03/135/ENF

Appeal Decisions

Inquiry opened on 27 January 2005
Site visit made on 18 March 2005

by Peter Norman MA MRTPI

an Inspector appointed by the First Secretary of State

39 03/135

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Date
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Appeal A: APP/J3910/C/04/1153508
Land adjacent to Chelworth Lodge, Cricklade, Wiltshire SN6 6HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Olding against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD2702.
- The notice (Notice A) was issued on 10 May 2004.
- The breach of planning control as alleged in the notice is, without planning permission, the carrying out of engineering operations comprising alterations to and the widening of a vehicular access.
- The requirements of the notice are to:
  - a) Narrow the vehicular access to the public highway to a width of one of the existing gates (i.e. to 4.9 metres which is half the width of the existing access) by the removal of all tarmacadam and the other hardsurfacing materials such as hardcore, gravel and other foundation materials to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre over half of the current width of the access.
  - b) Reinstate the roadside ditch by the removal of the surplus width of pipe beyond the width of the narrowed vehicular access required of paragraph a) above.
  - c) Remove all debris resulting from the requirements of paragraphs a) and b) above from the land.
  - d) Restore the land disturbed by compliance with requirements a) and b) of this notice level with the natural contours consistent with the levels of the immediately adjoining land.
  - e) Finish the surface of the areas of the land disturbed by complying with the requirements of paragraphs a), b) and d) above with topsoil to a depth of at least 25mm.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 does not fall to be considered.
- The inquiry sat for three days on 27 and 28 January and 17 March 2005.

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

Appeal B: APP/J3910/C/04/1160093
Land at Ordnance Survey parcel no. 5388, adjoining Chelworth Lodge, Cricklade, Wiltshire SN6 6HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Olding against an enforcement notice issued by North Wiltshire District Council.

- The Council's reference is AD2719.
- The notice (Notice B) was issued on 28 July 2004.
- The breach of planning control as alleged in the notice is, without planning permission, the carrying out of engineering operations comprising the excavation of soil, the tipping of hardsurfacing materials to provide roadways and hardstanding areas.
- The requirements of the notice are to:
  - a) Remove the hardsurfacing, gravel, hardcore and other such materials from the land to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre.
  - c) *(sic)* Remove all debris resulting from the requirements of paragraph a) above from the land.
  - d) Restore the land disturbed by compliance with requirement a) of this notice level with the natural contours of the adjoining land by the importation, if necessary, of soil to replace the hardsurfacing materials removed as a requirement to comply with paragraph a) above.
  - e) Finish the surface of the areas of the land disturbed by complying with the requirements of paragraphs a) and b) *(sic)* above with topsoil to a depth of at least 25mm.
  - f) Seed the disturbed areas resulting from compliance with the requirements of this notice with grass.
- The period for compliance with the requirements is three months.
- The appeal is 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. Since the prescribed fees have 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 does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation.

Appeal C: APP/J3910/A/04/1153305
Chelworth Lodge, Cricklade SN6 6HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr A Olding against the decision of North Wiltshire District Council.
- The application Reference 04/01071/FUL, dated 8 April 2004, was refused by notice dated 7 June 2004.
- The development proposed is described as alterations to existing access and track to form improved access to industrial area.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. At the inquiry applications for costs were made by Mr A Olding against North Wiltshire District Council. These applications are the subject of a separate Decision.

2. The error in the lettering of the requirements of Notice B went unnoticed at the inquiry. It is obviously a slip which will have confused nobody, and I am therefore satisfied that I could correct it without injustice if that notice were upheld. With regard to the requirements of Notice A, the Council drew attention to a more substantial point: if the access has been unlawfully widened as the notice alleges, some of the roadside hedge will

have been lost; there is no requirement to reinstate it, and the Council asked me to vary the notice by using my powers under section 176 to add a requirement to that effect. However if the notice were upheld with an additional requirement there would be injustice to the appellant because he would be put in a worse position than if he had not appealed. Such a variation would therefore be outside the scope of section 176.

3. The evidence of fact was taken on oath.

4. The sites referred to in the notices overlap, the alleged developments are closely related and in both cases the determination of the ground (c) and ground (d) appeals depends on an analysis of the history of the land. I therefore summarise the evidence on the history first, before applying the facts to the respective appeals.

The History of the Land

Until 2000

5. The appellant stated that he bought the land subject to Notice B, which I shall call "the notice land", together with other land to the east, which I shall call "the industrial site", in 1970. The documentary evidence from the Land Registry indicates that the date may have been 1972, but nothing turns on that. The Council put in no evidence to counter the appellant's evidence about the state of the land and how he had used it during the 1970's, '80's and '90's.

6. The appellant's evidence was that when he purchased the land there were no buildings on the industrial site. It was separated from the notice land by a fence in which there were three gateways. On the notice land there were two hardstandings, one near the eastern fence close to one of the gateways ("hardstanding D") and the other near the western boundary ("hardstanding C"). The hardstandings were about half-way between the hedge on the northern boundary of the land, beside the Ashton Keynes road, and the stream which marks its southern boundary. A wooden building stood on D and an implement shed on C. Mr Cooper's evidence confirmed the existence of the two buildings: in 1971 he had carried out repairs to the wooden building, and in 1974 the implement shed was demolished and he had removed the remains.

7. There were three ways into the notice land from the road: one at the eastern end from which a track led to hardstanding D, one at the western end with a track leading to hardstanding C, and a central access ("access A") at the point now the subject of Notice A. From access A a track ran southwards to join a sand or gravel track running east-west, which linked the two hardstandings. Access A had two 12 ft (3.66 m) gates, and the eastern access point also had double gates. A further area of sand or gravel, sufficient to attract adverse comment from local parish councillors, was laid in 1973 in connection with the keeping or training of horses on part of the notice land.

8. In 1974 the appellant formed a company, Chelworth Livestock Ltd, which dealt in alfalfa hay and straw. He also owned (and owns) land in Wales, and explained that high quality hay is readily available in West Wales, whereas there is a lack of straw which is plentiful in the Cricklade area. The alfalfa was bought from Mr Clark, a local farmer, and brought on to the notice land in 40 ft (12.2 m) trailers which used the tracks to reach the hardstandings, where it was stored in vehicle bodies; the trailers were 8 ft 2 in (2.49 m) wide and the

appellant estimated the width of the tracks at that time at about 10 ft (3.05 m). Mr Clark's son recalled helping with the work, and his evidence was that he brought in the alfalfa through double gates at access A. The hay and straw dealing business continued until 1978 or 1979. There is written evidence from Broadway Timber Products, a packaging firm, that during the 1970's hardstanding C was also used for the storage, in vehicles or in the open, of plastic granules for re-processing.

9. After 1979 there was less use of the notice land, but Mr Cooper recalled that in 1980 he had paid to use it for the storage of his contracting plant. He had driven in through access A with a lorry that needed a minimum clearance of 15 ft (4.57 m), and used the east-west track and the track linking it to access A. However from 1980 onwards the tracks were little used and became overgrown. The eastern and western access points to the notice land were closed by removing the culvert pipe and opening up the ditch, and the building on hardstanding D was dismantled. According to the appellant, by 1990 the tracks were almost invisible beneath the rank growth. In the meantime a number of haulage and industrial firms had begun to use the industrial site, and early in 1991 retrospective permission for industrial use was granted.

10. The notice land remained unused during the 1990's, and the vegetation continued to thicken and grow up. Then in February 1999 Mr Harvey, a sub-contract groundworker, was employed to remove the two old gates at access A – one of which he describes in his written evidence as heavily overgrown – together with two gate posts and part of a tree trunk, and to replace the concrete pipes which carried the roadside ditch under the access with new pipes. There is no evidence of any further work or activity on the land during 1999 or 2000.

From 2000

11. In 2000 there were enforcement proceedings arising from a dispute about activities permitted on the industrial site encroaching on the notice land. Following negotiations, an enforcement notice took effect requiring, among other things, the erection of a fence between the two; the wording referred to three gates in this fence. I saw that one such gateway is located adjacent to the site of hardstanding D. In December 2001 the majority of the industrial site was sold off, the remainder following in early 2003.

12. In December 2001 or early 2002 Mr Harvey built a low bund across access A, but the appellant considered it was too low and had contractors place a more substantial hardcore bund across the access. At about the same time Mr Cooper was engaged to carry out works to the tracks on the notice land. The appellant reported that by this time the grass and bracken had grown to a height of a metre or more, with small hedge thickets. He therefore had parts of the notice land mown by a flail mower, and Mr Cooper began stripping back the overgrowth from the tracks and building them up with hardcore.

13. In January or February 2002 a complaint was made to the authority that an access had been widened and tracks were being created. A Council officer, Mrs Murphy, visited the site in April. She formed the view that a length of hedgerow had been removed and an opening created. A photograph was taken but neither the gap in the hedge nor the hardcore bund were measured. Her contemporaneous estimate was that the break in the hedge was 5 m wide and the bund 1.5 m to 2 m high. However the photograph shows that the width of the bund was four or five times its height, and that it did not entirely fill the gap in the hedge.

In October 2002 a second Council officer, Mr Smith, visited the site. The note of his visit does not record the width of the bund, but his estimate given at the inquiry was 5 m to 6 m.

14. Mr Cooper testified that he later laid kerbstones and tarmac at access A, and installed new double gates. He estimated that the height of the bund which the gates replaced was at least 6 ft (1.8 m) and its width 25 to 30 ft (7.6 m to 9.1 m). Although Mr Cooper was not sure when this work was done, the kerbing at least must have been laid by early 2003 because Mr Smith testified that he noticed it when he revisited the site in February or March of that year. Although he took no measurements and produced no note of his inspection, he also stated that the opening in the hedge had been widened; in April the Council received a complaint about the widening of the access.

15. It is agreed that by February 2004 the gateway was in its present form, with kerbing, tarmac and gates; the width of the access between gateposts was measured as 9.9 m. A plan agreed at the inquiry shows the break in the hedge to be 13.2 m. The written evidence of Mr Harvey was that the present gateway is the same size as when he cleared it in 1999, and in an e-mail dated December 2004 a local Councillor, Cllr Hatton, confirmed that the size of the access had not changed over the previous four years.

The Evidence of Aerial Photographs

16. The Council accepted that access A shows up as a gap in the hedge in an aerial photograph taken in 1943 or 1944. However the available print of that photograph is of poor quality and does not show any hardstanding, or any other feature, within the notice land; it is too indistinct for the width of the gap in the hedge to be discernible.

17. As to the aerial photograph taken in August 1991, Mr Simmons, an expert called for the appellant, accepted that it shows no break in the hedge in the position of access A, but was able with difficulty to discern the line of the east-west track. The appellant himself submitted that the hardstandings are visible in the photograph. The Council's submission at the inquiry was that no tracks or hardstandings are visible, nor any break in the hedge; however on behalf of the appellant attention was drawn to the fact that in August 2002 the relevant officers, in full knowledge of what the air photo shows or fails to show, had decided to close the enforcement file and take no further action against the access as seen and photographed by Mrs Murphy in April of that year.

18. The 1999 photograph produced by Mr Simmons was taken from a lesser height and shows more detail. Again Mr Simmons conceded that there is no sign of a gap in the hedge, but found an impression "wider than a footpath" running across the land on the line of the east-west track; he discerned the outline of a hardstanding at C, but not at D. In the authority's view the photograph provides no evidence of the existence of any tracks, hardstandings or gaps in the hedge.

19. In the most recent air photograph, taken in 2001, Mr Simmons was able to discern the line of the east-west track whereas the authority contended that no tracks, hardstandings or breaks in the hedge can be seen. The appellant considered that the photo shows the tracks, and access A as a double-gated gap 10 m wide.

20. In my view aerial photographs should be interpreted with caution. They are valuable for what they show but it is not safe to assume that objects or features not shown were not

present on the ground. During my inspection I was shown the two fallen, rusted gates at the eastern point of access from the notice land to the road, which the appellant had mentioned as being in existence when he bought the land. The gates are hidden in the hedge, with semi-mature trees growing through the bars, and have obviously not been used for twenty years or more, but they nevertheless mark a gateway which once gave access to the land. Yet there is no sign at all of this entrance on any of the aerial photos – not surprisingly because the canopy of the hedge has grown over it completely. I therefore do not consider that the absence of a break in a hedge, as shown on an aerial photograph, is strong evidence of the absence of a field access.

21. As to the tracks it was suggested that, even if heavily overgrown, their alignments would have been visible from the air, just as the runways of a former wartime airfield nearby, now grassed over, are to be seen as ghost images on the photographs. However the tracks which are said to have existed in the 1970's and '80's were described as of sand and gravel, whereas the former runways would have been of concrete or tarmac, and the evidence is that other parts of the notice land were also sanded or gravelled in connection with the keeping and training of horses. This could account for the fact that, once rank vegetation had taken over for a period of ten or twenty years, the alignments of the tracks did not stand out when photographed from the air. Had the tracks been visible (and it may be that some traces can be seen) the appellant's case would have been strengthened; however I do not accept that the absence of tracks from air photographs taken at a time when it is agreed that the whole of the land was heavily overgrown shows that the tracks did not exist.

Appeal A

Ground (c)

22. Notice A makes two allegations: that the access has been altered and that it has been widened. Although the initial view of the officer who first visited the site following a complaint was that a length of hedgerow had been removed and an opening created, the Council later accepted, in the light of an aerial photograph taken in 1943 or 1944, that an access of some kind had existed historically at this point. Hence the allegation, not of creating an access, but of widening it. The alterations alleged comprise the laying of hardcore, installation of kerbs, and tarmacking.

23. Article 3 of, and Part 9 of the Second Schedule to, the Town and Country Planning (General Permitted Development) Order 1995 permit works required for the maintenance or improvement of a private way to be carried out within the boundaries of the way. The appellant's submission was that, insofar as the alterations had affected only the lawful access, without widening it, there had therefore been no breach of control. Although the notice treats the totality of the operations – alterations and widening – as a single breach, the Council also took the view that any surfacing works not involving widening would have been permitted under Part 9. For that reason the notice requires the tarmac, hardcore etc to be removed only where they extend beyond the width which the Council consider to be lawful.

24. To my mind it is doubtful whether Part 9 is applicable. It was submitted that article 3(6) of the Order makes it clear that the permission under Part 9 can be relied on to lay out a means of access to an existing highway. However Part 9 is mentioned in paragraph (6) only to

exclude development permitted under that Part from two provisos which apply to Schedule 2 generally; these are that development is not permitted if it involves the formation or widening of an access to a trunk or classified road, or if it creates an obstruction to the view of persons using any vehicular highway so as to be likely to cause them danger. In my view nothing in article 3(6) is capable of extending the meaning of the words of Part 9, which clearly limit the extent of the permission granted to "land within the boundaries of an unadopted street or private way". In the present case the works extend from the edge of the metalled carriageway of the Ashton Keynes road across a culverted ditch to the back of the hedge line. I have no information on where the ownership boundary falls between the appellant's land and land owned by the highway authority, and I am aware that sometimes in rural areas the boundary is unclear, but wherever the boundary falls the works must either be within the appellant's land – in which case they are covered by Notice B – or within the public highway, where Part 9 does not apply and the right to carry out improvements is granted only to the highway authority. My conclusion is that the appeal on ground (c) should fail.

25. I am conscious that both parties were agreed that Part 9 is applicable to the operations which have taken place other than any widening, and that I did not invite submissions on the proposition that it does not apply. However the conclusion which I have reached on the matter will cause no prejudice because the notice does not in any event seek to enforce against those operations.

Ground (d)

26. Section 171B of the Act provides that, where there has been a breach of control consisting in the carrying out of engineering operations, no enforcement action may be taken more than four years after the operations were substantially completed. In this instance the allegation is of engineering operations comprising alterations to and the widening of a vehicular access; I interpret this to mean a single set of operations consisting of a number of alterations and widening. On that interpretation, the appellant's contention that there has for decades been an access of the width enforced against is not sufficient, even if correct, for success on ground (d). The kerbstones, tarmac and gates were all put in after October 2002, less than two years before the notice was issued, and the operations as a whole were therefore not completed until then.

27. If my interpretation is wrong, and the widening is properly to be considered as a separate and distinct operation, the question is when was it substantially completed. The appellant's own evidence, given in cross-examination on the first day of the inquiry, was that in the 1970's the access subject to the notice had two 12 ft gates – a total width therefore of 7.32 m. It was agreed that by February 2004 the access was in its present form, and at that date the width between gateposts was measured as 9.9 m. This represents a widening of 2.58 m. The old gates, and vegetation which had grown over at least parts of them, were removed in 1999 and my estimation, from Mrs Murphy's 2002 photograph and the comments on it made at the inquiry, is that the resultant gap in the hedge was about 9.5 m. But merely removing trees or bushes in a hedge is not development and does not constitute engineering works to widen an access. The widening was not effective until the widened access was made useable as such. Whether that is taken to have happened when the blocking bund was removed, when the hardcore and tarmac were laid, or when the new

gates were installed is immaterial for present purposes because all those events took place less than four years before the issue of the notice. The appeal on ground (d) therefore fails.

28. With regard to the extent of the widening I have taken the appellant's figure for the original width of the gateway because there was simply no evidence from the authority of any lesser width. I can understand why they consider that the original access is unlikely to have been wider than a standard single agricultural gate, bearing in mind that it does not show up at all in the aerial photographs. However, having seen the heavily overgrown eastern access to the notice land, which is equally invisible from the air, I conclude that the photographs do not provide reliable evidence that features not visible in them were absent or insignificant. It will be necessary to vary the first requirement of the notice to take account of my conclusions about the extent of the widening.

Conclusion on Appeal A

29. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed and I shall uphold the enforcement notice with a variation.

Appeal B

Ground (b)

30. Whilst the appellant accepted that engineering operations to provide roadways and hardstanding areas have occurred, it was submitted that Notice B does not specify the breach of control with adequate precision: it should identify the roadways and hardstandings in question rather than say that operations have been carried out within the notice land as a whole. The Council agreed, in the Statement of Common Ground, that the operations which had given rise to the notice were the east-west track, the two tracks which run north-south to it from the Ashton Keynes road, and the hardstandings at either end of the east-west track. The appellant indicated that the substitution for the notice plan of a plan showing those features would satisfy his objection on ground (b).

31. I find no merit in the appeal on ground (b). There is no dispute that the matters alleged have taken place as a matter of fact. The clear meaning of the allegation, as worded in the notice, is that in the Council's view all and any operations to provide roadways and hardstanding areas carried out on the notice land are in breach of planning control. I do not accept that there is any room for doubt about what the allegation means. When the notice was issued, works were in progress and a notice based on a survey of the position on any one day could quickly have become out of date and failed to pick up all the operations against which the authority sought to take action. The method used by the Council to frame the allegation and define the site has not prejudiced the interests of the appellant, because the Act allows for appeals on the grounds that the operations are lawful or immune from enforcement and, whilst the burden of proof in such matters is on him, the Council are obliged to produce, and have produced, evidence with regard to each of the operations alleged to have taken place. The appeal on ground (b) fails.

Ground (c)

32. It was submitted that the operations affecting both the tracks and the hardstandings were permitted by Part 9 of the Second Schedule to the General Permitted Development Order.

That Part refers to the maintenance or improvement of a private way, within the boundaries of the way. It was agreed that it can apply only when there is in existence a private way to be maintained or improved.

33. I do not accept that Part 9 can apply to a hardstanding. The word 'way' connotes a means of getting from one place to another, whereas a hardstanding is a base for a building or a place where things are kept, parked or stored in the open. It is not necessary to decide for the purposes of the ground (c) appeal whether and when the hardstandings existed, because all the evidence about them indicates that, if they did exist, they were used for storage and not as 'ways'.

34. With regard to the tracks, described in the notice as 'roadways', the Council's initial position was to deny that they had existed in the early '70's as described by the appellant. However during the inquiry it was accepted that the tracks may have existed thirty years ago, but that by the time the operations referred to in the notice were carried out they had completely disappeared and 'returned to nature'. Reference was made to a decision of the Secretary of State in Henley-on-Thames ((1966) JPL 70) in which it was held that, for Part 9 to apply, the private way to be improved must be not only in existence but also 'recognisable'.

35. I do not accept the appellant's argument that the degree to which a way has become overgrown is irrelevant for the purposes of Part 9. It is easily possible that a track through a forest for example, particularly if it never had a hard surface, could become completely lost and undetectable if left unused for several decades. The wording of Part 9 is quite straightforward and to my mind the question of its applicability to given circumstances should be approached as a matter of fact and degree; I see no justification for importing the concept of abandonment from other areas of planning law, or highway law concepts such as 'once a highway, always a highway'. On that basis there is some force in the Council's argument that ways which could hardly be seen on the ground and were covered with rank vegetation more than a metre high were not ways at all. But the appellant had only to mow the vegetation down – as he in fact did – for the tracks to become visible again; I was shown parts of the tracks where hardcore had not been laid, and agree that their sandy/gravelly base is easily distinguishable from the rest of what is otherwise a boggy, ill-drained field. My conclusion is that the application of Part 9 is not precluded by the extent to which the tracks had 'returned to nature'.

36. A further point advanced by the Council was that the works had gone beyond the permission granted by Part 9 because there had been excavation, the former base of the tracks had been dug up and taken away, and hardcore laid instead. Even if that were the case – and the evidence was that in fact parts of the tracks were simply built up rather than excavated first – it would not assist the Council's case. The purpose of Part 9 is to grant a planning permission, and the works permitted by it must therefore be engineering or other operations which are more than trivial and so constitute development requiring permission. The excavation of unsound foundation material and its replacement with hardcore easily falls within that description.

37. Part 9 is however subject to the proviso that the works are carried out within the boundaries of the way. In *Eric David Cowen v the Secretary of State for the Environment and Peak District National Park Authority* QBCOF 1998/0860/4 the Court confirmed that this means

the way may not be widened. The only information before the inquiry about the width of the tracks before they became overgrown was given in oral evidence by the appellant and Mr Cooper. The appellant said that in the 1970's the tracks were used by hay trailers. The trailers were 8 ft 2 in (2.49 m) wide and had a 7 ft 6 in (2.29 m) wheelbase, and from those dimensions he estimated the width of the tracks at about 10 ft (3.05 m). Mr Cooper said that in the early '80's he had used the tracks with a lorry 9 ft (2.74 m) wide, and his evidence is therefore consistent with that given by the appellant.

38. The present tracks vary in width and I did not measure them. However the appellant's technical witnesses agreed, in giving evidence about the extent of widening now proposed under the section 78 appeal, that it is not proposed to widen the tracks beyond their present width of 5.5 m to 6 m. That part of the field-track included in the revised access detail plan (to which I refer below in the context of appeal C) is also shown to have an existing width of 6 m. My conclusion is that the works which began in 2002 have had the effect of widening the tracks which existed in the 1970's and '80's before they became overgrown; the works therefore exceeded what is permitted under Part 9. It is a well-established principle of the law relating to the enforcement of planning control that if development otherwise permitted by the General Permitted Development Order goes beyond a limitation imposed by the Order the whole of the development is unauthorised. The appeal therefore fails on ground (c).

Ground (d)

39. The appellant's evidence about the existence of the hardstandings in the 1970's and '80's is supported by the sworn testimony of Messrs Cooper and Clark, and there is written evidence from others, including Broadway Timber. Their detailed recollections of the buildings which stood on the hardstandings and what happened to them, and of the use of the hardstandings in connection with the hay dealing business and for other storage, were not contradicted or challenged. It would not be unusual to find small sheds or stores on a field such as the notice land, and from the waterlogged nature of the ground which was apparent on my inspection I would expect any such building to have needed a hardened area for a base. During my visit I saw that the hardstandings had been built up and re-surfaced recently, but around the edges among the grass and weeds there were traces of what appeared to be an earlier surface. On the balance of probability, I consider that hardstandings C and D have existed for several decades.

40. That, however, does not dispose of the matter because it is alleged – and accepted – that work was done to the hardstandings during the four years prior to the issue of the notice. If that work involved development it required permission, and no such permission is granted by Part 9 or any other provision of the General Permitted Development Order. There is little evidence of exactly what work was done to the hardstandings, but it appeared to me that they had simply been resurfaced, largely with road planings, rather than excavated and rebuilt. In my view the resurfacing of an existing hardstanding is work of a trivial nature which falls as a matter of fact and degree to be regarded as *de minimis*, and does not constitute development requiring planning permission. That being so, if any development requiring planning permission was involved in the initial formation of the hardstandings, it took place many years ago, and with respect to the hardstandings this appeal should succeed on ground (d).

Ground (f)

41. The submission under this heading was that the requirement to remove the surfacing materials totally is excessive in view of the authority's acknowledgement that sand or gravel tracks of some kind have existed on the land historically. In fact my finding that there were tracks about three metres wide, which could lawfully be improved under the provisions of Part 9, makes it pointless and excessive to include in the notice any requirement that the materials be removed over that three-metre width, because having removed the materials the appellant could then lawfully replace them. However a requirement to remove materials laid to provide any roadway more than three metres wide would do no more than remedy the breach of control. I propose to vary the requirements accordingly and in so doing will amend the wording to make clear that they do not apply to the hardstandings which I have found to be immune from enforcement.

Conclusion on Appeal B

42. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Appeal C

Nature of the Proposed Development

43. When they considered the application, submitted as "alterations to existing access and track", the authority did not accept that the access at point A and the track linking it to the industrial site were lawful. They therefore dealt with it on the basis that the proposal was for the "formation of an entrance and access track". In view of my decisions on the section 174 appeals, appeal C falls to be determined in the terms of the application as originally submitted.

44. The location of the access point is wrongly shown on Plan A submitted with the application. A corrected plan (Plan E, bearing the drawing number LPC.855.04.01A) was submitted with the appeal and accepted by all parties as the basis on which the appeal should be determined. At the inquiry an additional plan was put in, modifying the proposed access detail submitted with the application (Plan C), and comparing the present proposal with the existing access and an earlier proposal dismissed on appeal in March 2004. The additional plan is Plan F, bearing the drawing number DGT/9, and Plans G and H are versions of the same plan with figured dimensions added. It was agreed that the appeal be determined on the basis of the revised proposed access detail.

45. The application includes no details of the proposed width, construction or surface of the track. The red lines which define the site of the track are 7 metres apart on Plan E, and the small section of track within the field which is shown on the access detail plans is 6 metres wide. The appellant confirmed that a track six metres wide is proposed.

Main Issue

46. The intention of the proposal is to provide an alternative access to the industrial site, where the present access is agreed to be substandard. I consider that the issue in the appeal is

whether the benefits of the altered access and track in highway safety terms would be sufficient to outweigh any harm to the character or appearance of the countryside.

Planning Policy

47. The relevant parts of the development plan are the Wiltshire Structure Plan 2011 and the North Wiltshire Local Plan, both adopted in 2001. The Structure Plan says that the principle that development should take place in settlements, rather than the open countryside, remains fundamental to government planning policy, and policy DP15 of the Plan is that development in the open countryside should be strictly controlled. In the Local Plan, policy RC9 says that development appropriate in the countryside will be permitted subject to a number of criteria being met. Examples of inappropriate development (not including access roads) are given but appropriate development is not defined, although the supporting text explains that the policy is intended to ensure that the rural landscape and the countryside in general are conserved and that only development in sympathy with the rural character of an area is permitted. The criteria which may be relevant to the appeal proposal are that the amenities, rural character and environment of the countryside are not to be demonstrably harmed, the impact on the open landscape is to be minimised, materials and landscape treatment are to be appropriate, and the effect on any highways is to be acceptable.

48. Planning Policy Statement 7 refers to the importance of economic diversification in rural areas but calls for good quality development that, where possible, enhances the intrinsic qualities of the countryside; the development of 'greenfield' land is discouraged and, where such land must be used, it should not be used wastefully. The quality and character of the wider countryside is to be protected.

Reasons

Highway Safety

49. The industrial site is occupied by five companies including two haulage firms. About sixty people are employed. There are about twenty arrivals and twenty departures of HGVs per day in addition to movements by smaller goods vehicles and cars. A significant proportion of the heavy vehicles are car transporters with trailers. Although the bellmouth is about 20 m wide where it meets the carriageway it leads to an access road only 3.6 m wide, so that two opposing large vehicles cannot use the junction at the same time. This means that an HGV intending to enter the site may have to wait in the road, and sometimes an HGV meeting an oncoming vehicle may even have to reverse out. It was common ground that this is an unsatisfactory and potentially hazardous situation.

50. In March 2004 a proposal for an access to the industrial site on the same alignment as the present proposal but with a differently designed exit to the Ashton Keynes road was dismissed on appeal. One of the Inspector's concerns was that he had no evidence as to why the existing entrance to the industrial site could not be improved instead. Before making the present application, the appellant's advisers therefore considered this possibility, in conjunction with the highway authority, and found that the necessary widening could be achieved only by felling a double row of mature Leyland cypresses which they considered to be important in landscape terms. My inspection confirmed that

the access road could be widened only at the cost of these trees, which do help to screen the industrial buildings and the cars parked around them from view. However the roadside vegetation would be unaffected, and the trees to be felled are some way into the site. Whilst their loss would be a material consideration to set in the balance, I do not accept the appellant's conclusion that because these trees would be lost the improvement of the existing entrance is not a feasible option. It is however true that the owners of the industrial site have put forward no proposals to improve the entrance and there is no indication of any kind that they are likely to do so in the foreseeable future.

51. The access now proposed is not intended as a substitute for the existing entrance to the industrial site: it could not be, because the appellant is not in a position to arrange for the closure of the existing access as it and the industrial site are not within his ownership or control. Instead the proposed access is intended as an alternative, for use by incoming drivers when the existing entrance is occupied by an outgoing HGV. There was no dispute that the geometrical design of the proposed junction with the highway, and its position on a straight stretch of road with good visibility, would make for a good and safe access. However the only evidence that the owners or occupiers of the industrial site would be likely or willing to use it is in the form of three short letters written in very general terms, making no particular reference to incoming vehicles using it in the specific circumstances mentioned by the appellant. The Council submitted that, in the absence of an agreement between the appellant and the firms generating the vehicle movements, and bearing in mind that he would no doubt wish to make some kind of charge for others to use his land, there would no effective way to ensure that the new access was used when needed, or at all.

52. I conclude that if the proposed access were used in the way put forward by the appellant there would be a public benefit in terms of highway safety. However the extent of the highway benefit is difficult to quantify. I accept that movements might be concentrated at certain times, but the figure of twenty HGVs in and twenty out during a working day does not suggest that, in the absence of the additional access, meetings between incoming and outgoing vehicles at the existing entrance to the industrial site are likely to occur frequently; I have no information about how often such conflicts do occur in fact, and no data about traffic flows or accident rates on the Ashtead Keynes road were put in. Nor is there any certainty that any potential benefit would be delivered, because there can be no guarantee that firms on the industrial site would choose to use the new access.

Character and Appearance of the Countryside

53. To reach the highway from the industrial site, the improved access track would cross the notice land. I am not required or authorised to determine the lawful use of that land for the purpose of these appeals, and the matter was not investigated at the inquiry. The use of the land is nevertheless relevant to any consideration of the effect of the proposed development on the character of the countryside. Paragraph 4 of Notice B states that its only authorised use is agricultural. That assertion was not challenged in any evidence given for the appellant or in opening submissions made on his behalf. Under cross-examination his planning witness accepted that the grant of permission on the present proposal would result in the change of use of the strip of land used for the access, but only of that strip, to industrial use. In answer to me he gave the opinion that the present lawful use of the notice land is for agriculture. It was later submitted on the appellant's behalf that I should not rely

on that answer to what had been an unexpected question and that the answer was wrong. However in the absence of any planning permission or certificate of lawful use in respect of the notice land, or any other evidence to the contrary, I will assume for the purposes of this appeal that the Council's statement about its authorised use in Notice B is accurate.

54. The application of policy RC9 to the proposal is not straightforward because the policy says that development appropriate in the countryside will be permitted, without defining what 'appropriate development' means. The supporting text notes the need to protect the countryside for its own sake, and the words "in sympathy with the rural character of an area" appear in parentheses after "appropriate development", which may be a clue to the meaning of the policy. However I can find no clear-cut support for the authority's view that the proposal is in principle not appropriate in the countryside.

55. If the proposal is not inappropriate in principle, the criteria of policy RC9 must be examined. At the point where the improved track would meet the Ashton Keynes road there would be no loss of hedgerow, but at the hedgerow line the proposed access would be nearly 4.5 m wider than its present authorised width, which I have found to be 7.4 m. Forward of that, a small part of the verge would be tarmacked to create a radius for vehicles turning in from the east. These changes would clearly be noticeable, but any harm would be offset by the proposed planting of new hedges extending for over 15 metres into the site on either side of the access track, which would help to screen the notice land and the industrial site from view. On balance I do not consider that the proposed changes at the access point from the highway would in themselves do significant harm in visual terms, or conflict with any of the other relevant criteria of policy RC9.

56. The other component of the development is the alteration of the track. At present the track has a lawful width of just over three metres. The proposal would almost double its width, require a foundation and surface capable of accommodating articulated car transporters and other heavy goods vehicles in all weathers, and result in a change of use of the land constituting the track to industrial use. About 0.45 hectares of land with no lawful use other than for agriculture would be enclosed between the track and the road to the north. It is true that in visual terms alone the changes would not be particularly prominent because the roadside hedge provides a screen, albeit only a partial one in winter. But the rural character of the countryside is affected by the uses to which land is put and the activities which take place, and does not depend solely on what can easily be seen.

57. I appreciate that any proposal to change the use of all or part of the notice land would require planning permission, and that the grant of permission on the present proposal would not pre-determine the matter. Nevertheless the presence of the access route for heavy vehicles would have an urbanising effect, and make it difficult to put the isolated 0.45 hectare parcel to any practical agricultural use; in my view the likelihood in the real world is that this land would in practice become an adjunct of the industrial site. The Council also referred to the proposal resulting in a wasteful and inefficient use of land, which would be contrary to an important principle of PPS7; bearing in mind the probable negative effect of the track on the likelihood of viable agricultural use of any part of the notice land, I would endorse that view. I conclude that, taken as a whole, the proposal would not be in sympathy with the rural character of the area, and would be contrary to the development plan because

it would be harmful to the character and environment of the countryside, as well as conflicting with the principle that land should be used in an efficient manner.

Conclusions on Appeal C

58. I accept that the appeal proposal has potential benefits in terms of highway safety, but in my view the undefined scale of those benefits and the uncertainty about their realisation mean that they are not sufficient to outweigh the harm to the countryside. I therefore conclude, for the reasons given above and having regard to all other matters raised, that the appeal should be dismissed.

FORMAL DECISIONS

Appeal A: APP/J3910/C/04/1153508

59. I direct that the enforcement notice be varied by deleting paragraph 5.a) and inserting in its place:

> "a) Narrow the vehicular access to the public highway to a width of 7.4 metres by the removal of the following where they are in excess of that width: all tarmacadam and other hardsurfacing materials such as hardcore, gravel and other foundation materials to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre."

60. Subject to that variation I dismiss the appeal and uphold the enforcement notice as varied.

Appeal B: APP/J3910/C/04/1160093

61. I direct that the enforcement notice be corrected by re-lettering sub-paragraphs c) to f) of paragraph 5 as sub-paragraphs b) to e), and varied by deleting paragraph 5.a) and inserting in its place:

> "a) Where any part of any roadway exceeds 3.1 metres in width, reduce the width of the roadway to a width of no more than 3.1 metres by removing from the land the hardsurfacing, gravel, hardcore and other such materials which are comprised in the part of the roadway in excess of that width; the said hardsurfacing, gravel, hardcore and other such materials shall be removed to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre."

62. Subject to this correction and this variation I dismiss the appeal and uphold the enforcement notice as corrected and varied.

Appeal C: APP/J3910/A/04/1153305

63. I dismiss the appeal.

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Sebastian Head	of Counsel, instructed by the Appellant.
He called	
Mr David Tighe CEng BSc MICE DipTEng	a Director of Pinnacle Transportation Limited, of Bristol.
Mr Alan Olding	the Appellant.
Mr Robert Cooper	of Robert Cooper, Groundworkers & Exporters, of Cricklade.
Mr Norman Clark	a former supplier of alfalfa to the appellant, of Wootton Bassett.
Mr Derek Simmons FRICS	Chairman of Simmons Aerofilms Limited, Chartered Land Surveyors, of Cheddar.
Mr Andrew Miles DipTP MRTPI	a Director of LPC (Trull) Ltd, Town and Country Planning Development Consultants, of Tetbury.

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Fletcher	of Counsel, instructed by Peter Jeremiah, Solicitor, Team Leader Legal Services for North Wiltshire District Council.
He called	
Mrs Anne Murphy	an Investigations Officer, Planning Services, with North Wiltshire District Council.
Mr Simon Smith BA MTP MRTPI	a Planning Officer with North Wiltshire District Council.
Mr David Pearce BSc FRICS	Principal of Land Development & Planning Consultants Limited, of Chippenham.

DOCUMENTS

Document	1	Lists of persons present at the inquiry.
Document	2	Notice of inquiry and notification list.
Document	3	Two letters in support of the Council.
Document	4	Statement of Common Ground, as amended during the inquiry.
Document	5	Appendices A to D to Mr Tighe's evidence.
Document	6	Three letters from occupiers of industrial units at Chelworth Lodge, put in by Mr Tighe.
Document	7	Items 1 to 5 attached to Mr Olding's evidence.
Document	8	Statements made by individuals with knowledge of his landholding, put in by Mr Olding.

Document	9	Planning application for the erection of loose boxes and a barn, made by Mr Olding in 1973, and letter from the County Planning Officer in connection with it.
Document	10	Officers' report to Committee, 17/11/99, concerning the use of land at Chelworth Lodge for the parking and storage of vehicles, put in by Mr Olding.
Document	11	Officer's note of a site visit on 17/6/99, put in by Mr Olding.
Document	12	Appendices 1 to 8 to Mr Miles' evidence.
Document	13	Conditions suggested by the appellant.
Document	14	Statement prepared by the Council in connection with an enforcement appeal hearing in 2000, put in by the appellant.
Document	15	Extracts from the relevant enforcement complaint sheet and file progress sheet, put in by Mrs Murphy.
Document	16	Site inspection notes put in by Mr Smith.
Document	17	Delegated and Committee reports on the appeal application and two similar earlier applications, put in by Mr Smith.
Document	18	Appendices I to XVI to Mr Pearce's evidence.
Document	19	Copies of Land Registry entries for Chelworth Lodge, put in by the Council.
Document	20	Additional suggested conditions agreed between the parties.
Document	21	Extracts from *Planning Law, Practice and Precedent* – Tromans & Turrell-Clarke.
Document	22	Report of a lawful development certificate appeal at Henley-on-Thames, (1996) JPL 70.
Document	23	*Eric David Cowen v the Secretary of State for the Environment and Peak District National Park Authority* QBCOF 1998/0860/4: transcript.

PLANS

Plans	A to C	The application plans.
Plan	D	Composite sketch of existing and proposed access details, submitted with the application.
Plan	E	Corrected version of Plan A submitted with the S 78 appeal.
Plans	F to H	Figures DGT/9, /9A and /9AA, submitted during the inquiry, showing revised proposed access details with figured dimensions.
Plans	I to O	Figures DGT/1 to /5, /7 and /8, put in by Mr Tighe.
Plan	P	Figure DGT/9B, put in by Mr Tighe, showing the effect of the proposal if the existing access were found to be unauthorised in its present form.
Plans	Q & R	Plans for the industrial units at Chelworth Lodge, approved in January 1991.
Plans	S to V	Plans 1 to 4 put in by Mr Miles.

PHOTOGRAPHS

Photos	1 & 2	The existing access to the industrial units, put in by Mr Tighe.

Photo	3	Photocopy of the aerial photograph at Document 18/XIII, annotated by Mr Olding.
Photos	4 to 8	Five views of his land in June 1999, put in by Mr Olding.
Photo	9	Aerial photograph of the notice land in 1999, put in by Mr Simmons.
Photos	10 to 26	Album of photographs put in by Mr Pearce.
Photos	27 & 28	The subject access in March 2004, put in by Mr Pearce.
Photo	29	The notice land in March 2004, put in by Mr Pearce.
Photo	30	Original print of the aerial photograph at Document 18/XIII.
Photo	31	Original print of the aerial photograph at Document 18/XV.

Costs Decisions

Inquiry opened on 27 January 2005
Site visit made on 18 March 2005

by Peter Norman MA MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
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Date
13 APR 2005

Costs application in relation to Appeal Reference: APP/J3910/C/04/1153508
Land adjacent to Chelworth Lodge, Cricklade, Wiltshire SN6 6HP

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr A Olding for a partial award of costs against North Wiltshire District Council.

Costs application in relation to Appeal Reference: APP/J3910/C/04/1160093
Land at Ordnance Survey parcel no. 5388, adjoining Chelworth Lodge, Cricklade, Wiltshire SN6 6HP

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr A Olding for a partial award of costs against North Wiltshire District Council.

Costs application in relation to Appeal Reference: APP/J3910/A/04/1153305
Chelworth Lodge, Cricklade SN6 6HP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr A Olding for a partial award of costs against North Wiltshire District Council.

- The inquiry sat for three days on 27 and 28 January and 17 March 2005 and was in connection with (i) an appeal against an enforcement notice (Notice A) alleging unauthorised engineering operations comprising alterations to and the widening of a vehicular access; (ii) an appeal against an enforcement notice (Notice B) alleging unauthorised engineering operations comprising the excavation of soil and the tipping of hardsurfacing materials to provide roadways and hardstanding areas; and (iii) an appeal against the refusal of planning permission for alterations to an existing access and track to form improved access to an industrial area.

Summary of Decisions: The applications fail and no awards of costs are made.

Procedural Matters

1. The applications were described as being for a partial award of costs in respect of each appeal, amounting to a full award of the appellant's costs of the inquiry. I have treated them as three separate applications, but as the relevant facts and submissions relied on are common or closely interrelated I will deal with them together.

The Submissions for Mr A Olding

Notice A

2. Paragraph 23 of annex 3 to Circular 8/93 referred to a local planning authority having 'reasonable grounds' for concluding that there had been a breach of control. In the case of the allegation of widening in Notice A the authority had not had reasonable grounds, and the allegation had been irrational for the following reasons.

3. A Council officer, Mrs Murphy, had visited the site in April 2002 and photographed the hardcore bund. From her photograph it was possible to determine that the bund was about two metres high and ten metres wide, and Mrs Murphy had accepted that its height must have been between 1.5 and two metres. She had not measured the width of the gap in the hedge in front of which the bund stood, and had accepted that her estimate that the gap was five metres wide had been made without any training in estimating distances or measurements. Following that visit the matter had been investigated: aerial photographs taken in 1991 had been checked and no gap in the hedge could be seen at the relevant point. The authority had then written to the appellant in June 2002, advising that if the gap (that is, the gap which had been seen and photographed in April) was to be secured with a gate, an access requiring planning permission had been formed.

4. In response the appellant had sought to prove to the authority that a gap of the size seen and photographed by Mrs Murphy had always existed, but had been camouflaged in the aerial photo by growth. Her e-mail to the appellant dated March 2003 was evidence that he had succeeded in proving his point; in it she confirmed that the case had been closed, and that unless there had been some change of circumstance she would not be re-opening the file or entering into further correspondence about it. It was clear therefore that Mrs Murphy's investigations had led her to conclude that, despite what was shown by the aerial photographs, the existence of an access of the width she had seen in April 2002 had been lawful; had it been otherwise, she would have taken further action in the absence of an application for planning permission.

5. Thus the Council had had no basis for making the assertion that the access had been widened. Mr Smith could not have observed any widening, because he had not seen the access until October 2002, when it had been in the state shown in Mrs Murphy's photograph. By virtue of Mrs Murphy's e-mail of March 2003 the Council had explicitly accepted that, despite what the aerial photos appeared to show, an access greater than ten metres in width had been in existence and that no further action would be taken on it. There was no evidence of any widening after March 2003.

6. In taking action alleging the widening of the access the Council had acted inconsistently with the advice in *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*. Having investigated the matter, concluded that the access was lawful and stated that no further action would be taken, they had behaved irrationally in taking action against precisely the same access; they had failed properly to investigate the breach, and they had failed properly to assess the seriousness of the breach, which could not be assessed without establishing the base line prior to the occurrence of any breach, upon which they had had no evidence. There was no evidence before the inquiry that the gap had ever been widened.

7. As to the other works alleged in Notice A, the argument advanced by the Council had been contradictory. They had submitted that Part 9 of the Second Schedule to the Town and Country Planning (General Permitted Development) Order 1995 applied only to a part of the access 4.9 metres in width, because the access had otherwise returned to nature. In fact the notion that there had ever been an access 4.9 metres wide was entirely speculative, and there had been no basis for distinguishing between different parts of the access for the purposes of Part 9.

8. As it did not require the hedge to be reinstated, compliance with Notice A would produce an absurd result. It had been unreasonable to take enforcement action which would lead to such a result.

Notice B

9. Notice B alleged the carrying out of operations to provide roadways. During the inquiry it had been conceded on behalf of the Council that tracks had previously existed on the land. That concession amounted to an admission that the authority had been wrong to deduce from aerial photographs that the tracks did not exist. Circular 10/97 advised that in an appeal on grounds (c) or (d) an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. Here the authority had had no evidence against the existence of the tracks other than the aerial photographs, and had subsequently accepted that, despite what they showed, some tracks had existed. If the matter had been properly investigated, the authority would have accepted prior to the inquiry what they had come to accept during the course of it. The history had been set out fully and clearly in a letter from the appellant to the Council dated 9 April 2004, which gave the names and details of a number of witnesses who were willing to provide further information. However, contrary to the *Good Practice Guide*, the authority had not investigated further. Subsequently, in response to enforcement action, the appellant had repeatedly asked in vain for the Council to specify what further evidence they required. Had the Council conducted a proper investigation they would have reached the conclusion about the tracks which they had eventually reached during the course of the inquiry, and the action against the tracks would not have been taken.

10. Despite the novel approach taken by the Council at the inquiry that the tracks had returned to nature by the time works were done, the notice had clearly been issued on the basis that there never had been any tracks. The 'return to nature' point had been invented for the purposes of the inquiry. In any event it was irrelevant to the operation of Part 9 because, whether or not they had disappeared from view, the tracks had still been there and the concept of abandonment did not apply to operational development.

Section 78 Appeal

11. Paragraph 7 of annex 3 to Circular 8/93 said that a planning authority should not prevent development which could reasonably be permitted in the light of the development plan and of any other material considerations. The Council's error of judgement in striking the planning balance in this case had been so wrong that it had amounted to unreasonable conduct. Circular 5/2000 emphasised the importance of discussions between the parties at all stages. In this case the application had followed a previous appeal decision in which the Inspector had said that certain investigations should be carried out into the possibility of

improving the existing entrance to the industrial site. That matter had been investigated on behalf of the appellant, in co-operation with the highway authority. The planning authority had then responded unreasonably by refusing planning permission.

The Response by North Wiltshire District Council

Notice A

12. The supposed existence of an access ten metres wide was inconsistent with all the photographic evidence. Enforcement action against the widening of the access had therefore been justified and whether or not officers had made incidental errors of measurement did not affect that. The notice had not been issued on the basis of a perception that there had been widening, but on the basis of all the available evidence especially the aerial photographs, which indicated that the ten-metre gap had been created within the period of four years preceding the date of the notice. Even if officers had, as alleged, reached an erroneous conclusion that the access had been widened after Mrs Murphy's April 2002 photograph was taken, any such error did not matter if the issue of the notice had in fact been justified on the evidence.

13. The complaint of inconsistency regarding Part 9 of the Second Schedule to the General Permitted Development Order was based on a misunderstanding of the Council's case. The point was that, for Part 9 to apply, there had to be a way in existence at the relevant time. When works had been done to the tracks referred to in Notice B they had already grown back into the landscape and were no longer there, so that Part 9 could not apply. In the case of the access referred to in Notice A, the existence of an agricultural access had been accepted, and Part 9 therefore did apply, but only to the width of that agricultural access and not to any widening.

14. The failure of the notice to require reinstatement of the hedge was a defect which the Inspector had been asked to correct. But even if it could not be corrected such a defect did not make the notice as a whole unreasonable.

Notice B

15. Although it was accepted that tracks had existed on the notice land at some time in the past, it was common ground that by the time works were done to them they had become overgrown. The issue of fact and law had therefore been whether they were still in existence at that time. Further investigation into the history of the tracks in the 1970's and '80's would not have helped to resolve that issue. It had not been a question of the Council refusing to accept the appellant's evidence about the early history, but that the evidence on that did not bear on the key issue with regard to Part 9 of the Order.

Section 78 Appeal

16. The point taken about a supposed 'error of judgement' had validity only on the assumption that what existed on the site at the dates of the notices was lawful. The authority had been entitled, on the evidence, to take the view that it was not lawful. There had been no irrationality in the Council's decision not to accept the appellant's conclusion that improvement of the existing entrance to the industrial site was not practical. In any event

they had been entitled to come to their own view on the relative weight to be given to harm to the countryside and highways matters.

Conclusions

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

Notice A

18. It is apparent from the letters and e-mails which passed between the appellant and the authority that the Council's position with regard to the existence and lawfulness of the access the subject of Notice A was not entirely consistent, and the appellant's confusion and annoyance are understandable. But the approach taken in the application for costs that the two aspects of the operations referred to in Notice A should be treated as separate is in my view not supported by the facts. I have found that there was a single act of unauthorised development which involved both widening and altering the access, and that there is clear evidence that the development was not completed four years before the notice was issued (ie by 2000). The issue of the notice was therefore justified on the facts, and any false assumptions or erroneous estimates made by officers in 2002 and 2003 about the width of the gap in the hedge do not affect the reasonableness of the decision to take enforcement action.

19. Although there appears to have been no objective basis for the assumption made in Notice A that the original access was 4.9 metres wide, I do not consider that it was an unreasonable assumption bearing in mind that no access at all is to be seen in that position on recent aerial photographs, and that at the time the notice was issued the Council had received no evidence about the historic measurements of the opening.

20. I do not accept that because the notice does not require the hedge to be reinstated the enforcement action as a whole was unreasonable. Compliance with the notice is not bound to produce an absurd result because the appellant is free to fence, or not to fence, his land as he wishes; with or without reinstatement of the hedge the effect of the notice would be to restrict the size of the access usable by vehicles to its lawful width.

Notice B

21. Although at the inquiry the Council's emphasis was on whether the tracks on the notice land were still in existence when works were done to them, I accept the appellant's submission that when the notice was issued it was probably on the basis that they had never existed. The reality was that complaints had been received that roadways were being formed where none currently appeared to exist, and excavation work and the laying of hardcore were to be seen taking place on the land. A detailed analysis of the history of the land, and of law and precedent regarding permitted development rights under Part 9 of the General Permitted Development Order, might have led the Council to conclude that no permission was needed. However the Act does not require an authority to satisfy themselves of the actual existence of a breach of control before issuing a notice: it is enough if it appears to them, on the basis of course of some evidence, that there has been a breach. In my view the uncertainties

surrounding the nature and extent of works permissible under Part 9 and the existence or former existence and widths of the tracks were such that it was not unreasonable for the authority to conclude that a breach of control had occurred in this case.

Section 78 Appeal

22. Planning judgements are usually the result of balancing those factors which favour one decision against those which favour another. The Courts have repeatedly held that the weight to be accorded to competing factors is a matter for the decision maker, provided that all relevant matters, and no irrelevant ones, are taken into account. To establish that an error of planning judgement was so wrong that it amounted to unreasonable conduct would therefore be a difficult task. There is no evidence that in considering the appeal application the authority ignored relevant matters or took into account immaterial considerations.

Summary Conclusion

23. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated in relation to any of these appeals and I therefore conclude that no awards of costs are justified.

FORMAL DECISIONS

APP/J3910/C/04/1153508

24. I refuse the application for an award of costs.

APP/J3910/C/04/1160093

25. I refuse the application for an award of costs.

APP/J3910/A/04/1153305

26. I refuse the application for an award of costs.

INSPECTOR

03/00135/EMIN

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 adjacent to Chelworth Lodge, Cricklade, Wiltshire SN6 6HP shown hatched on the attached plan.

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the carrying out of engineering operations comprising alterations to and the widening of a vehicular access.

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) The land lies in an attractive rural area where it is the policy of the Local Planning Authority, in the interests of rural amenity, only to allow development which is essential to the needs of agriculture or appropriate to a rural area. The development is not of this nature and is visually intrusive and detrimental to the rural amenity of the area contrary to Policy RC9 of the North Wiltshire Local Plan.

c) Should the Local Planning Authority take no action seeking the narrowing of the vehicular access it would become immune from such action and lawful. The continued existence of the currently unauthorised

development would be detrimental to the rural character of the area and would also be likely to lead to its use in a way which would further erode the character and amenity of this rural area.

5. WHAT YOU ARE REQUIRED TO DO

a) Narrow the vehicular access to the public highway to a width of one of the existing gates (i.e. to 4.9 metres which is half the width of the existing access) by the removal of all tarmacadam and the other hardsurfacing materials such as hardcore, gravel and other foundation materials to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre over half of the current width of the access.

b) Reinstate the roadside ditch by the removal of the surplus width of pipe beyond the width of the narrowed vehicular access required of paragraph 5a) of this notice.

c) Remove all debris resulting from the requirements of paragraphs 5a) and 5b) of this notice from the land.

d) Restore the land disturbed by compliance with requirements 5a) and 5b) of this notice level with the natural contours consistent with the levels of the immediately adjoining land.

e) Finish the surface of the areas of the land disturbed by complying with the requirements of paragraphs 5a), 5b) and 5d) of this notice with topsoil to a depth of at least 25mm.

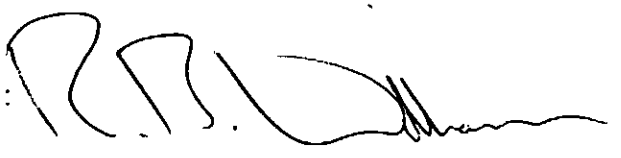
6. TIME FOR COMPLIANCE

Three months from the time this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 21 June 2004 unless an appeal is made against it beforehand.

Dated : 10 May 2004

Signed : 

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.

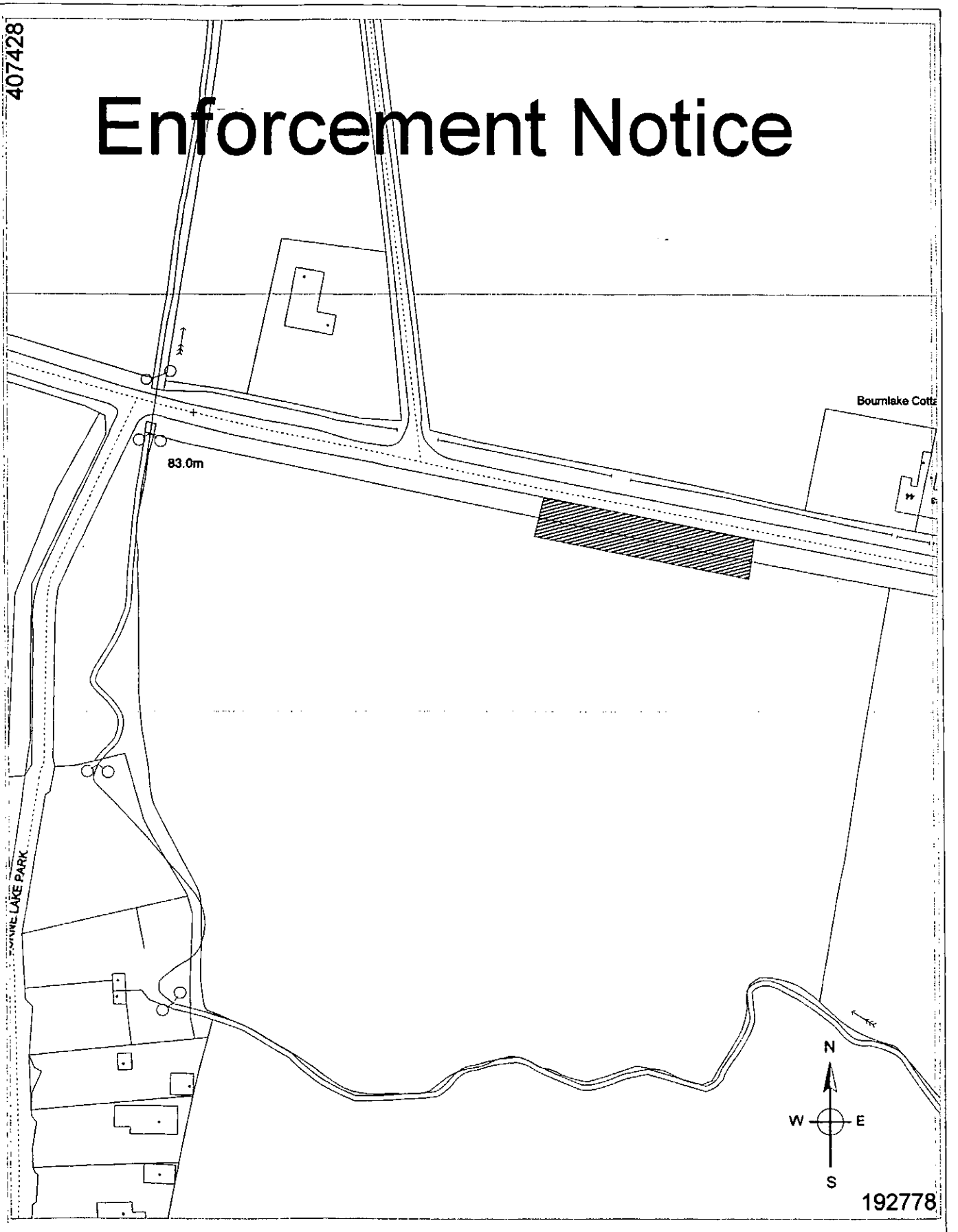
(b) The second copy of the appeal form should be sent to the Council.

(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.

Enforcement Notice



North Wiltshire District Council

Land at Chelworth Lodge, Chelworth, Cricklade, Swindon, Wilts

SCALE: 1:1250

Grid Ref: SU0756 9287 03/00135/EMIN

Planning Services 10.5.04

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NORTH WILTSHIRE DISTRICT COUNCIL- 100017933 2004

Our Ref: 03/00135/EMIN

Strategic Manager: Alun Davies

Your Ref:

Enquiries to: Robin Williams

Date: 28 July, 2004

Regist.

Planning Services
Monkton Park
Chippenham
Wiltshire
SN15 1ER

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

www.northwilts.gov.uk

Mr A Olding
Pencaerau Mawr
Blaenycoed
Carmarthen
SA33 6HA

Dear Sir

ENFORCEMENT NOTICE AT LAND ADJACENT TO CHELWORTH LODGE, CRICKLADE, WILTSHIRE, SN6 6HP

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

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

Yours faithfully

Charles Pescod
Implementation Team Leader
Development Control and Listed Buildings

Our Ref: 03/00135/EMIN

Strategic Manager: Alun Davies

Your Ref:

Enquiries to:

Date: 28th July 2004

Planning Services
Monkton Park
Chippenham
Wiltshire
SN15 1ER

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

www.northwilts.gov.uk

Mr A Olding
Pencaerau Mawr
Blaenycoed
Carmarthen
SA33 6HA

Dear Sir

ENFORCEMENT NOTICE AT LAND ADJACENT TO CHELWORTH LODGE, CRICKLADE, WILTSHIRE, SN6 6HP

Should you wish to appeal against the enforcement notice on ground (a) as provided by Section 174 (2) (a) of the Town and Country Planning Act 1990 (as amended) the following fees will be required:-

£2420 for both the Planning Inspectorate and the Local Planning Authority

The cheque for the Planning Inspectorate should be made payable to the First Secretary of State and for the Local Planning Authority the cheque for the Council made out to North Wiltshire District Council.

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

Charles Pescod
Implementation Team Leader
Development Control and Listed Buildings

03/00135/EMIN (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 Ordnance Survey parcel no. 5388, adjoining Chelworth Lodge, Cricklade, Wiltshire SN6 6HP shown hatched on the attached plan.

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the carrying out of engineering operations comprising the excavation of soil, the tipping of hardsurfacing materials to provide roadways and hardstanding areas.

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) The only authorised use of the land is agricultural and it lies in an attractive rural area where it is the policy of the Local Planning Authority, in the interests of rural amenity, to protect the countryside from inappropriate development. The development does not appear to be essential to the needs of agriculture and is visually intrusive and detrimental to the rural amenity of the area contrary to Policy RC9 of the North Wiltshire Local Plan.

c) Should the Local Planning Authority take no action seeking the removal of the unauthorised development it would become immune from such action and lawful. The continued existence of the currently unauthorised development would be detrimental to the rural character of the area and would also be likely to lead to the use of the land in a manner which would further erode the character and amenity of this rural area.

5. WHAT YOU ARE REQUIRED TO DO

a) Remove the hardsurfacing, gravel, hardcore and other such materials from the land to a depth of at least one metre or to the total depth of the hardsurfacing materials if less than one metre.

c) Remove all debris resulting from the requirements of paragraph 5a) of this notice from the land.

d) Restore the land disturbed by compliance with requirement 5a) of this notice level with the natural contours of the adjoining land by the importation, if necessary, of soil to replace the hardsurfacing materials removed as a requirement to comply with paragraph 5a) of this notice.

e) Finish the surface of the areas of the land disturbed by complying with the requirements of paragraphs 5a) and 5b) of this notice with topsoil to a depth of at least 25mm.

f) Seed the disturbed areas resulting from compliance with the requirements of this notice with grass.

6. TIME FOR COMPLIANCE

Three months from the time this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 8th September 2004 unless an appeal is made against it beforehand.

Dated : 28th July 2004

Signed :

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.

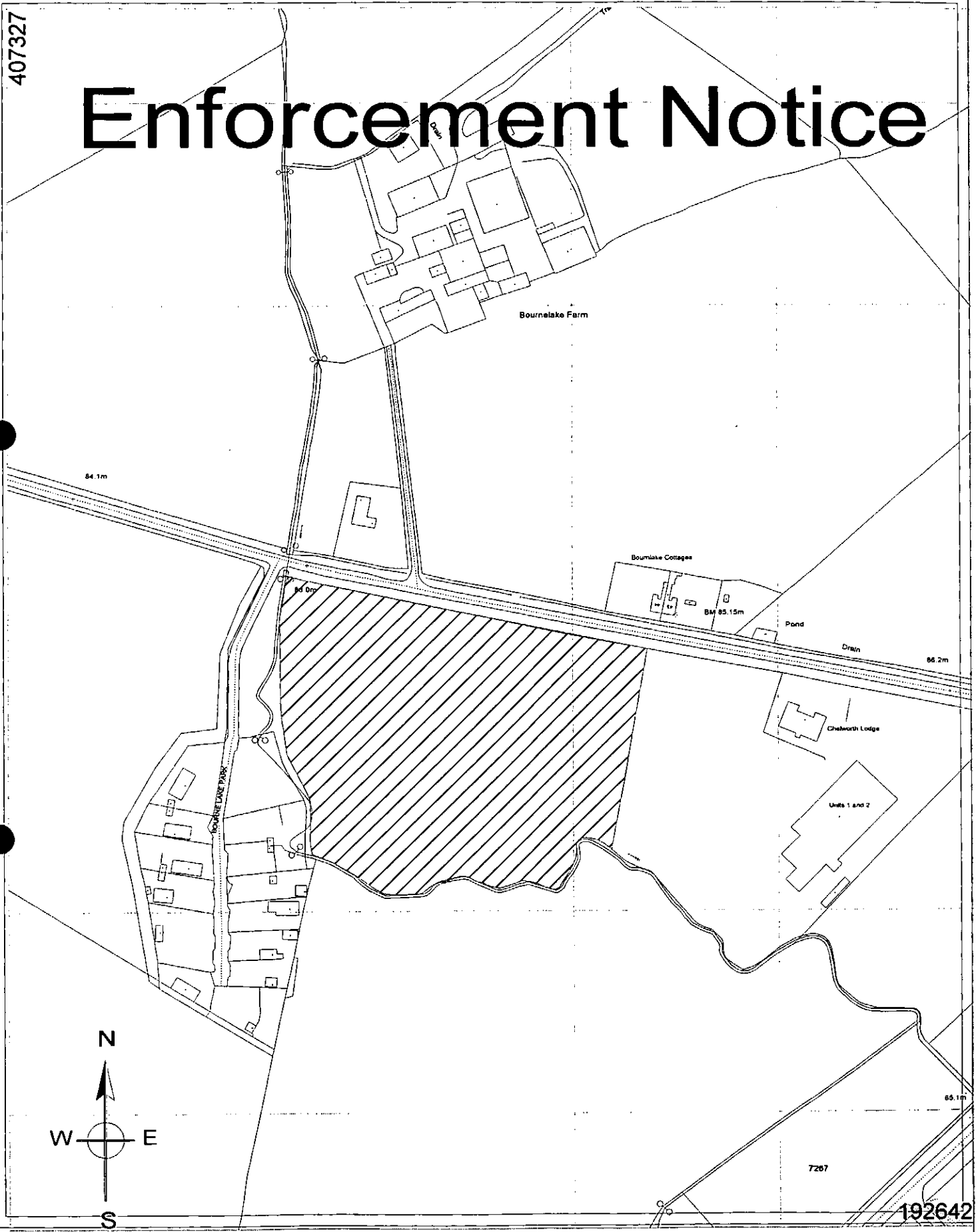
(c) The third copy is for your own records.

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.

407327

Enforcement Notice



192642

North Wiltshire District Council

Land adj to Chelworth Lodge, Cricklade, Swindon, Wilts
SCALE: 1:1250

ST8695 7790 03/00135/EMIN

Planning Services 23.7.04

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