

ENFORCEMENT REGISTER INFORMATION SHEET

E/ 270

APPEAL yes no

Plan's Ref N/82/1559/ENF

ADDRESS

PLANTS FARM,
BRAYDON LANE,
CHELWORTH,
CRICKLADE

BREACH of CONTROL

Issuing Authority N.W.D.C.

Date Issued 23-8-82

STOP NOTICES

Date Served

Requiring



270

Date(s) served

Takes effect 1-10-82

Compliance by 1-1-83

Dates Extended by
Secretary of State
Variation of notice
Appeal dismissed.

Date withdrawn

REQUIREMENTS of ENFORCEMENT

Steps required to be taken

- (i) To secure the discontinuance of the use of the said land in connection with the operation of a road haulage business for purposes unconnected with the use of the land as circus winter quarters.
- (ii) To secure the removal of all motor vehicles brought onto the said land for purposes unconnected with the use of the said land as circus winter quarters.

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

Alleged breach of planning control

The making of a material change in the use of the said land from a use solely in connection with the winter quarters of Austen Brothers Circus by the addition to the existing uses of uses connected with the operation of a road haulage business together with the parking and storage of motor vehicles associated therewith which uses are unconnected with the use of the said land for the purposes of the circus winter quarters.



Common Services

Room 1411 Tollgate House Houlton Street Bristol BS2 9-DJ

Telex 449321

PLANNING	
No	Direct line 0272-218 914
Switchboard 0272-218811	
20 SEP 1983	

N/82/1559/ENF

Council ref: AD/DA/502

Messrs Rushton, Ibbotson & Clay
Solicitors
7 & 8 Richmond Terrace
BLACKBURN
BB1 7BB

Your reference

MSC/JMT/Austen

Our reference

T/APP/5408/C/82/2649/PE2

Date

13 SEP 1983

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEAL BY MR B H AUSTEN
LAND AND BUILDINGS AT CHELWORTH PARK, BRAYDON LANE, CHELWORTH, CRICKLADE

1. I refer to the appeal which I have been appointed to determine, against an enforcement notice issued by the North Wiltshire District Council concerning the above land and buildings. I held an inquiry into the appeal on 7 June and carried out a post-inquiry inspection on 17 June 1983.
2. a. The date of the notice is 23 August 1982.
b. The breach of the planning control alleged in the notice is the making of a material change in the use of the said land from a use solely in connection with the winter quarters of Austen Brothers Circus by the addition to the existing uses of uses connected with the operation of a road haulage business together with the parking and storage of motor vehicles associated therewith which uses are unconnected with the use of the said land for the purposes of the circus winter quarters.
c. The requirements of the notice are:-
 - i. To secure the discontinuance of the use of the said land in connection with the operation of a road haulage business for purposes unconnected with the use of the land as circus winter quarters.
 - ii. To secure the removal of all motor vehicles brought onto the said land for purposes unconnected with the use of the said land as circus winter quarters.
- d. The period of compliance with the notice is within three months.
- e. The appeal was made on ground 88(2)(a) but at the inquiry ground 88(2)(h) was added.

THE SITE AND ITS SURROUNDINGS

3. The Enforcement Notice relates to an area of about 3 acres used as winter quarters by Austen Brothers Circus on the north side of Braydon Lane. The land was formerly used in association with a Ministry of Defence airfield, and retains numerous concrete hardstandings. The buildings now on the site, as listed in

Document 4 and indicated on Plan C, include stables and a hay barn, together with a large industrial type workshop building, Building C, situated in the north-east corner, of about 150 ft by about 60 ft, with a ground area of about 9,000 sq ft. It was erected with planning permission in 1981 as a workshop, reception, and office building, subject to a planning condition that it shall enure for the benefit of Austen Brothers Circus only. Four bays comprising the western half are occupied by Keeping Transport Ltd, a general haulage business. One bay is used for vehicle repairs and maintenance, while the remainder are used by the firm for the repacking and storage of plastic granules, and the de-sleeving of plastic gramophone records for recycling, in connection with which 6 persons are employed. The other half of the building is used as workshops by the appellant, while the extreme east end has a 2-storey section. The upper part is currently in unauthorised temporary use as residential accommodation, while the ground floor contains a mess room, showers, toilets, and a launderette, for use by winter quarters personnel, but these facilities are also apparently shared by the staff of Keeping Transport Ltd.

4. In front of Building C is a large concreted area flanked to the west by Buildings J and K, new stables and a large hay barn, and to the east, by caravan parking area E. The large concreted area is used by Keeping Transport Ltd for parking its vehicles, and at my inspection contained 3 lorries, 3 small trucks, a mini bus, a saloon car, and a large waste paper bin. At the west side of Building C there were also 2 employees' cars, a scrap car, a coach (privately owned by Mr & Mrs Keeping), spare lorry wheels, some pallets, and a "Portakabin" building used as an office for the haulage business. Open parking areas H, I, G & F, for lorries, trailers and equipment, comprise the remainder of the Circus quarters, although at the inspection area E, used for the winter parking of Circus caravans, contained a lorry, a trailer, 2 vans, and a hamburger sales caravan, as well as a single caravan.

5. Adjacent to the entrance driveway on part of the south-east corner of the appeal site, but mainly falling just outside it, is a detached house under construction, for which planning permission was granted in 1982 to the appellant in conjunction with the winter quarters, and which will be occupied by him as his permanent home. Planning permission for the winter quarters was originally granted conditionally in 1974, and retrospectively in December 1980 to extend the site and erect a workshop and maintenance building, but subject to a planning condition that it shall enure for the benefit of Austen Brothers Circus only. In addition to the appeal site itself, the appellant also owns some 14 acres of agricultural land surrounding it, as indicated edged and coloured blue on Plan B, together with a further 30 acres of agricultural land at Chelworth Fields. Hay from the land is fed to the Circus animals kept at the quarters in winter, which includes 16 horses, 3 elephants, and 5-7 "wild" animals. Human and animal acts are rehearsed every day in winter.

6. Braydon Lane, an unclassified road, lies about 1 mile distant from Cricklade itself, set in a wider predominantly agricultural area, and is in effect a cul-de-sac terminating at the Government Communications Centre at Blakehill to the south-west of the appeal site. Along the south-east side of the Lane at this northern end, is a modern industrial and warehousing site of about 3.5 acres, known as the Chelworth Industrial Estate. The Purton and Cricklade District Plan, and its Proposals Map provides for an extension to this industrial site of about 8 acres, as on Plans D and G, southwards on this side of the Lane. Beyond this extension, astride the Lane, are premises occupied by a firm which distributes petroleum products and dries grass and other agricultural produce. Fronting the appeal site side of the Lane is mainly agricultural land, but opposite the Industrial Estate is a residential property, Pear Tree Farm, and disused buildings at Plants Farm. Alongside the driveway entrance into the appeal site and the rest of the appellant's ownership, off Braydon Lane, is a residential property with a small

poultry house cleaning depot attached. Along the C70 Class III road, which crosses Braydon Lane to the north-east, are clusters of residential development at Chelworth Lower Green and Chelworth Upper Green, the latter including a workshop building, and a yard used in connection with a haulage business, and formerly a coal yard, which has a long planning history, as outlined in Document 9.

THE CASE FOR THE APPELLANT

The material points are:-

7. On the planning merits pleaded under ground (a), the appellant's Circus is one of the largest touring the country, and its transport and equipment return to the winter quarters at the appeal site in early November until late February, except for a Christmas Season of 4 weeks in a permanent building. The workshop building in question is used not only to overhaul the fleet of lorries and trailers, but also to construct and fit special showmen's bodies to them, which is no different from the activities associated with a road haulage business, and is considered to be in keeping with the general industrial nature of the area. During the winter months the workshop is also used to construct most of the equipment and the "big top", and 12 persons are employed over the winter period. In summer the workshop is little used, other than for emergencies and repairs, and is therefore unused or under-used for a greater part of the year; surplus Circus vehicles remain at the site throughout the year, but are kept in the open. It is felt that the workshop and its adjacent hardstanding should be fully used.

8. Prior to moving to the appeal site, Keeping Transport Ltd occupied premises near the centre of Swindon, but in April 1982 a rate increase of 31% meant giving them up, or going into liquidation. The Company would have closed down if it had not gone to the appeal site, as it was unable to find other suitable premises in the area, and the rent paid is less than half that paid for premises in Swindon. Three of the 4 bays of Building C occupied are used for the storage, unpacking and repacking, of goods, which is seen as being ancillary to the general transport business. The fourth bay is used as a vehicle repair shop, and the appellant's repair bay, with an inspection pit, is also used if necessary. The Company operates 12 lorries, of which 6 are hired out, a Transit van and Transit mini bus, for staff, and 2 small pick-up trucks. It operates throughout the United Kingdom and undertakes regular runs also to Spain, Italy and France. Unused records are collected from manufacturers and their sleeves removed in Building C for recycling, and plastic granules received in bulk are also put into plastic bags. Since moving to the appeal site, 9 additional persons have been employed as drivers and packers. Excluding Mr & Mrs Keeping, 16 persons are employed altogether, including 8 involved in loading, unloading and packing - one of whom is a disabled youth. In the near future work for a further 3 disabled persons could be offered, in addition to employment for 4 others, and it is hoped to enlarge the lorry fleet to 15.

9. The use of the appeal site premises by Keeping Transport Ltd is in accord with the North East Wiltshire Structure Plan Policies E1 and E2, for promoting employment and the development of small scale industries in rural areas. Policy E4 suggests that there should be an increase in the industrial and warehousing uses in Cricklade, which is predominantly Braydon Lane, and Policy E11 states that the change of use of buildings to use for employment purposes will normally be permitted, providing the buildings are compatible with the local environment, and where the proposal will not detract from the amenities of the locality, and the character of the countryside, which is considered to be the case here. Policy E12 states that within or on the edge of villages the establishment, or expansion, of small scale employment should normally be allowed, and Keeping Transport Ltd is such a "small

scale" employer, and does not detract from the amenity or character of the area, nor adversely affect traffic generation. The Cricklade and Purton District Plan Policies E1, E3 and E4 reiterate Structure Plan Policies E11 and E12. The fact that a transport company is using the existing facilities at the appeal site does not cause excessive traffic generation, and the requirements of Policy L1 have already been met at the site. There is no policy presumption against employment development outside allocated sites for industry and commerce.

10. Braydon Lane is not situated in the countryside, but has a mixture of agricultural and industrial uses along it, and industry is the most significant one, making the Lane in effect an industrial road serving established and proposed industrial uses. There is no evidence of the unauthorised use at the appeal site giving rise to complaint, or any loss of amenity, as is the case with the other unauthorised sites in the surrounding area listed by the Council. Circular 22/80 states that development control must avoid restricting development contributing to the economic regeneration of the country, and stresses the role of small scale enterprises. It refers to making the best use of derelict land, which forms part of the appeal site. Enforcement action should be taken only after negotiations and discussions have failed to find a satisfactory solution, and if "planning reasons clearly warrant such action". However, no discussions have taken place with the Council, and no genuine planning consideration has been given to the use made of the site by Keeping Transport Ltd, and the Council clearly considers the Circular a "dead letter". No specific and convincing objections exist, and Braydon Lane must be one of the best locations to site a transport depot. Furthermore, in respect of Development Control Policy Note 4, and the need to protect good agricultural land, the proposed extension of the Chelworth Industrial Estate in the District Plan is on good agricultural land, whereas the appeal site is on derelict land, and would be a better alternative. An intensification of part of the existing use of the site by Keeping Transport Ltd will not adversely affect the character of the Lane or the surrounding area, and would not intrude into a "green fields" site.

11. Suitable sites for transport depots are not readily available, and established ones are frequently unsuitable and of the farmyard type of premises with difficult access. Small cheap buildings are required, whereas units on purpose built industrial estates are too expensive, but 2 businesses sharing the same premises can reduce costs as well as the impact of the activity on the local area. The appeal site also has excellent hardstanding areas and turning facilities. A planning condition limiting the number of vehicles to be used to 15 would be acceptable, but a personal permission is not appropriate because of the suitability of the use to this site. Under ground (h) pleaded, Keeping Transport Ltd have been seeking an alternative site for the last 6 months without success. Empty warehouses in Swindon exist but access is not suitable for a road haulage business, and units on the new Kembrey Street Industrial Estate have good buildings but only a very restricted parking area in front. It would take a minimum of 12 months to find alternative premises if the Notice is upheld, and an extended period of compliance of at least 12 months is sought.

THE CASE FOR THE PLANNING AUTHORITY

The material points are:-

12. On the planning merits, the unauthorised development in question conforms with neither the Structure Plan nor the District Plan. The Chelworth industrial allocation is planned to cater for all new industrial and warehouse development in the locality. To allow the unauthorised use to continue would be to condone an unplanned "free for all", and reverse efforts to regain some control over sporadic

and commercial development in this area, in which task the Council has been supported by the Secretary of State and his Inspectors on appeal. With regard to District Plan Policies E4 and E5, the appeal site is not adjacent to any established settlement, neither is the use of a redundant building involved. It is not accepted that spare capacity exists, as the appellant has made a planning application for a larger replacement Building A in order to provide additional accommodation, and a transport haulage depot is not considered compatible with the local environment.

13. Being part of the rural periphery of Swindon, the area experiences considerable pressures from footloose commercial uses seeking low cost sites for non-conforming activities, for which suitable premises may well be difficult to find within the urban area. While Chelworth is not the most attractive stretch of countryside, the essential character remains rural. The solution of the area's problems will be found in adhering to the strategy in the District Plan policies. At present the planned extension of the Chelworth Industrial Estate on the opposite side of Braydon Lane, is undeveloped, but additional local employment should be provided here in the main, and not on isolated sites, or by sub-dividing existing ones to form mini industrial estates. In this way development can be more economically and efficiently serviced, and their impact on the environment lessened and made more localised. If planning permission were granted the present monthly rent paid by Keeping Transport Ltd would no doubt be radically increased. Development Control Policy Note 4 - Development in Rural Areas suggests that the majority of industrial development should take place in areas allocated for it, and that the face of the countryside should not be spoilt or changed. Circular 57/73 - Lorries and the Environment, recognises the environmental impact of the lorry as a major problem. A haulage depot in the middle of the countryside is no more suitable than in the middle of a housing estate. Rarely do they serve a specific local need, but are related to a sub-regional distribution network, and are more appropriately sited at focal points within the road network. The District Plan has received the County Council's certification, and the Secretary of State's approval is expected any day. It would be extraordinary for a decision to be made in conflict with such recently formulated policies, and irresponsible if the Plan's strategy for employment is ignored at the very moment it is formally agreed.

14. In terms of Circular 22/80, encouragement is being given to industrial and commercial growth, and the formation and expansion of small scale businesses. The Secretary of State himself has approved the Structure Plan strategy, having regard to Circular 22/80, and will no doubt shortly approve the more detailed strategy in the District Plan. In the Council's view, the Policies strike a proper balance between the protection of the natural and built environment with the pressures of economic and social change. There were special circumstances for permitting the establishment of the Circus winter quarters, contrary to established planning policies for the area. Space and isolation was needed as animals might be kept and grazed more readily in a relatively remote rural location. Comings and goings would be seasonal only, which is certainly not the case with the present haulage depot, or with a general industrial or commercial use, which do not warrant any special exception. Discussions with Keeping Transport Ltd did not take place prior to issuing the Enforcement Notice because experience has shown them to be unproductive, and are used by unauthorised users as a delaying tactic. A generous provision of land for industry and warehousing has been provided in the District Plan. Under ground (h) pleaded, the period for compliance is considered reasonable, but it is of course open to the Inspector to extend the period if he sees fit.

THE CASE FOR THE COUNCIL FOR THE PROTECTION OF RURAL ENGLAND

The material points are:-

15. As a national organisation dedicated to the defence of rural heritage against increasingly fierce pressures of urban and commercial developments, the Council seeks the full use of space which is already available in existing built-up areas before development in mainly rural areas is permitted. The Council wholeheartedly support the District Council for the reasons they have given for serving the Notice. The District Plan for Cricklade and Purton develops the policies and general proposals of the Structure Plan for North East Wiltshire. It delineates the purpose for each area of land, and elaborates the policies of the Structure Plan in detail. If this appeal were to be allowed, it would result in a development for which there has been no planning approval, and which would mean the introduction of an additional commercial use outside the area allocated for such uses in the District Plan. It would, therefore, be in direct conflict with the policies of the District and Structure Plans, and the Notice should be upheld and the appeal dismissed.

CONCLUSIONS

16. On the planning merits, and from the representations made and my inspection of the appeal site and the surrounding area, I am of the opinion that the principal issues for determination in this case are whether the introduction of the unauthorised use at the Circus winter quarters site, in connection with a road haulage business, is in conflict with planning policies for the area, and whether there are positive planning objections to the shared use of the site on grounds of protecting the amenity and character of the area.

17. My own view is that a generous allocation of land for new industrial and commercial development of this kind has clearly been made in the area, and specifically the provision for the extension of the Chelworth Industrial Estate on the opposite side of Braydon Lane. Nevertheless, while one would expect that this, and the other allocations elsewhere in the Structure Plan and District Plan, would absorb most of the demand for new sites, as was intended, I find no general policy presumption against the establishment of new industrial or commercial sites, or the change of use of existing buildings for these purposes, in such rural areas as this. Moreover, bearing in mind the advice in Circular 22/80, I consider that the matter must turn on the planning merits of these additional activities carried on in the context of the appeal site itself and its particular surroundings.

18. On this, while the Chelworth Industrial Estate undoubtedly dominates the opposite side of Braydon Lane, this north-west side, notwithstanding the small poultry house cleaning site, is predominantly agricultural. In addition, it has 2 residential properties fronting it, apart from the appellant's own house under construction, but the overall visual impression one gets is of an expanse of agricultural fields, bounded by Chelworth Upper Green to the north, and the B4040 road to the west. Within this area it could be said that the winter quarters do intrude. However, I accept that the development was allowed in such a location as an exception to general planning policies, on the grounds of the special needs of such winter quarters, especially those of the animals, which clearly need a farm like environment. I view the winter quarters, therefore, as undoubtedly did the planning authority, as a special type of farm, in a relatively isolated rural position surrounded by its own land, albeit with modern buildings, and it is against this that I must compare the present unauthorised use.

19. The appellant has a large fleet of vehicles on which he and his staff work over the winter, together with the construction and repair of Circus equipment. Nevertheless, from the evidence, the Circus is absent, being on the road, from the early Spring until the late Autumn, and the passage of vehicles to and from the site is minimal for most of the year. While you claim this supports your client's case, I consider this to be very different in its impact from the daily all the year round high level of commercial use to which a significant part of the site is now put. Such a level of use was, of course, never envisaged when planning permission was granted, and is, undoubtedly, intrusive - both visually and in terms of movement and activity on the site, the number of persons employed at it, and above all the number of vehicle movements generated.

20. To my mind this conflicts not only with the broader character, appearance and amenity of this agricultural area, but also with the amenity and character of the winter quarters themselves, as it would with a normal farm with a group of farm buildings around it. I do not find convincing the argument propounded that a large part of the workshop building is surplus to Circus needs over the winter months, and is under-utilised most of the year. That must apply equally to the whole of such winter quarter premises, and does not justify, in my opinion, trying to find alternative or dual uses, once planning permission has been granted. The use by Keeping Transport must inevitably conflict with that of the winter quarters by over-intensifying their use over the winter months, and significantly increasing the number of vehicles on it, at the expense of the animals, the training and rehearsal of acts, and the residential environment of the occupants of the caravan park situated right alongside the large concreted area used by Keeping Transport Ltd, and of the appellant's own house. Furthermore, if allowed, there would no doubt be immediate pressure to use other parts of the appeal site, and its buildings, for similar industrial and commercial uses, and to enlarge the winter quarters accommodation to compensate for that given over to non-Circus uses. These would soon swamp the composite uses making up those of the winter quarters function, and its role as the "home" of the appellant's Circus and its members, and, as the Council fears, turn the site as a whole into an unplanned industrial estate of some proportion, which would be even more unacceptable and intrusive in this location. For these reasons, I find that planning permission should not be granted for the retention of the unauthorised uses specified in the Notice, and ground (a) pleaded fails.

21. Although not pleaded, I have also considered under ground (g) the requirements of the Notice, but find these appropriate and proper in the circumstances. However, regard to ground (h), the period for compliance of three months, I find that bearing in mind the advice in Circular 22/80 that this ought to be extended to twelve months, to allow Keeping Transport Ltd to seek alternative accommodation, without disrupting unduly the business and the employment it provides.

22. I have taken account of all the other matters raised but consider, however, that they are outweighed by those considerations that have led me to my decision.

FORMAL DECISION

23. In exercise of the powers transferred to me, and for the reasons given above, I hereby direct that the Notice be varied as follows:-

In paragraph 4 line 2 by the deletion of the words "three months" and their substitution by the words "twelve months".

Subject to this variation, I hereby uphold the Enforcement Notice, dismiss the appeal, and refuse to grant planning permission on the application deemed to have been made under Section 88(B)3 of the 1971 Act (as amended by the Act of 1981).

RIGHT OF APPEAL AGAINST THE DECISION

24. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

D. J. Tackley

D J TACKLEY BSc(Econ) FRTPI
Inspector

ENC