Reg'd

NORTH WILTSHIRE DISTRICT COUNCIL

Reference 02/00237/ENF

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

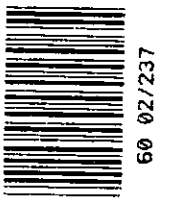
(1) THIS IS A FORMAL NOTICE which is issued by North Wiltshire District Council ("the Council") because it appears to them that there has been a breach of planning control under section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue a notice, having regard to the provisions of the development plan and to other material planning considerations.

SCHEDULE 1

THE LAND AFFECTED

Land at Stanton, Nr Chippenham, Wiltshire shown hatched on the attached plan A.

("the land")



SCHEDULE 2

THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission the importation and deposit of waste, including earth and other construction waste, construction of bunds and other engineering operations including earth movement.

("the unauthorised development ")

SCHEDULE 3

REASONS FOR ISSUING THIS NOTICE

1. It appears to the Council that the unauthorised development took place within the last four years.

2. The unauthorised development is unsightly, out of character, causes noise and disturbance and is inappropriate to the open countryside contrary to policies RTM1, RC9 and RC10 of the North Wiltshire Local Plan – Adopted 2001.

SCHEDULE 4

WHAT YOU ARE REQUIRED TO DO

1. Cease the importation and deposit of waste materials, including earth and other construction waste.

2. Redistribute the materials on site to ensure that no part of the finished surface is more than five metres above the natural ground level and to ensure that the finished shape of any bunds that remain are commensurate with the cross section shown in the attached as plan B.

3. With the exception of areas cross hatched on the attached plan A, ensure that the finished surface to a depth of at least 300mm comprises only topsoil and vegetation with no stones measuring in excess of 150mm in any direction.

4. Remove all vehicles, machinery and other materials, including temporary accommodation associated with the unauthorised development.

5. With the exception of the areas cross-hatched on the attached plan A, seed the land with grass.

6. Re-seed any area in which the grass is dead or dying within 9 months of it becoming dead or dying.

SCHEDULE 5

TIME FOR COMPLIANCE

1. One day after this notice takes effect

2. 6 months after this notice takes effect

3. 6 months after this notice takes effect

4. 6 months after this notice takes effect

5. 6 months after this notice takes effect

6. 5 years after this notice takes effect

SCHEDULE 6

WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 7 November 1004 unless an appeal is made against it beforehand.

Issued: 1 October 2004

Signed.....

(Council's authorised officer)

North Wiltshire District Council

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 Planning Inspectorate before 7 November 2004.The enclosed booklet "Making Your Enforcement Appeal" sets out your rights. Read it carefully.

You may use the enclosed appeal forms. One is for you to send to the Planning Inspectorate with the spare copy of this enforcement notice, which is enclosed. The others are for you to send to the Council and for your records.

If You Appeal

If you lodge an appeal then you must submit to the Planning Inspectorate, a statement in writing specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts that you propose to rely on, in support of each of those grounds. Either:

When giving notice of appeal; or

Within 14 days from the date that the Planning Inspectorate sends you notice that requires you to send a statement.

If your wish to have your appeal also considered as a deemed application for planning permission or you intend to make an appeal under Ground (a), you may be required to pay a fee. A fee may be payable under Regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 for the deemed application for planning permission for the development alleged to be in breach of planning control in the enforcement notice. The Fee for this case is £6,050. This amount is payable both to the Council and to the Planning Inspectorate.

What happens if you do not appeal

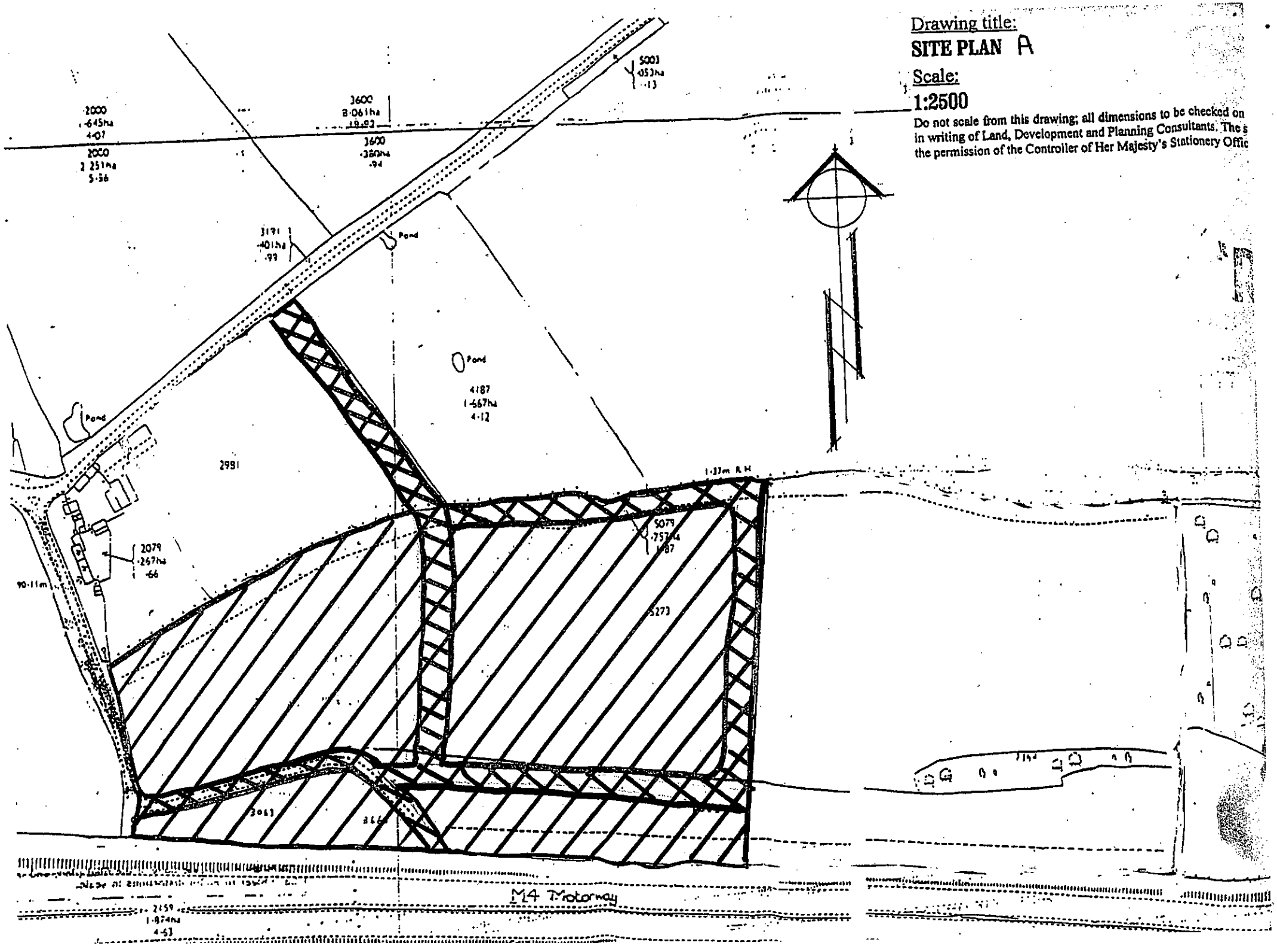
If you do not appeal against this enforcement notice, it will take effect on 7 November 2004 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the periods specified in the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

Who this Enforcement Notice is Served On

Owner Land at Stanton, Nr Chippenham, Wiltshire
Occupier Land at Stanton, Nr Chippenham, Wiltshire
Any Other Person with an Interest in Land at Stanton, Nr Chippenham, Wiltshire
Mr G Ridout, Nables Farm, Draycot, Chippenham, Wiltshire SN15 5HB
Mr Jack Harley, Lakeside Construction, Valley Farm, Warminster, Wiltshire BA12 0LT
Ridout Farms, Nables Farm, Seagry, Chippenham, Wiltshire SN15 5HB

If you believe that there is someone else who should be served or any of those listed above has not received a copy of the notice or any other document please let that person and the Council know of this omission as soon as possible.

Enclosures:
Site Plan
Appeal Forms (3 Copies)
Appeal Guide Booklet
Enforcement Notice (3 Copies)



Drawing title:

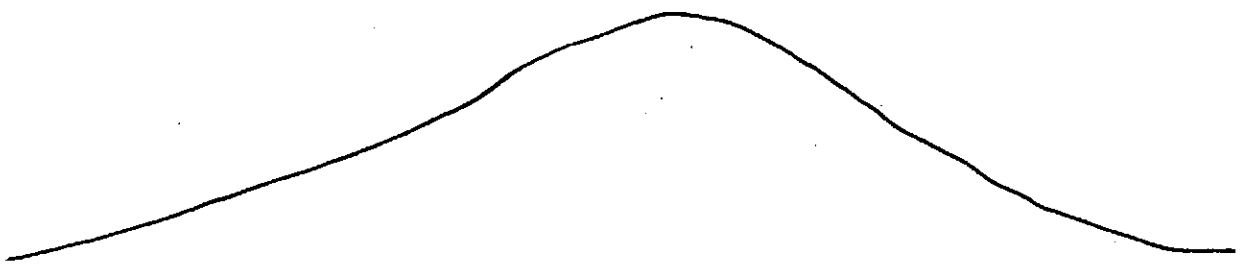
SITE PLAN A

Scale:

1:2500

Plan B

Section through bund illustrating finished shape as required by Step 2



Appeal Decision

Inquiry held on 21 April 2005
Site visit made on 21 April 2005

by Colin A Thompson Dipl Arch DipTP RIBA MRTP IHBC
an Inspector appointed by the First Secretary of State

ne Planning Inspectorate
09 Kite Wing
emple Quay House
The Square
emple Quay
ristol BS1 6PN
T 0117 372 6372
mail: enquiries@planning
spectorate.gsi.gov.uk

ate
18 MAY 2005

Appeal Ref: APP/J3910/C/04/1164304
Land at Stanton, Nr Chippenham, Wiltshire SN14 6AA

- The appeal was under section 174 of the Town and Country Planning Act 1990 (*the Act*) as amended by the Planning and Compensation Act 1991.
- The appeal was by Mr Jack Harley, Lakeside Construction, against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference was AD2727.
- The notice was issued on 1 October 2004.
- The breach of planning control as alleged in the notice was the importation and deposit of waste, including earth and other construction waste, construction of bunds and other engineering operations including earth movement.
- The requirements of the notice were:
  1) cease the importation and deposit of waste materials, including earth and other construction waste;
  2) redistribute the materials on site to ensure that no part of the finished surface is more than 5 metres above the natural ground level and to ensure that the finished shape of any bunds that remain are commensurate with the cross section shown in the attached as plan B;
  3) with the exception of areas cross hatched on the attached plan A, ensure that the finished surface to a depth of at least 300mm comprises only topsoil and vegetation with no stones measuring in excess of 150mm in any direction;
  4) remove all vehicles, machinery and other materials, including temporary accommodation associated with the unauthorised development;
  5) with the exception of the areas cross hatched on the attached plan A, seed the land with grass, and;
  6) re-seed any area in which the grass is dead or dying within 9 months of it becoming dead or dying.
- The period for compliance with requirement 1) was one day after this notice takes effect and for requirements 2) - 5) was 6 months after this notice takes effect. The period for compliance with requirement 6) was 5 years after this notice takes effect
- The appeal was proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees had not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended did not fall to be considered.

Summary of Decision: the appeal is dismissed and the notice as varied is upheld

The Site

1. At the accompanied visit I saw the following items were present on the land: a portacabin type structure that had been used for storage and for site operative purposes; 2 caravans; 1 tractor; 1 fuel bowser and a metal skip. Additional to the bunds referred to in the enforcement notice (*the notice*), there were some completed access-ways and partly

constructed ones, the remains of 2 heaps of what looked like topsoil and a pile of what appeared to be broken stone.

2. It was agreed at the accompanied site visit that the height of the tallest, eastern boundary, bunds was some 9 metres above the generally flat natural level of the site. Those completed bunds had mostly been seeded with grass. I was told that the land had previously been in agricultural use (as pasture) except for a small section, in the south-western corner of *the notice* lands, close to the motorway, which was scrub. This latter part of the site was not included within the 23 October 2001 planning permission (*the 2001 permission*) referred to in my paragraph 9 below.

The Notice

The Alleged Breach of Planning Control

3. As a matter of undisputed fact material had been brought onto, and deposited on, the site. I saw that this included soil and some brick and other rubble. It appeared to me, on the balance of probabilities, that this was someone's waste, or unwanted, material. The opinion of the Environment Agency, that the activities taking place on the site might be an exception from Waste Management Licensing under Schedule 3 of the Waste Management Licensing Regulations 1994, does not alter the nature of the material that had been imported and deposited. The breach of planning control which *the notice* alleged, when it referred to *the importation and deposit of waste*, was not therefore to my mind incorrect.

The Ground (c) Appeal

4. The proposed cross section of the earth bunds on plan B, which was attached to *the notice*, was not shown to any scale. But the Council agreed that this plan was indicative of the sectional shape required with the cross section showing a suggested maximum height in the order of 5m.

The Ground (f) Appeal

5. In answer to one of my questions the Council stated that *the notice* requirements sought to remedy injury to amenity caused by the alleged breach of planning control.

The Ground (c) Appeal

6. This ground was that those matters alleged in the breach did not constitute an infringement of planning control.

Background

7. It was a matter of agreement between the parties in the Statement of Common Ground that the development being undertaken on the site, the subject of *the notice*, was not permitted by any class of the General Permitted Development Order 1995 nor any other form of deemed consent. I had no reason to disagree with this assessment.

8. A planning application for revised details of landscaping was submitted to the local planning authority on 5 February 2004 (*the second application*), but was refused on 31 March 2004. A further planning application, for revised landscape treatment associated with the use of land for the stationing of touring caravans and tents, supported by a noise consultant's report, was submitted on 8 April 2005 (*the third application*). The Council

considered that *the third application* was for new development and had not registered it because the fee paid did not accord with what the local planning authority considered was the correct amount. It followed that, at the time of this appeal, there were no other relevant planning permissions affecting the area of *the notice* works other than *the 2001 permission.*

9. Bearing all this in mind, the appeal under this ground needed to consider whether *the 2001 permission*, reference APP/J3910/A/01/1065390, was in the process of lawfully being implemented. As part of his consideration of what was to become *the 2001 permission* the then Inspector indicated that he had been informed at his hearing that the proposed bunds would need to be 4 metres to 6 metres high.

10. It was important to stress that the small south-western part of the site, referred to in my paragraph 2 above, was not part of *the 2001 permission* site.

My Reasoning

11. It was a well established principle that unauthorised works did not constitute a material operation comprised in the development. The leading case was *Leisure Great Britain plc v Isle of Wight Council [2000] PLCR 88.* The overall position now appeared to be that works that had been undertaken in breach of an operational planning condition, and hence in breach of planning control, could not be taken as works of material development unless they fell within one or more of 4 recognised exceptions. These were, firstly, where the developer had clearly done all it could to meet the condition or conditions; secondly, where approval had subsequently been given so that work done before the deadline was made lawful; thirdly, where the local planning authority had agreed that development could commence without full compliance with the relevant condition or conditions; and finally, where the condition or conditions had in substance been complied with but the formalities, including written approval, had not been completed before the work started on the site. In answer to one of my questions the appellant's agent indicated that compliance with the first and third of the recognised exceptions was claimed.

12. That part of *the 2001 permission* which applied to *the notice* lands had 16 conditions. Numbers 3, 5, 7, 10, 11 and 12 were conditions-precedent which required the approval in writing of the local planning authority before development, or works, were begun. Conditions 3 and 5 related to the design and implementation of the proposed access road, conditions 7 and 10 were about landscaping design and maintenance, condition 11 referred to the details of the earthworks and bunds, and condition 12 related to details of site boundary treatment. It was a matter of agreement between the main parties that no written approvals for these conditions had been given by the Council.

13. The local planning authority was clearly aware that works had taken place on *the notice* lands. Indeed, meetings between the main parties had considered such matters as the shape and the heights of the bunds. But the fact that the Council knew what was going on, and was attempting to regularise matters through discussion, did not seem to me to indicate that the developer had clearly done all it could to meet the relevant conditions-precedent or that the local planning authority had agreed that development could commence without full compliance with them. The fact that the appellant had been asked to make *the second planning application* as a method of resolving the problems surrounding the outstanding conditions supported my conclusion that the claimed recognised exceptions identified by *Leisure Great Britain plc v Isle of Wight Council* had not been satisfied.

14. Gaps in the bunds as built had been created to accommodate the presence of above ground, and under ground, services. But this did not impact on my conclusions above, being requirements instigated by statutory service providers. That Mr Robertson (from the Council) was reported to be *reasonably happy* with revised plans for the bunds, submitted on 27 October 2003, (set out in the Council's letter to the appellant dated 19 November 2003) did not alter the position much either. The local planning authority still required full engineering drawings, including details of the composition, of the bunds as part of *the second planning application.* In the event *the second planning application* was refused and anyway this matter had no impact on the other conditions-precedent. The absence of any Stop Notice, or any possible delay there may have been in issuing *the notice*, were not material points in assessing whether the development undertaken was lawful because such actions were at the discretion of the local planning authority. None of these matters were sufficiently compelling to alter the conclusions reached in my preceding paragraph.

15. In conclusion on this ground of appeal, because part of *the notice* site did not have the benefit of any planning permission there could be no approval for development there. Where *the notice* lands and *the 2001 permission* site overlapped, pre-commencement conditions were not complied with and none of the 4 recognised exceptions under *Leisure Great Britain plc v Isle of Wight Council* were applicable. It followed that the development carried out was not that approved under *the 2001 permission*, or indeed any other planning permission or class of permitted development. As the works were not authorised or lawful those matters alleged in the breach did constitute an infringement of planning control. The ground (c) appeal should fail.

16. In reaching this conclusion I took account of the appellant's assertion that Council had misdirected itself by seeking to identify the breach of planning control, as engineering operations and not a breach of condition. But because I found that *the 2001 permission* had not been implemented, and in any event the development included land not covered by *the 2001 permission*, it was difficult to see how any breach of *the 2001 permission's* conditions could have taken place.

Ground (f) Appeal

17. This ground was that the steps required by the notice were excessive and lesser steps would overcome the objections.

18. Regarding requirement 1), the continued importation and deposit of waste materials had the potential to cause disturbance to the living conditions of neighbours. Indeed, *the 2001 permission* had a condition limiting the time for the bund construction works to 6 months in order to keep any disturbance caused to neighbours within reasonable bounds; a period already exceeded substantially (works started on the site in January 2002 and had been progressing until recently). In view of the Council's objective for *the notice*, that it should remedy injury to amenity caused by the alleged breach of planning control, it followed that the cessation of such importation, and hence disturbance, was not excessive.

19. In making this assessment I took into account the appellant's contention that more topsoil would be needed to complete any re-shaped bunds (because it was considered by him to be impractical to re-use the existing deposited topsoil). But such considerations did not warrant what could be an open ended commitment to further waste importation and the likely further damage to amenity.

20. Turning to requirement 2), the Council could have decided to require the site to be restored to its previous condition before *the notice* works were started, and thereby force the removal of all the imported material, but declined to do so. It clearly decided to under-enforce, a logical result of their reason for issuing the notice (see my paragraph 5 above). The bunds may have provided adjoining dwellings with some motorway noise attenuation; as no doubt would any retained but re-modelled ones were I to uphold *the notice* and following possible compliance with it. But the present rather tall bunds, and their somewhat alien and artificial appearance, had to my mind already impacted adversely upon the look of the area and the living conditions of neighbouring residents. Bearing in mind the Council's decision to under-enforce, a requirement to redistribute the materials already on the site, to ensure that no part of the finished surface was more than 5 metres above the natural ground level, rather than remove it, was not to my mind disproportionate. Although *the notice* plan B did not have any scale, the fact that it showed an indicative sectional shape, and we now know a maximum height of 5 metres, it appeared to me to be sufficiently informative to be used as a satisfactory gauge for land remodelling under this requirement. This aspect of *the notice* was not therefore excessive either.

21. Concerning requirements 3) and 5), there was no objection to the land restoration and seeding with grass under these terms. The removal of all vehicles, machinery and other material etc under requirement 4) was also not contended and was entirely proportionate.

22. But seeding with grass that small part of the south-western corner of the appeal site, not included in *the 2001 permission* and which before the works began was scrub, under requirement 5), would go beyond what would be needed to restore that part of the site to its former condition. This would be excessive and that land should be omitted from this requirement. Also requirement 6), stated that any seeded area should be reseeded within 9 months of it becoming dead or dying. Bearing in mind that the previous use of the largest part of the notice site was agricultural, and noting that this requirement was intended to last 5 years after *the notice* would take effect, it could prevent other agricultural uses of the land including the planting of arable crops. Because such an agricultural use would not be development under the terms of *the Act*, as amended, such a requirement would be excessive and probably not lawful. Requirement 6) should be deleted. The ground (f) appeal succeeds on these limited points alone.

Overall Conclusions

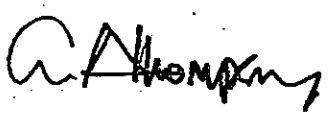
23. The appeal failed under ground (c). The appeal succeeded under ground (f) in so much as the requirements should be varied to omit reference to the notice lands which lie outside *the 2001 permission* site under requirement 5), and omit requirement 6) altogether. But the notice as so varied should be upheld.

Formal Decision

24. I vary *the notice* by altering requirement 5) under SCHEDULE 4, WHAT YOU ARE REQUIRED TO DO by, after the words *with the exception of the areas cross hatched on the attached plan A*, adding the words *and that part of the notice lands not included in the site for the 23 October 2001 permission*, the remainder of the requirement remaining unchanged.

25. I further vary *the notice* by deleting requirement 6) under SCHEDULE 4, WHAT YOU ARE REQUIRED TO DO in its entirety, along with the consequential TIME FOR COMPLIANCE, UNDER SCHEDULE 5.

26. Subject to these variations I dismiss the appeal and uphold *the notice*.



APPEARANCES

FOR THE APPELLANT:

Mr D R Pearce BSc(EstMan) FRICS Advocate and planning witness

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks BTP DipLaw MRTPI Advocate and planning witness

INTERESTED PERSONS:

Mr Sugden	Clanville, Stanton St Quintin, Chippenham, Wilts SN14 6AA
Mrs Sherry Meadows	The Chase, Stanton Park, Stanton St Quintin, Chippenham, Wilts SN14 6LA

DOCUMENTS

Document	1	List of persons present at the inquiry.
Document	2	Letter of notification of the inquiry and a list of persons notified.
Document	3	Bundle of letters from interested organisations and persons.
Document	4	Statement of Common Grounds.
Document	5	Case law put in by the Council.
Document	6	Bundle of papers and plans put in by the appellant.