



Appeal Decisions

Inquiry held on 22 March 2005

Site visit made on 22 March 2005

by **Jim Griffiths MA MSc RIBA MRTPI DMS**

an Inspector appointed by the First Secretary of State



35 03/462 B

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Date

05 APR 2005

Appeal A Ref: APP/J3910/C/04/1158474

Whites Farm, Grittenham, Chippenham, Wiltshire SN15 4JW

- 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 S Nicholls against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD 2684.
- The notice was issued on 8 July 2004.
- The breach of planning control as alleged in the notice is the change of use of the land from agriculture to a mixed use for agriculture and in connection with the operation of a road haulage business, the parking of vehicles not associated with the lawful agricultural use, and the storage of vehicles, trailers, machinery, plant and equipment, waste items, scrap, materials, skips, chattels and other items.
- The requirements of the notice are (a) Permanently cease using the land for the unauthorised uses referred to in Part 3 of the Notice in order to restore the use of the land to the lawful agricultural use. (b) Remove from the land all vehicles, trailers, machinery, plant and equipment, waste items, scrap, materials, skips, chattels and other items associated with the unauthorised uses referred to in part 3 of the this Notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Appeal B Ref: APP/J3910/C/04/1158042

Whites Farm, Grittenham, Chippenham, Wiltshire SN15 4JW

- 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 S Nicholls against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD 2683.
- The notice was issued on 8 July 2004.
- The breach of planning control as alleged in the notice is the carrying out of engineering operations comprising the provision of hardsurfaced areas, mounds and bunds.
- The requirements of the notice are (a) Remove all hardsurfaced areas, gravel, hardcore and other such materials to a depth of one metre or to the total depth of the materials if less than one metre. (b) Remove all bunds, mounds and raised areas from above natural ground level. (c) Remove all materials and debris, resulting from requirement (a) and (b) above from the site. (d) Restore the land level with the natural contours of the adjoining land by the importation, if necessary, of soil to

replace the hardsurfacing materials that have been removed as a requirement to comply with (a) and (b) above. (e) Finish the area of land disturbed by the need to comply with (a) and (b) above with topsoil to a depth of at least 100mm and sow grass seed sufficient to restore the land suitable for the grazing of animals.

- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (d) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Procedural Matters

1. A Certificate of Lawful Use or Development (an LDC) was issued by the Council on 24 February 2003. It certifies the lawful use of land and buildings at Whites Farm for the operation of a road haulage business, the parking of road haulage vehicles and the assembly, servicing and repair of road haulage vehicles pending export for sale. The certificate specifies two areas on the plan accompanying the LDC. The hatched area next to the site entrance is certified for use for the parking of road haulage vehicles and the remaining land is certified for the operation of a road haulage business and the assembly, servicing and repair of road haulage vehicles pending export for sale.

The Notice Land and Surroundings

2. The LDC land comprises a former agricultural yard and buildings with a gated access from a minor road in open countryside to the south of Brinkworth. At the time of my inspection, there were some 17 bays marked by cones near the entrance for the parking of road haulage vehicles. Some bays were occupied by road haulage vehicles or trailers and others were vacant or had cars parked in them. The remaining LDC land appeared to be in use for the assembly, servicing and repair of road haulage vehicles pending export for sale. The workshop for this activity was housed in an agricultural building in the south-east corner of the land.
3. Notice A and Notice B lands adjoin the LDC land and lie to the west. The notice lands include a large agricultural building with a hardsurfaced frontage, a bunded enclosure and mounds of earth and hardcore. The entrance and access to the LDC land has been widened and hardsurfacing has been laid to accommodate parked vehicles and road haulage vehicles, equipment, scrap items and van bodies. There were eight or so manure spreaders and some grass mowers parked on the western section adjoining a cultivated field. Part of the agricultural building was used to store agricultural equipment and fodder and the remainder was in use for the repair of road haulage vehicles. Two or three men were working on vehicles at the site.

Correction to Notice A

4. The list of activities taking place at the site in Notice A omits the repair of lorries for export activity identified in the LDC. I saw that this component of the mixed use of the site was taking place on part of the notice lands. I consider therefore that it should be included in the allegation in Notice A. I am empowered to make corrections to notices where there would

be no injustice caused to either party. I am satisfied that requirement is met here and I will include the repairs activity in part 3 of Notice A.

Notice B : Appeal on ground (d)

5. There was agreement at the inquiry regarding the extent of the engineering operations that were immune from enforcement action because they were probably carried out more than four years before Notice B was issued.
6. The hardsurfaced area in front of the large agricultural shed and the bunded enclosure adjoining this apron were considered to have been completed before July 2000. From my observations at the site inspection, I agree with that conclusion. The engineering operations carried out on this part of the notice land are therefore immune from enforcement action. The appeal on ground (d) succeeds to that extent and this portion of the site will be excluded from Notice B.
7. No evidence was put forward to suggest that the other engineering operations carried out on the Notice B land were completed before July 2000.

Notice A and Notice B : Appeals on ground (a) and the Deemed Applications

8. Prior to the opening of the inquiry, there had been negotiations between the Council and Mr Nicholls' agent regarding the two enforcement notices. Broad agreement had been reached on a way forward that permitted the continued use of part of the land for Mr Nicholls' business and at the same time securing tree planting, boundary fencing and the return of the remaining land to its agricultural use.
9. The Council's development plan policies support appropriate employment development in rural areas subject to minimising the harm caused to the appearance of the countryside. With this approach in mind, I consider that the solution reached by Mr Nicholls and the Council strikes the right balance between supporting employment and safeguarding the character and appearance of this stretch of open countryside.
10. The deemed application for the uses specified in the corrected Notice A will be granted, in part, and refused, in part. In essence, the land adjacent to the existing LDC site will be the subject of a conditional planning permission and the remaining land will be subject to the requirements of the notice to cease the unauthorised uses. Likewise, in relation to Notice B, the hardsurfacing and bunds adjacent to the entrance and site road will be the subject of a conditional planning permission and the land next to the cultivated field will be required to be restored to a condition suitable for agricultural use. Accordingly, the appeals on ground (a) succeed in part.

Conditions

11. I agree with the Council's suggestion that a scheme should be prepared and implemented to screen the new uses by bunds and new planting. The scheme should define the location of the parking and other uses permitted on the site. The parking scheme would extend to the LDC land. I regard this as necessary since the LDC land is within the ownership of the appellant and the mix of uses (some of which are unsightly) merits careful layout to protect visual amenity. The proposed layout would define the maximum height of materials stored on the site and specify fencing for the perimeter of the site to limit the visual impact of this non-rural activity.

12. I will grant the permission in such a way as to require that the permitted uses to cease in the event that the condition relating to the submission of a scheme is not complied with. This will provide the Council with the necessary 'leverage' to ensure that the layout of the site conforms to the terms of the planning permission. A plan showing the extent of the permission will be appended to the notices.
13. The Council considered that the repair of road haulage vehicles for export should be confined to the LDC land and precluded from the notice land by condition. I consider that such a condition is justified since it would limit the extent of this commercial activity and allow space for the ancillary uses such as storage and parking on the part of the notice land that is the subject of the permission.

Notice A and Notice B Appeals on ground (g)

14. The two notices will require part of the land to be restored to agriculture. Mr Pearce, acting for M Nicholls, felt that, in view of the reduction in the extent of the requirements, the compliance periods of three and four months would not be too onerous. I will not therefore vary the notices in this respect. The appeals under ground (g) do not succeed.
15. Notice B does require attention in that the seeding of the restored land is probably unnecessary. Its return to agriculture is achieved by the covering the disturbed areas with a layer of top soil. I will vary the notice accordingly.

Formal Decisions

Appeal A Ref: APP/J3910/C/04/1158474

16. I direct that the enforcement notice be corrected by substituting the words "the assembly, servicing and repair of road haulage vehicles pending export for sale," for the words 'in connection with' in section 3 of the notice. I allow the appeal insofar as it relates to the land shown diagonally hatched and cross-hatched black on Plan One annexed to this decision and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for change of use of the land from agriculture to a mixed use for agriculture and the assembly, servicing and repair of road haulage vehicles pending export for sale, the operation of a road haulage business, the parking of vehicles not associated with the lawful agricultural use, and the storage of vehicles, trailers, machinery, plant and equipment, waste items, scrap, materials, skips, chattels and other items at Whites Farm, Grittenham, Chippenham, subject to the following conditions:
 1. (a) The uses hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such uses shall be removed within one month of any one of the requirements set out in (i) to (iv) below not being met:-
 - (i) within 3 months of the date of this decision a scheme including the following details shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The details shall include the proposed shaping and landscaping of the cross-hatched area, the areas to be used for parking and storage of vehicles for drivers and employees on the diagonally hatched area and the LDC land, the location and proposed maximum heights of stored materials, scrap vehicles and parts on the diagonally hatched area, and the fencing and

boundary treatment of the cross-hatched and diagonally hatched area and the LDC land.

(ii) within 8 months of the date of this decision the scheme shall have been approved by the local planning authority; if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.

(iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) the approved scheme shall have been carried out and completed within the timetable referred to in (i) above.

(b) Where reference is made in Condition No.1 (a) above to uses being required to cease the uses may resume should an approved scheme later be implemented in full.

2. Should within a period of five years from the completion of the approved scheme any tree, shrub or hedge die, become diseased or for any other reason be removed, it shall be replaced with a tree, shrub or hedge of the same species unless an alternative is approved in writing by the local planning authority.

3. The cross-hatched and the diagonally hatched areas of land shall not be used for the assembly, servicing and repair of road haulage vehicles pending export for sale.

I direct that the enforcement notice be varied by the deletion of the words "shown hatched" and the substitution of the words "shown outlined in black" in section 2 and the substitution of Plan One attached to this decision for the plan attached to the enforcement notice.

I dismiss the appeal and uphold the enforcement notice as corrected and varied insofar as it relates to the land shown edged black and outside the cross-hatching and diagonal hatching on Plan One annexed to this decision, and I refuse planning permission in respect of that land identified on the substituted plan, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/J3910/C/04/1158042

17. I allow the appeal on ground (d) insofar as it relates to the land shown hatched horizontally on Plan Two annexed to this decision. I allow the appeal in so far as it relates to the land shown diagonally hatched and cross-hatched on Plan Two and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the carrying out of engineering operations comprising the provision of hardsurfaced areas, mounds and bunds at Whites Farm, Grittenham, Chippenham, subject to the following conditions:

1. (a) The engineering operations hereby permitted shall be removed and all materials brought onto the land for the purposes of such operations shall be removed within one month of any one of the requirements set out in (i) to (iv) below not being met:-

(i) within 3 months of the date of this decision a scheme including the following details shall have been submitted for the written approval of the local planning authority and

the scheme shall include a timetable for its implementation. The details shall include the proposed shaping and landscaping of the cross-hatched area, the areas to be used for parking and storage of vehicles for drivers and employees on the diagonally hatched area and the LDC land, the location and proposed maximum heights of stored materials, scrap vehicles and parts on the diagonally hatched area, and the fencing and boundary treatment of the cross-hatched and diagonally hatched area and the LDC land.

(ii) within 8 months of the date of this decision the scheme shall have been approved by the local planning authority; if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.

(iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) the approved scheme shall have been carried out and completed within the timetable referred to in (i) above.

(b) Where reference is made in Condition No.1 (a) above to engineering operations being required to be removed, the engineering operations may be restored should an approved scheme later be implemented in full

2. Should within a period of five years from the completion of the approved scheme any tree, shrub or hedge die, become diseased or for any other reason be removed, it shall be replaced with a tree, shrub or hedge of the same species unless an alternative is approved in writing by the local planning authority.

3. The cross-hatched and the diagonally hatched areas of land shall not be used for the assembly, servicing and repair of road haulage vehicles pending export for sale.

I direct that the enforcement notice be varied by the deletion of the words "shown hatched" and the substitution of the words "shown outlined in black" in section 2 and the substitution of Plan Two attached to this decision for the plan attached to the enforcement notice. I direct that the enforcement notice be varied by deleting the following words from section 5 (e) "and sow grass seed sufficient to restore the land suitable for the grazing of animals".

I dismiss the appeal and uphold the enforcement notice as corrected and varied insofar as it relates to the land shown edged black and outside the cross-hatching, diagonal hatching and horizontal hatching on Plan Two annexed to this decision, and I refuse planning permission in respect of that land identified on the substituted plan, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.



Inspector

APPEARANCES

FOR THE APPELLANT

Mr David Pearce BSc FRICS

Chartered Surveyor with Land
Development and Planning Consultants Ltd,
Chippenham, Wilts SN14 7NS

He gave evidence and made submissions.

FOR THE LOCAL PLANNING AUTHORITY

Mr Simon Chambers BSc MA MRTPI

Chartered Town Planner with LPC Town
and Country Planning Consultants
representing North Wiltshire District
Council.

He gave evidence and made submissions.

DOCUMENTS

- 1 List of persons at the inquiry.
- 2 Notice of the inquiry and list of person notified.
- 3 Copies of the plans accompanying Notice A and Notice B.
- 4 Proof of evidence by Mr Pearce and Appendices I to IV.
- 5 Proof of evidence by Mr Chambers and Appendices 1 to 3.
- 6 Colour copy of aerial photograph of site.
- 7 Scale survey of the site.



Plan One

This is the plan referred to in my decision dated:

by **Jim Griffiths MA MSc RIBA MRTPI DMS**

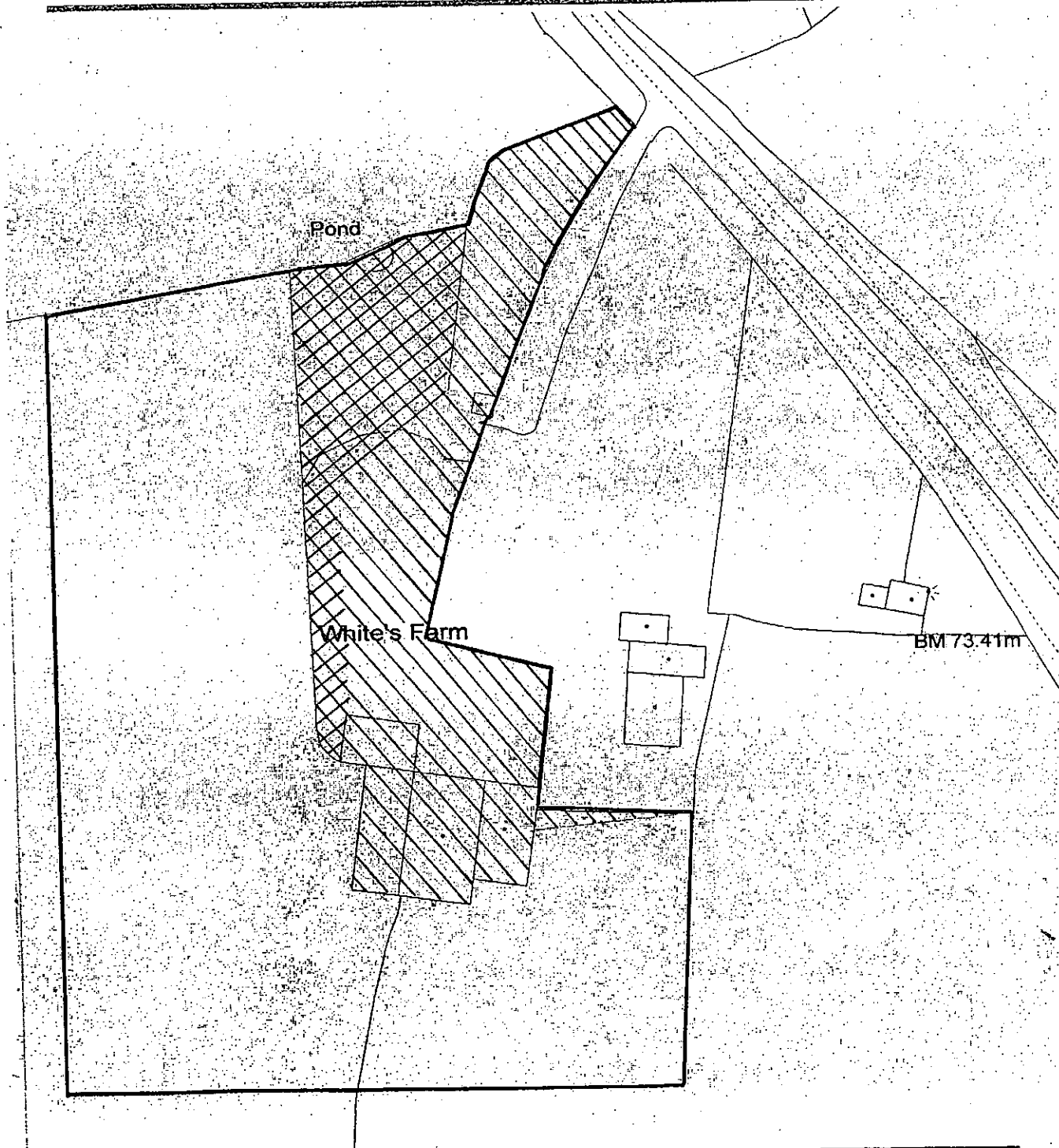
Land at Whites Farm, Grittenham, Chippenham

Reference: APP/J3910/C/04/1158474

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Scale: 1 : 1000

05 APR 2005





Plan Two

This is the plan referred to in my decision dated:

by **Jim Griffiths MA MSc RIBA MRTPI DMS**

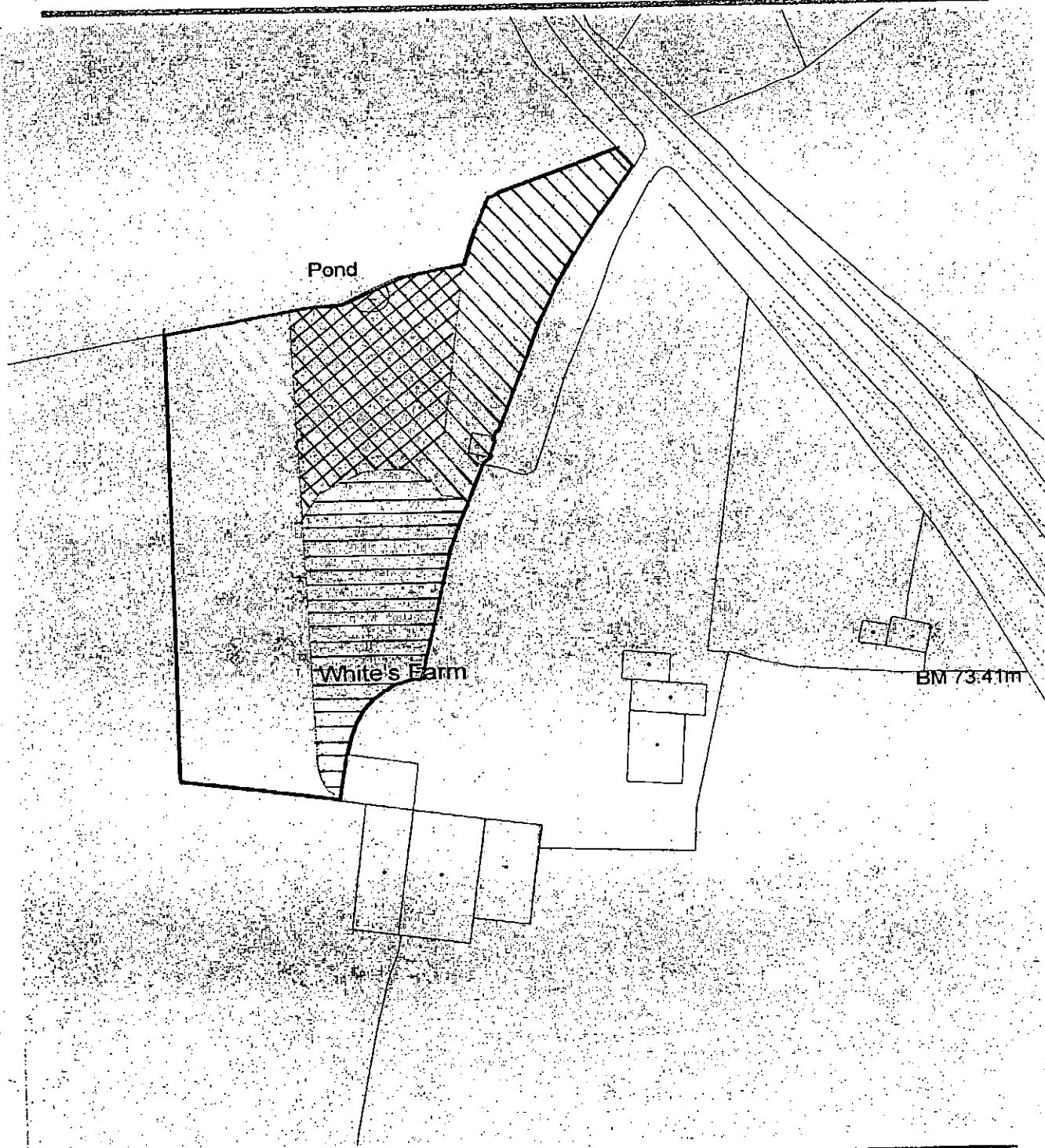
Land at Whites Farm, Grittenham, Chippenham

Reference: APP/J3910/C/04/1158042

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Scale: 1 : 1000

15 APR 2005



03/00462/EMIN (A)

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

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

ENFORCEMENT NOTICE

ISSUED BY: North Wiltshire District Council

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

Land at Whites Farm, Grittenham, Chippenham, Wiltshire shown hatched on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the change of use of the land from agriculture to a mixed use for agriculture and in connection with the operation of a road haulage business, the parking of vehicles not associated with the lawful agricultural use, and the storage of vehicles, trailers, machinery, plant and equipment, waste items, scrap, materials, skips, chattels and other items.
4. **REASONS FOR ISSUING THIS NOTICE**
 - a) It appears to the Council that the above breach of planning control has occurred within the last ten years.
 - b) The site is prominent within the open landscape and the expansion of the lawful use on adjoining land beyond its established boundaries has a detrimental impact upon the area contrary to policies RE19 and RC9 of the North Wiltshire Local Plan.

5. WHAT YOU ARE REQUIRED TO DO

- a) Permanently cease using the land for the unauthorised uses referred to in Part 3 of this Notice in order to restore the use of the land solely to the lawful agricultural use.
- b) Remove from the land all vehicles, trailers, machinery, plant and equipment, waste items, scrap, materials, skips, chattels and other items associated with the unauthorised uses referred to in Part 3 of this Notice.

6. TIME FOR COMPLIANCE

Three months from the date that this Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 20 May 2004 unless an appeal is made against it beforehand.

Dated : 8 April 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.

03/00462/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 Whites Farm, Grittenham, Chippenham, Wiltshire 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 provision of hardsurfaced areas, mounds and bunds

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 site is prominent within the open landscape and the development is detrimental to the rural character of the area contrary to the provisions of policy RC9 of the North Wiltshire Local Plan.
- c) Should the Council take no enforcement action seeking the removal of the hardsurfaced areas, mounds and bunds with the reinstatement of the land suitable for agricultural use they would become immune from such action and lawful. The continued existence of these hardsurfaced areas, mounds and bunds would be detrimental to the rural character of the area and

would also be likely to encourage the adjoining business use to expand which would further erode the character of the countryside.

5. WHAT YOU ARE REQUIRED TO DO

- a) Remove all hardsurfaced areas, gravel, hardcore and other such materials to a depth of one metre or to the total depth of the materials if less than one metre.
- b) Remove all bunds, mounds and raised areas from above natural ground level.
- c) Remove all materials and debris, resulting from the requirements of a) and b) above, from the site.
- d) Restore the land level with the natural contours of the adjoining land by the importation, if necessary, of soil to replace the hardsurfacing materials that have been removed as a requirement to comply with a) and b) above.
- e) Finish the area of land disturbed by the need to comply with a) and b) above with topsoil to a depth of at least 100mm and sow grass seed sufficient to restore the land suitable for the grazing of animals.

6. TIME FOR COMPLIANCE

Four months from the date that the Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 20 May 2004 unless an appeal is made against it beforehand.

Dated :8 April 2004

Signed :

on behalf of North Wiltshire District Council

ANNEX

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