land returned to its former state, or granting planning permission for the developments. I conclude on the balance of probability that because of the finely balanced nature of the local drainage system and the changing pattern of rainfall, removing the areas of hardstanding, the access track and the ditch would be unlikely to achieve the previously finely balanced position of the drainage system, a view held by the Council's drainage expert, and that instead flooding would be likely to recur in severe storm conditions unless steps are taken to implement a co-ordinated drainage scheme for the area.
30. In reaching my conclusions on the deemed application, I have considered representations made by local residents on the visual impact of the development on their rural surroundings. I conclude from my site visit that the stables and areas of hardstanding are visually contained within the curtilage of the appeal property and the ditch is visually absorbed into the rural character of the adjacent fields. I note that the access track, which was created as a temporary means of access for construction of the stables and hardstanding, was covered in top-soil and re-seeded prior to the issuing of the enforcement notice. I conclude from my site visit that as the track has taken on the appearance of the field in which it is situated it appears visually as part of the rural character of the area. I therefore conclude that no undue harm would be caused to the rural character of the area by the retention of the operational developments.
31. For the above reasons, I propose to allow the appeal and to grant planning permission for the developments subject to a condition, discussed and agreed by the parties at the Hearing, requiring details of a drainage scheme to be submitted to the local planning authority for approval. I am imposing this condition in the interests of safeguarding the appeal property and nearby residential properties from potential flooding. As fulfilment of the condition is dependent upon the actions of other parties, including the County and District Councils, and the operational developments have already taken place, the condition will include time limits for the preparation, submission and approval of an appropriate scheme and its implementation and a default clause in the event of these time limits not being met.

Conclusions

32. For the reasons given above and having regard to all other matters raised, I consider that Appeal A should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered. Appeal B will be dismissed for the reasons given.

Formal Decisions

Appeal A: APP/J3910/C/03/1119382

33. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under Section 177(5) of the Act as amended, for the development already carried out, namely the erection of a building partly outside of the residential curtilage; the construction of engineering works to form a ditch; and the construction of engineering

works to form a hardstanding and track areas with associated sub-surface works, on land at Appleford, Thornhill, Broadtown, Swindon, Wilts, SN4 7RX referred to in the notice, subject to the following condition:

- 1) Unless within 3 months of the date of this decision a drainage scheme is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 9 months of the local planning authority's approval, then within 3 months the drainage ditch to the rear of the property and the surface and sub-surface materials associated with the two areas of hardstanding and the access track, shall be removed and the land reinstated to its former state in terms of materials and compaction.

Appeal B: APP/J3910/C/03/1119383

34. In exercise of the powers transferred to me, I dismiss the appeal and uphold the enforcement notice.

Information

35. A separate note is attached setting out the circumstances in which the validity of any of these decisions may be challenged by making an application to the High Court.
36. The decision on Appeal A does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.
37. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

E. C. Anne Perkhill

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr G Currie DipTP MRTPI	Consultant, DPDS Consulting Group.
Mr D Frosoni BSc CEng MCIWEM	Senior Engineer, Cole Easdon Consultants.
Mrs S Harris	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Mr L Robertson MA (UD) Dip (UD)	Principal Planning Officer, North Wiltshire District Council.
BSc (Hons) MRTPI	
Mr S Scothern BSc	Engineer, North Wiltshire District Council.

INTERESTED PERSONS:

Mr D Pearce	Land Development & Planning Consultants, representing Mr & Mrs M Stubbings, 17 Thornhill, Broadtown.
Mr D Noble	David Noble & Associates, Management & Technical Services, representing Mr & Mrs M Stubbings, 17 Thornhill, Broadtown.
Mr M Stubbings	17 Thornhill, Broadtown.
Mrs V Stubbings	" " "
Mr R Fox	11 Thornhill, Broadtown.
Mr D Fox	" " "
Mr S Love	16 Thornhill, Broadtown.
Mrs E Love	" " "
County Councillor T Sturgis	Brook Farm, Great Somerford, Chippenham.
District Councillor M Groom	Chestnut Springs, Lydiard Millicent.

DOCUMENTS

Document 1	List of persons present at the Hearing.
Document 2	Notification of Hearing and list of persons notified.
Document 3	Receipt dated 7 July 2002 re sale of 6 year old coloured mare Butterfly by Sue Harris to Mrs Sue Moyles.
Document 4	Copy of e mail and attachments from Jane Harris to Mr & Mrs Love dated 16 December 2002 re horse purchase.
Document 5	Copy of e mail from Allan & Jacky Oakes to Mr & Mrs Love dated 13 October 2003 re development at Appleford.
Document 6	Table of Wotton Bassett Rainfall Data, 1 October 2002 to 1 January 2003.
Document 7	Copy of e mail from Allan & Jacky Oakes to Mr Stubbings dated 13 October 2003.
Document 8	Copy of e mail from Mr & Mrs Love to Nigel Daniels, North Wilts D C dated 10 November 2002 re Appleford.
Document 9	Copy of letter from Sue Harris to Mr Stubbings dated 3 November 2002.
Document 10	Letter dated 2 November 2002 from Sue Harris to Mr S Love.

PLANS

- Plan A Plan accompanying the enforcement notices.
Plan B Copy of Land Registry plan showing land owned by Mr & Mrs Stubbings at the rear of 17 Thornhill, Broadtown.

PHOTOGRAPHS

- Photo 1 Photograph of Mr Harris riding a horse at the appeal site.
Photos 2-5 Paper copies (black & white) of photographs of flooding at 16 Thornhill, Broadtown on 1 January 2003.
Photos 6-11 Colour photographs of flooding in October 2002.



Costs Decisions

Hearing held on 14 October 2003

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date

15 May 2004

Costs application in relation to Appeals Ref: APP/J3910/C/03/1119382-1119383
Land at Appleford, Thornhill, Broadtown, Swindon, Wilts SN4 7RX

- The application is made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6 and the Local Government Act 1972, Section 250(5).
- The application is made by North Wiltshire District Council for a partial award of costs against Mrs S Harris.
- The hearing was in connection with appeals against two enforcement notices alleging without planning permission: A. The erection of a building partly outside of the residential curtilage; the construction of engineering works to form a ditch; and the construction of engineering works to form a hardstanding and track areas with associated sub-surface works; and B. Change of use of the land from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses.

Summary of Decision: The application fails and no award of costs is made.

Costs application in relation to Appeal Ref: APP/J3910/C/03/1119382-1119383
Land at Appleford, Thornhill, Broadtown, Swindon, Wilts SN4 7RX

- The application is made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6 and the Local Government Act 1972, Section 250(5).
- The application is made by Mrs S Harris for a full award of costs against North Wiltshire District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging without planning permission: A. The erection of a building partly outside of the residential curtilage; the construction of engineering works to form a ditch; and the construction of engineering works to form a hardstanding and track areas with associated sub-surface works; and B. Change of use of the land from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for North Wiltshire District Council

1. A partial award of costs is requested in respect of enforcement notice A (operational development) on the grounds that an unreasonable appeal has been made as described in para 6 of Annex 3 to Circular 8/93. The case involved private party disputes, land drainage and highway and planning matters. A complicated case. A series of letters in Appendix 6 of the appellant's appendices on the history of the case. Planning permission was required for the works. Every opportunity was given to the appellant. If the Council's advice had been taken then they could have avoided a potential problem. Detailed hydraulic analysis was therefore requested. The application would have received consideration. There was no issue on design and therefore it would have had a good chance of success. As there was

no application the Council was in a difficult position. If advice had been followed the appeal might not have been necessary.

2. The chronology of correspondence as set out within the appellant's case (Appendix 6 DPDS) clearly shows that on numerous occasions officers of the Council advised that planning permission was required for the works. This was the result of and in response to substantial correspondence from both the appellant and her advisors. Such an application prior to the works commencing would have had a high probability of resolving the issues that are the subject of the appeal. It is considered from the evidence presented, that the apparent reasons why such a planning application for the disputed operational development was not made was the cost of producing the relevant technical information required for a full consideration of the drainage matters arising from the development.
3. The appellant has belatedly attempted to deal partly with the drainage issue (whether or not consequential to the works undertaken by the appellant) by the submission of a planning application for the construction of a drainage ditch and access track. This application remains under consideration and is subject to formal consideration by the Council at present. There is however a strong possibility that with further confirmatory information that this may prove to be a beneficial proposal. It is considered that if similar action had been taken by the appellant at the beginning, considerable time and expense in both pursuing the enforcement matters and the consequential appeal would have been saved.

The Response on behalf of Mrs S Harris

4. The Council has taken the view that the appellant had to submit a planning application for the stable block. The Council is unwilling to move from this, even though we say that planning permission is not required for a domestic stable. An application was not necessary. Private party disputes, land disputes and highway matters have lengthened the process. The Council was asked about the part of the stables outside the garden area. No response was received. This was only one element. It was felt that a planning application was not necessary. The Council can look at development even if part needs planning permission, especially if the infrastructure is not in dispute. The appellant feels that she is being forced into issues not relevant to the appeal.

The Submissions for Mrs S Harris

5. The Council's initial concern was the stable block. It was held not to be permitted development because too close to the house and in the extended garden area. On both counts the Council was wrong. Every effort was made to overcome the problem. A planning application was not the only way.
6. Referring to paras 24 and 28 of Annex 3 to Circular 8/93, it is maintained that the Council has acted unreasonably as set out in the appendix to the appellant's statement – Council reports of 9 October and 18 December 2002, together with correspondence from her advisors consulting on 6 and 19 December 2002. Despite the information set out in the Council's report of 8 October 2002, any breach of planning control relates to a small corner of the stable building, certainly not enough to warrant enforcement action. The hardstanding areas do not require planning permission and to require them to be removed is going beyond what is reasonably necessary to rectify any breach of planning control. The access track is no longer visible and therefore does not conflict with any development policy within the Structure Plan and Local Plan. The stable has never been used for

commercial purposes and it is suggested that the Council has placed too much emphasis on neighbour allegations when the appellant has signed a statutory declaration to that effect. An award of costs is therefore requested to address the unnecessary expenditure she has been forced to bear in bringing the matters to appeal.

The Response on behalf of North Wiltshire District Council

7. It is agreed that it would be unreasonable for a planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission. There were full investigations and a further test is whether it was expedient to issue an enforcement notice. If planning permission could have been granted it would have been reasonable to do so. If the information is absent, then it is reasonable to refuse. The development was contrary to Local Plan policy, especially regarding nuisance to neighbours. The position of the Council did not change. The Council did not behave unreasonably because of the site position changes regarding the stables. The letter dated 25 March 2002 from the appellant and the Council's response dated 22 April 2002 refer. The works began shortly thereafter. The Council could only determine the case on the basis of the information presented. Then the information on use began to flow. It would be unrealistic to ignore the effect on neighbours. Information was received in the summer and autumn 2002. The fact that the track is not visible is only true if no harmful effect. There is a dispute on this. It was reasonable to consider the matter seriously. The application for costs against the Council is therefore rejected.

Conclusions

8. I have considered these applications for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

Application by the Council

9. I conclude from the exchange of correspondence that took place between the Council and the appellant and her advisors that the Council drew the appellant's attention to the relevant facts concerning the construction of the stables based on the appellant's original letter dated 25 March 2002. It is evident that there was confusion over the precise location of the stables, but when this was later resolved it is clear from the letters sent by the Council to the appellant that the Council still considered that a breach of planning control had taken place. Nevertheless, as stated in para 1 of Annex 3 to Circular 8/93 the right of appeal is a statutory right. I consider that the appellant exercised this right in a reasonable manner, as there was a fundamental difference of view between the parties on whether the development required planning permission. The submissions made under the ground (c) appeal turned on matters for determination having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995 (GPD0).
10. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Application by the Appellant

11. I consider that the Council had reasonable grounds for concluding that there had been breaches of planning control and exercised due care in accordance with the guidance in PPG 18 and Circular 10/97 in deciding to issue the enforcement notices. This included extensive correspondence and site meetings with the appellant and her advisors prior to the notices being issued. I am therefore satisfied that the Council undertook reasonable investigations before deciding to issue the notices. The Council on appeal was able to substantiate its reasons by reference to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), the development plan and other material considerations. In particular, the Council was able to show that it had reasonable grounds for concluding that the breaches of planning control would unacceptably affect public amenity, and that it was expedient to issue the enforcement notices in this particular case. The planning issues in the case were matters for determination in the context of the appeals having regard to the GPDO, the development plan policies for the area, the expert evidence submitted by the parties on the drainage issue and the particular circumstances of the site and its relationship to neighbouring residential properties. I am also satisfied that opposition to the development from local residents was founded on valid planning reasons supported by substantial evidence.
12. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decisions

13. In exercise of the powers transferred to me, I refuse the application by North Wiltshire District Council for an award of costs.
14. In exercise of the powers transferred to me, I refuse the application by Mrs S Harris for an award of costs.

E.C. Anne Parkhill

INSPECTOR

Chief Executive: Bob Marshall

Director: Bob Gwilliam
Director: Jeff Penfold

Replies to:
Nigel Daniels
Implementation Team Leader
Planning Services
Monkton Park
CHIPPENHAM
Wiltshire SN15 1ER

Tel: Chippenham (01249) 706594
Fax: Chippenham (01249) 460810
DX No. 34208

Enquiries to:
Our Ref: 02.00075.EMAJ
Your Ref:

25 April 2003

North Wiltshire District Council

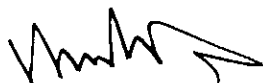
Dear Sir/Madam

ENFORCEMENT NOTICES AT LAND AT APPLEFORD, THORNHILL, BROAD TOWN, SWINDON, WILTSHIRE

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

Unless an appeal is made, as set out in the Annex, the Notices will take effect on the date shown in Paragraph 7 of the Notices 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



Implementation Team Leader

To

Mrs S Harris
Appleford
Thornhill
Broad Town
Swindon

Bank of Scotland
The Mound,
Edinburgh, EH1 1YZ



INVESTOR IN PEOPLE

Chief Executive: Bob Marshall
Director: Bob Gwilliam
Director: Jeff Penfold

North Wiltshire District Council

Our Ref: 02.00075 EMAJ a & b

Your Ref:

Enquiries to: Mrs C A Garrett

25 April 2003

Mrs S Harris
Appleford
Thornhill
Wootton Bassett
Wilts

Planning Services
Monkton Park
Chippenham
Wiltshire SN15 1ER

Tel: 01249 706594
Fax: 01249 460810
email: cgarrett@northwiltshire.gov.uk

Dear Madam

ENFORCEMENT NOTICES – LAND AT APPLEFORD, THORNHILL, BROAD TOWN, SWINDON

Should you wish to appeal against the attached enforcement notices the following fees will be required:-

Notice A – on the calculation of the area as up to 0.31 hectares, the fee for both the Council and the Planning Inspectorate will be £440

Notice B – on the change of use the fee will be £220, for both the Council and the Planning Inspectorate.

These fees must be included with your appeal forms, which you have to send to the Council at the above address and the Planning Inspectorate at the address on the appeal form.

Yours faithfully



Implementation Team Leader



INVESTOR IN PEOPLE

02.00075.EMAJ(a)

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 Appleford, Thornhill, Broadtown, Swindon, Wilts, SN4 7RX
shown hatched on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission,
 1. The erection of a building partly outside of the residential curtilage.
 2. The construction of engineering works to form a ditch
 3. The construction of engineering works to form a hardstanding and track areas with associated sub-surface works.
4. **REASONS FOR ISSUING THIS NOTICE**
 - a) It appears to the Council that the above breach of planning control has occurred within the last four years.
 - b) Planning permission would not have been granted without investigation of the likely disturbance to the natural surface water drainage of the affected

area and, in consequence, the imposition of planning conditions to mitigate such identified effects.

- c) The works are contrary to policy RLF13 of the North Wiltshire Local Plan concerning equestrian facilities.
- d) The works are contrary to policy RB 25 of the North Wiltshire Local Plan concerning flooding.

5. WHAT YOU ARE REQUIRED TO DO

- a) To remove the drainage ditch to the rear of the property and reinstate the land to its former state in terms of materials and compaction.
- b) To remove all surface and sub-surface materials associated with the hardstanding and track and to return the land to its former state in terms of materials and compaction.
- c) To remove the stables building and return the land to its former state in terms of materials and compaction.

6. TIME FOR COMPLIANCE

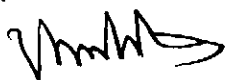
Two months from the date on which this notice takes effect

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 6 June 2003 unless an appeal is made against it beforehand.

Dated : 25 April 2003

Signed :



Implementation Team Leader

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.

02.00075.EMAJ(b)

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 Appleford, Thornhill, Broadtown, Swindon, Wilts, SN4 7RX
shown hatched on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use of the land from residential and agricultural land to a mixed use for residential and commercial trading and keeping of horses.
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 Local Planning Authority would not grant planning permission to the use, given the proximity of the premises to residential properties and the potential adverse impact upon the amenity of those properties due to general disturbance.
 - c) The use is contrary to policy RLF13 of the North Wiltshire Local Plan.

5. WHAT YOU ARE REQUIRED TO DO

- a) To cease any commercial use of the land associated with the trading or keeping of horses.

6. TIME FOR COMPLIANCE

28 days from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 6 June 2003 unless an appeal is made against it beforehand.

Dated : 25 April 2003

Signed : 

Implementation Team Leader

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.

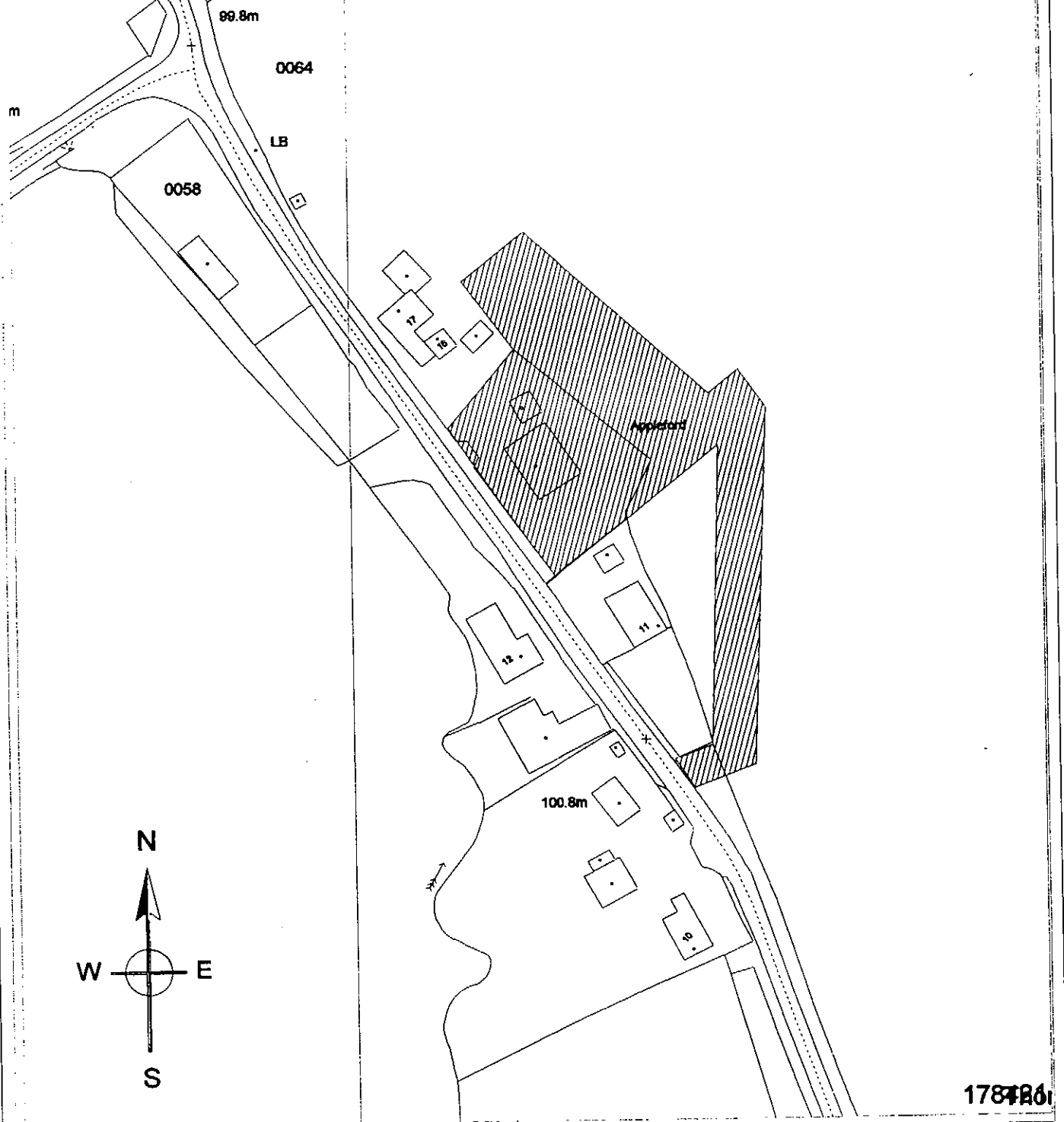
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407929

Enforcement Notice



*North
Wiltshire
District
Council*

land at Appleford, Thornhill, Broad Town, Swindon, Wiltshire
SCALE:1:1250

Grid Ref: SU0803 7856 02.00075.EMAJ

Planning Services

25/4/03

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NORTH WILTSHIRE DISTRICT COUNCIL - LA079840 2003