

**ENFORCEMENT REGISTER  
INFORMATION SHEET****E/294**APPEAL yes ☒

Plan's Ref N/82/1020/ENF

**ADDRESS***Swiss Cottage,  
Sambourne Road,  
Menealy***BREACH of CONTROL**

Issuing Authority

Date Issued *5th May 1982***STOP NOTICES**

Date Served

Requiring



294

Date withdrawn

Date(s) served

Takes effect *18th June 1982*Compliance by *18th September 1982*Dates Extended by  
Secretary of State*Appeal dismissed 31/3/83***REQUIREMENTS of ENFORCEMENT****EXTENT to WHICH NOTICE COMPLIED WITH (dates)**

Steps required to be taken

1. Within the period of three months from the date upon which this notice takes effect
  - (a) to discontinue the use of the land for the purposes of providing residential accommodation and domestic storage
  - (b) to secure the removal of the caravans brought on to the land for the purposes of providing residential accommodation and domestic storage.
  - (c) To secure the removal of the tipped material deposited upon the land together with the walling erected, in connection with the formation of the said vehicular access, and the exposure of the topsoil comprising the original land surface.
2. To secure the replanting of the length of thorn hedgerow removed in the formation of the said vehicular access in the first available planting season following the date upon which this notice shall take effect and the replacement of any tree or shrub which dies in the first available planting season thereafter for a period of five years.

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Alleged breach of planning control

Schedule 2(a) (description of the material change of use alleged to have been made)

The making of a material change in the use of the land to a use for the stationing of caravans for the purposes of providing residential accommodation and domestic storage.

Schedule 2(b) (description of the other operations alleged to have been carried out on the land).

The tipping of hardcore comprising of stone, brick and other rubble (hereinafter called "the tipped material") together with the removal of thorn hedging and the construction of walling in the formation of a vehicular access from the land on to the B4040 Malmesbury - Cricklade Road.

MR WALLER  
IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

NORTH WILTSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE

Land adjacent to Swiss Cottage, Sambourne Road, Minety.  
Grid Reference SU 0379 9107

WHEREAS:

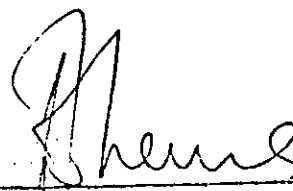
- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control after the end of 1963 and within a period of four years before the day of issue of this notice on the land or premises (hereinafter called "the land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of development by the making of the material change in the use of the land described in Schedule 2(a) below, and the carrying out of other operations described in schedule 2(b) below, without the grant of planning permission required for that development.
- (3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87 for the reasons set out in the annex to this notice.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period specified in respect of each step in that Schedule.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 18th June, 1982.

Issued 5th May, 1982

Signed

  
Solicitor to the Council.

Monkton Park,  
Chippenham,  
Wiltshire.

N  
clv

### Schedule 1

#### Land or premises to which this notice relates

The land adjacent to Swiss Cottage, Sambourne Road, Minety in the County of Wiltshire situate at Grid Reference SU 0379 9107 and known also as "Sambourne Cottage" being more particularly delineated on the attached plan and thereon coloured red.

### Schedule 2

#### Alleged breach of planning control

##### Schedule 2(a) (description of the material change of use alleged to have been made)

The making of a material change in the use of the land to a use for the stationing of caravans for the purposes of providing residential accommodation and domestic storage.

##### Schedule 2(b) (description of the other operations alleged to have been carried out on the land).

The tipping of hardcore comprising of stone, brick and other rubble (hereinafter called "the tipped material") ~~together with the removal of thorn hedging and the construction of walling~~ in the formation of a vehicular access from the land on to the B4040 Malmesbury - Cricklade Road.

### Schedule 3

#### Steps required to be taken

1. <sup>six</sup> Within the period of ~~three~~ months from the date upon which this notice takes effect
  - (a) to discontinue the use of the land for the purposes of providing residential accommodation and domestic storage
  - (b) to secure the removal of the caravans brought on to the land for the purposes of providing residential accommodation and domestic storage.
  - (c) To secure the removal of the tipped material deposited upon the land ~~together with the walling erected~~, in connection with the formation of the said vehicular access, and the exposure of the topsoil comprising the original land surface.
2. To secure the replanting of the length of thorn hedgerow removed in the formation of the said vehicular access in the first available planting season following the date upon which this notice shall take effect and the replacement of any tree or shrub which dies in the first available planting season thereafter for a period of five years.

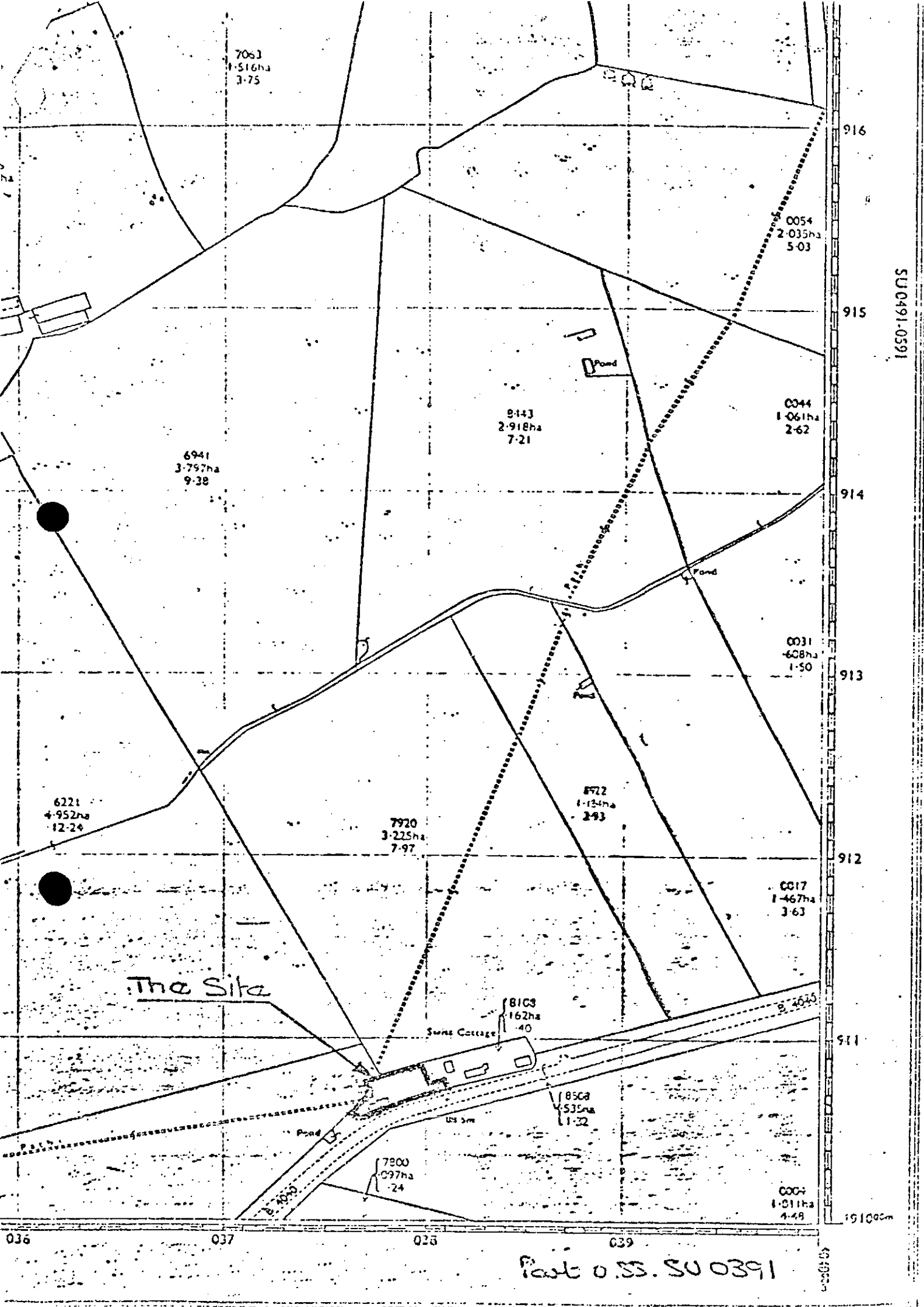
THE ANNEX

STATEMENT OF REASONS

1. The land lies outside the limits of any established settlement or its reasonable extension in an area of which it is the policy of the local planning authority that existing uses shall remain for the most part undisturbed and only development essential to agricultural need shall be approved.
2. The development constitutes sporadic development within open countryside which is detrimental to the character of this area in particular and rural amenity in general and would if permitted set a precedent for further undesirable proposals.
3. The development constitutes sporadic development along the B4040 Malmesbury - Cricklade Road, and would if permitted create a precedent for further similar development which collectively would be detrimental to highway safety.
4. The development is contrary to policies H19 and H24 of the North East Wiltshire Structure Plan, set out below:-

H19 New dwellings in the countryside unrelated to any established village will not normally be permitted unless justified in connection with the needs of agriculture or forestry.

H24 Mobile Homes, including residential caravans, will be treated in the same manner as permanent housing and, where they are environmentally acceptable, be subject to the same policies excluding policy H22.





Department of the Environment and  
Department of Transport

Common Services

Room 1411 Tollgate House Houlton Street Bristol BS2 9 DJ

Telex 449321

Direct line 0272-218 914

Switchboard 0272-218811

Mrs. J. Dard

E 294

N/83/0554/ENF

N/82/1020/ENF

Council reference N/82/1020/ENF, AD/DA/485

Messrs Robins and Co.  
Solicitors  
St Michaels House  
23 Brunswick Road  
GLOUCESTER  
GL1 1JE

Your reference

JHR/JAM

Our reference

T/APP/5408/C/82/1504/PE2

Date

31 MAR 1983

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
APPEAL BY MR M R WALDRON

LAND AND BUILDINGS ADJOINING SWISS COTTAGE, SAMBOURNE ROAD, MINETY, WILTSHIRE

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 3 March 1983.

2. a. The date of the notice is 5 May 1982.

b. The breaches of the planning control alleged in the notice are:-

1. The making of a material change in the use of land adjacent to Swiss Cottage, Sambourne Road, Minety, Wiltshire situated at Grid Reference SU 0379 9107 and known also as Sambourne Cottage (coloured red on enforcement notice plan) to a use for the stationing of caravans for the purposes of providing residential accommodation and domestic storage, since the end of 1963 and within a period of 4 years before the day of the issue of the notice, without planning permission.

2. The carrying out of other operations on the same site, namely the tipping of hardcore comprising stone, brick and other rubble (hereinafter called "the tipped material") together with the removal of thorn hedging and the construction of walling in the formation of a vehicular access from the land on to the B4040 Malmesbury-Cricklade Road, since the end of 1963 and within a period of 4 years before the issue of the notice, without planning permission.

c. The requirements of the notice are:-

1. to discontinue the use of the land for the purposes of providing residential accommodation and domestic storage;

2. to secure the removal of the caravans brought on to the land for the purposes of providing residential accommodation and domestic storage;

3. to secure the removal of the tipped material deposited upon the land together with the walling erected, in connection with the formation of the said vehicular access, and the exposure of the topsoil comprising the original land surface;

4. to secure the replanting of the length of thorn hedgerow removed in the formation of the said vehicular access and the replacement of any tree or shrub over a period of 5 years.

d. The period of compliance with the notice in respect of requirements 1, 2 and 3 is 3 months; and in respect of item 4's requirements, is the first available planting season, with replacement planting in the first available planting season thereafter for a period of 5 years.

e. The appeal was made on grounds 88(2)(a), (b), (g) and (h) but at the inquiry submissions were also made on the viability of the notice.

3. The evidence was taken on oath.

### SITE AND SURROUNDINGS

4. The site is located on the outside edge of a bend in an otherwise flat and straight length of the B4040 (Malmesbury to Cricklade) road which is not subject to any local speed limit and is about  $\frac{1}{3}$  mile to the north-east of a railway bridge and the Junction Inn on the outskirts of the village of Minety. The site immediately adjoins the isolated plot of Swiss Cottage and is otherwise surrounded by agricultural land and the road. At the time of my inspection, I could only find 2 hawthorn trees in the road frontage hedgerow and there was no sign of any previously existing thorn hedge; on the eastern side of the vehicular access to the site there was a short length of dry stone walling which was about 1 ft high. The site contained 3 caravans and on the western side of the access entrance there were the stone and brick walls of 2 former cottages which varied in height from about 1 ft above ground level to 9 ft.

### VALIDITY

5. You submit that the council have only served one notice alleging both a material change in use (which is accepted) and the carrying out of engineering operations in respect of the access (which is not accepted). There should have been 2 separate notices. Furthermore, in compiling this notice, the council have included matters which do not require planning permission. The validity of the whole notice is therefore questioned.

6. The council submit that your representations made no case.

7. I know of no legal requirement that allegations concerning unauthorised changes of use should necessarily be the subject of a separate notice to those alleging unauthorised operational work. In this case, both allegations concern the same land and the same owner/occupier, and as the operation work is associated with the access to the caravans, there is a close relationship between the 2 allegations. The question of the wording of the requirements does not strike at the validity of the allegations and if they are at fault, corrections can be made under the provisions of Section 88A(2) of the 1971 Act, as amended.

### Your Client's Case, Ground (b)

8. The appeal property was acquired by Mr Hurst in about 1963 and during his ownership he brought a lorry on to the site about 4 times. The previous owner used to work for the council, carrying out road works, repairing water butts etc, and doing road haulage work with his horse and cart, which used to enter the site through a 5 barred gate which was some 8 ft wide. The gate was still there in 1971, because



Mr Hurst took a lorry on to the site to clear brambles and when the road was improved, 2 or 3 years ago, there was a gap between the cottages and the hedging to the east. That gap is clearly shown on the aerial photograph from the County Council's planning office, dated 1971.

9. The notice does not allege the creation of a new vehicular access and does not require the closing of the access. "Engineering operations" includes the formation or laying out of means of access to highways, but does not necessarily include the widening or improvement of an access and. The tipping of hardcore may, in itself be an engineering operation, but most farmers and landowners put hardcore in gateways where access is likely to be 'bogged down'. The work undertaken by the appellant was a consequence of a recent raising of the road level by a highway authority improvement and following a recent inspection by, and interview with, members of the highway authority's road works section, it was understood that the highway authority would "come out and put it right". No planning permission is required for the removal of a hedge or fence abutting a public highway, the wall next to the access is less than 1 m high and is therefore "Permitted Development" and in all the circumstances of this case, there has been no breach of planning control in respect of the access.

#### Ground (a)

10. The council's witness has admitted that there is no local plan or village map, no committee resolution defining the limits of development for Minety and that, if it were within the village framework, the appeal site would have all the necessary requirements to fall within development permitted under Policy H 17 of the Structure Plan. Most of the village lies to the west, but the adjoining property to the east (Swiss Cottage) is the last property in Minety and the village signpost lies further to the east.

11. It was never intended to permanently develop the appeal site as a caravan site and a temporary permission is sought to establish the possibility of either constructing a new dwelling on the appeal site, or reconstructing the derelict cottage. When he moved to the appeal site, just before Christmas 1981, Mr Waldron was a self-employed welder, but after moving he has had no work and has had to live on social security benefits. He has not, therefore, been in a good position to proceed with his proposals for a dwellinghouse. Plans of such a house have nevertheless been prepared which show a house with a floor area of about 1,302 sq ft. Most of the building work will be undertaken by your client and his friends, and the eventual cost might be in the region of £18,960.

12. The question of whether residential rights of use have been abandoned is not at issue and if the council centrally refuse permission for the proposed building work, your client should be able to test that decision at a public inquiry. If after that inquiry, permission were still withheld, he would have an opportunity to serve a purchase notice on the local authority and would be entitled to compensation. If, however, he were forced to move before this process could run its course, he might have to sell the site for a pittance.

13. There are some 23 caravans in Minety and as many of them have been permitted whilst a dwelling is being erected, the same circumstances might apply in this case. There would be no objection to a personal permission and an approval for a limited period of 12 months is sought.

14. The letters of objection appear to follow a carefully orchestrated campaign. Some of them repeat errors concerning your client's family relationships and some are written by people who live a long way away. There is a dispute over the site boundaries (which may be subject to court action) and the evidence of the owner/occupier of Swiss Cottage, may therefore be biased. The other near resident (the

occupier of Braemar Cottage) acknowledges that there is no nuisance from the use and whilst many objections are raised on highway grounds, the site access has very good lines of sight, the highway authority's access design requirements could be met and the council admit that there would be no objection on access grounds if an application were to be made for an agricultural dwelling on the site. The letters of objection therefore have little merit.

15. In considering enforcement action, the council should have regard to the provisions of the development plan and any other material consideration, but their reasons for serving the notice have only had regard to their rural policies. They have not taken the 'other material considerations', such as the personal circumstances of your client, into account. Notices should only be served where there is no alternative, but in this case there is the alternative of a temporary permission.

#### Ground (g)

16. The requirement to replant a length of thorn hedging and remove tipped rubble is unreasonable and the council not only want a hedge replanted, but also the replacement of any trees or shrubs which may die over a period of 5 years. There is, however, no allegation concerning any shrub and the requirement is, in effect, a planning condition, but an enforcement notice cannot be treated like a planning permission and its terms cannot go beyond what is required to remedy the alleged breach (*Mansi v Elstree Rural District Council* (1964) 16 P&CR 153). There is no authority in any regulation to require replacement planting and the requirement to replant in the "first available planting season" is too vague to be an identifiable period. In all these circumstances and in view of the evidence and the council's uncertainty concerning the existence of an access; the requirements are excessive and unreasonable.

#### Ground (h)

17. Three months is insufficient time to enable the residential development of the land to be resolved and Mr Waldron's change in personal circumstances should be considered. He cannot afford to purchase another property and it is very difficult to find a caravan parking site in this area. He, his wife and 2 children would be made homeless and the council would then be faced with a duty of providing a home for his family. If it is feared that the suggested temporary permission for 12 months would unnecessarily prolong the use, the period for compliance could be extended for 12 months instead of granting a temporary permission.

#### THE COUNCIL'S CASE

The main points are:-

#### Ground (b)

18. The appellant has not disputed that there has been a material change in use without planning permission. Some local people have written to say that there was only a pedestrian wicket gate into the property and the council consider that either a new access has been created or a significant alteration to an existing access has been undertaken. If the access has been altered, then it is also being used to a greater extent than any previous access, and that access was never a residential vehicular access. The removal of the hedging and the construction of the wall are all part of the engineering work which has been undertaken and are therefore subject to planning control.

19. The appellant may have interviewed County Council employees in the road works section, but those people were not directly concerned with highway planning matters and if a vehicular access had existed, and been in use, the recent road improvements

would have provided an access at least as good as that which originally existed. Mr Waldron has had to raise the ground level to get access to the road and it follows that he has either created a new access or has undertaken significant alteration to an existing access. Either way, planning permission is required and no permission has been granted. There has therefore been a breach of planning control not only in relation to the use, but also in relation to the engineering work involved in the access.

#### Ground (a)

20. The site lies in open countryside beyond the limits of the village of Minety and on a road which has considerable lengths of undeveloped frontages, and runs through an essentially agricultural area. The County Development Plan includes the site in an area where existing uses shall for the most part remain undisturbed and only development essential to agriculture and other acceptable rural uses (which do not include the appeal use) shall be permitted. It further states that new houses will not normally be permitted in the open countryside and additions to existing ribbon development and to scattered dwellings will not normally be allowed.

21. Minety is a village which comes within Policy H 17 of the approved Structure Plan, which permits the development of small groups of houses "within the framework of each settlement", and in practice, it is considered that the railway bridge to the south-west of the appeal site defines the physical limit of village development. This site is therefore outside the village framework and does not qualify for inclusion in Policy H 17.

22. Residential caravans must be subject to the same policies as permanent housing, and the Structure Plan establishes that new dwellings in the countryside unrelated to any established village will not normally be permitted, unless justified in connection with the needs of agriculture or forestry. No such justification exists in this case.

23. Work on a Wiltshire Rural Area Local Plan has started (which would include Minety) and it is likely that when the plan comes to be drawn, the railway line to the south-west will define the village limits. Permission for a dwelling on this site has already been refused 3 times and whether one considers proposals for a house or a caravan, such development would clearly be contrary to the approved policies. Any application to rebuild the cottages is therefore unlikely to be approved.

24. It is general policy to discourage the formation of new vehicular accesses on to this main road, but if the access were brought up to standard it is unlikely that the highway authority would have a fundamental objection to its retention. The highway considerations in this case are not vital, but the caravan development is contrary to the approved policies and its retention on a temporary or permanent basis is equally unacceptable.

25. This enforcement action was considered by the appropriate committee on 2 occasions. It was not hurried or undertaken without careful consideration, and in the light of the objections from local people and the advice contained in the relevant circulars, the council took action, having regard to the provisions of the development plan and other material considerations.

#### Ground (g)

26. This is a small area of land and the amount of unauthorised work is therefore significant. It has entailed engineering work and the requirements of the notice are therefore reasonable.

## Ground (h)

27. The 3 month period for compliance was set some months ago and your client has already had almost a year to comply. He has had ample opportunity to enquire as to how reasonable his aspirations for the site are, and in view of the history of previous decisions and the planning circumstances, it is too far fetched to expect their realisation. There has already been a delay in bringing this matter to its present state and it is therefore reasonable to keep to the notice's 3 month period.

## THE CASE FOR THE PARISH COUNCIL

The main additional points are:-

28. They support the district council's action and consider that if permission is granted it would create a serious precedent for others to follow. Ample time has passed for your client's proposals to be put forward and only a minimum time should now be given to return the appeal site to its original condition. The parish council have no plan, but over the years the railway line has been regarded as one of the boundaries for development in the village and those views have been expressed on a number of applications.

## THE CASE FOR MR MORSE

The main additional points are:-

29. He has lived in the adjoining property of Swiss Cottage since 1958. He was born there and had lived there for 29 years before his marriage. The Sambourne Cottages included an old toll house and they ceased to be lived in from about 1958, when they gradually fell into disrepair. He knew the property when it was occupied by a Mr Skuse, a farmer, who kept 2 cows, and then by Jack and Jim Waldron (no relation to the appellant) who kept a cart at the railway station and ran a coal haulier's business. There was a stable building and a 4 ft wide wicket gate into the appeal site and stable. Horses would be ridden through the gate, but it was otherwise only used as a pedestrian access. He denies the existence of any 5 barred gate and has no knowledge of Mr Hurst gaining access to the site by lorry in the past.

30. The site is on a dangerous corner. It is a wet site with a dew pond and unsuitable for residential development. The present development is an eyesore and it should not be allowed to remain. If a temporary permission were to be given for 12 months, then it might take another 15 months to again reach the present stage of enforcement, and during all that time it would become a more permanent feature of this very rural area. Planning legislation is concerned with the quality of the environment and was framed to stop this sort of development. The number of objections and signatures on the petition show that there is a considerable weight of local objection to the use and the appeal should therefore be dismissed.

## THE CASE FOR MR HLETH

The main additional points are:-

31. He moved into Sambourne Bungalow in 1939 and the appeal property was then used by a Mr Waldron who had a horse and cart and did general haulage work. During the war, the owner's son was a member of the Home Guard and he remembered visiting the site when there was a 5 barred gateway on the right hand side of the cottage (where

the existing access is). He could not, however, say how wide it was, but the entrance was widened when the cottage was demolished. He has no objection to the retention of the caravans.

## CONCLUSIONS

### Ground (b)

32. It is not disputed that there has been a material change of use, but there is a direct conflict of evidence from the witnesses as to the prior existence of a vehicular access to this land. A wicket gate is normally of a markedly different scale and appearance to an agricultural 5 barred gate and whilst Mr Hurst considers that there was a 5 barred gate there when he visited the site in 1971, the submitted aerial photograph (dated 1971) clearly shows a gap between the Sambourne Cottages and the hedgerow to the east, and also shows a driveway and a gate to Swiss Cottage, but I cannot see any similar driveway or gate on the appeal site. The other photograph lacks clarity and was probably taken at an earlier time, but that again does not indicate any access or gateway on the eastern side of the cottages. There was a gap in the hedging on the eastern side of the cottage, but the case of *Davenport v Northwich Rural District Council* established that the mere action of driving vehicles over the boundary of a piece of land is not the formation of an access and consequently, Mr Hurst's occasional access to the land has not in itself established any right of vehicular access. In all these circumstances I conclude that your client has not satisfied the need to prove the probable existence of a vehicular access to the site when he occupied it.

33. The gravel and other tipped material on the site and the walling are of very recent origin and I consider that it is probable that operational work has been carried out on the site in the formation of the existing vehicular access and that that work has been of such a scale and character as to constitute development. I have, however, considerable doubt as to whether a thorn hedge or any other hedge existed on this frontage when the new access work was undertaken (it does not appear on the aerial photograph) and the walling on the verge next to the carriageway is of little significance in the formation of the access. The inclusion of these features in the allegation are therefore unwarranted and should be deleted. Subject to such a deletion, the appeal fails under ground (b).

### Ground (a)

34. Visibility in both directions from the access is very good and turning facilities could be provided within the site, but the access is set on a bend in a comparatively fast length of road where there is no local speed limit and any access to and from the site must therefore entail some inherent danger. Moreover, as this road is a 'B' class road it is of some importance in the local road hierarchy and any new vehicular access or increased use of an access should therefore be discouraged.

35. The fact that the site was at one time occupied by 2 dwellings must be taken into account, but those cottages have probably not been lived in for more than 25 years, and they no longer exist as buildings which could be repaired or renovated for habitable use. So little building remains that many passers-by are probably unaware of their existence, whereas the caravans can be readily seen from the main road, and being on the outside bend of that road and in a flat landscape, their unattractive appearance damages the visual quality of that landscape. There has been a substantial amount of objection from local people in their letters and petition, and whilst the site is within the parish of Minety, it is not within the built up part of the village, but in open countryside. The caravans are not required for any agricultural or allied

rural purpose, their use is contrary to overall planning policies and road safety interests and they must therefore be considered to be an inappropriate development and planning permission, even for a 12 month period, should not be granted. The appeal under ground (a) therefore fails.

Ground (g)

36. As the previous existence of a thorn hedge is not accepted and the wall is comparatively insignificant, it would be unreasonable to require any replanting of trees and shrubs and the removal of the wall. The remaining requirements logically follow from the allegation and should therefore remain.

Ground (h)

37. I appreciate that your client has proposals which may result in another appeal, but the same issue of planning merit would again be involved and his use has created a real injury to this area of countryside. I do not therefore consider that it would be in the public interest to extend the period for compliance to 12 months. Bearing in mind, however, his personal circumstances and the difficulty which he will have in securing alternative accommodation, I consider that the period for compliance should be extended to 6 months.

38. I have considered all other matters raised at the inquiry but they are not sufficient to outweigh the above reasons which lead me to my decisions.

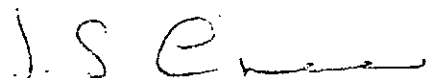
FORMAL DECISION

39. In exercise of the powers transferred to me I hereby direct that the words "together with the removal of thorn hedging and the construction of walling" from Schedule 2(b); and "together with the walling erected" in paragraph 1(c); and the whole of paragraph 2 of Schedule 3, be deleted; and the word "three" be replaced by the word "six" in the first line of paragraph 1 of Schedule 3. Subject thereto I dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the 1971 Act, as amended by the Act of 1981.

RIGHTS OF APPEAL AGAINST DECISION

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

I am Gentlemen  
Your obedient Servant



J S CHENER FRTPi  
Inspector

ENC

K. Scott

**IMPORTANT -**  
**THIS COMMUNICATION AFFECTS**  
**YOUR PROPERTY**

District Secretary's Department,  
G.C. Betteridge, LL.B. (Solicitor), District Secretary

*North Wiltshire*

26 OCT 1991

DX 34208 Fax (0249) 443152  
tel: CHIPPENHAM (0249) 443322 ext:593 (

**E** 294

NORTH WILTSHIRE DISTRICT COUNCIL  
Monkton Park, CHIPPENHAM, SN15 1ER

Dear Sir/Madam,

18th October, 1991

**NORTH WILTSHIRE DISTRICT COUNCIL**  
**TOWN AND COUNTRY PLANNING ACT 1971 (as amended)**  
**ENFORCEMENT NOTICE**

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

The Council have issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your interest in the land. Unless an appeal is made to the Secretary of State as described below, the Notice will take effect on the date shown in the box below and you must then ensure that the required steps for which you may be held responsible are taken within the period or periods specified in the Notice.

If you wish to appeal against the Notice, you should first read carefully the enclosed booklet entitled "Enforcement Notice Appeals - A Guide to Procedure". Then, you or your agent should complete the enclosed appeal form and send it, together with the extra copy of the Enforcement Notice enclosed herewith to the address on the appeal form. Your appeal **MUST BE RECEIVED** by the Department of the Environment **BEFORE THE NOTICE TAKES EFFECT**.

There is a requirement on the Council to specify the reasons why the local planning authority consider it expedient to issue the Notice and these reasons are set out in the ANNEX overleaf.

Yours faithfully,

*G.C. Betteridge*  
District Secretary

DATE ON WHICH NOTICE TAKES EFFECT  
AND BEFORE WHICH ANY APPEAL  
MUST BE RECEIVED 1st December, 1991

To:

Mrs. Amanda Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mr. Kevin Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mrs. D.R.A. Toseland  
13 Hay Lane  
Nr. Wroughton  
Wiltshire

Reasons for issue:

1. The site lies outside the framework or physical limits of any established settlement, in an area in respect of which it is the policy of the local planning authority, in the interests of rural amenity that only development essential to agricultural need or otherwise appropriate to a rural area shall be permitted.
2. The building is situated in a prominent location adjacent to a public highway and surrounded by open countryside such that it constitutes a detrimental urban incursion to the pleasant amenities and rural character of the area



NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)  
**ENFORCEMENT NOTICE**

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

---

WHEREAS :

- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of four years before the date of issue of this Notice on the land or premises ("the land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.
- (3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said Section 87, for the reasons set out in the ANNEX to this Notice.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of THREE MONTHS from the date on which this Notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 1st December, 1991

ISSUED 18th October, 1991

Signed

G.C. Bellbridge

Monkton Park,  
Chippenham, SN15 1ER.

SCHEDULE 1 .....

(over)

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

Land adjoining Swiss Cottage, Sambourne Road, Minety, Wiltshire shown stippled on the attached plan

SCHEDULE 2 - ALLEGED BREACH OF PLANNING CONTROL

The construction, in part, of a concrete block, constructed stone and brickwork building approximately 6m. long x 3.5m. wide.

SCHEDULE 3 - STEPS REQUIRED TO BE TAKEN

To remove the said building and materials and associated drainage works from the site.

E294

7063  
3162  
3.75

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT, 1971 (as amended)

# ENFORCEMENT NOTICE

SU 0491 0591

6941  
3.752ha  
9.38

8143  
2.91Eha  
7.21

0034  
1.061ha  
2.62

0031  
1.622ha  
1.50

6221  
4.552ha  
12.24

7520  
3.225ha  
7.97

8522  
1.152ha  
2.43

0017  
1.467ha  
3.63

the land  
referred to

8103  
162ha  
40

18503  
535ha  
1.32

7500  
0.17ha  
1.24

Scale 1:2500

Reproduced from the Ordnance Survey  
Map with the sanction of the Controller  
of H. M. Stationery Office

Plot 002 SU 0391

Su



# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ



Direct Line	0117-987-8927
Switchboard	0117-987-8000
Fax No	0117-987-8769
GTN	1374-

The Solicitor to the Council  
North Wiltshire District Council  
Monkton Park  
Cippenham  
Wiltshire  
SN15 1ER

YourRef:  
n.95.1518.F  
OurRef:  
T/APP/J3910/A/96/271043/P5

AD 1989.

Date: 15 APR 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND  
SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPEAL BY MRS A WOLTON

1. At the hearing into the above mentioned appeal held on 25 March 1997 an application for costs was made on behalf of Mrs A Wolton.
2. I enclose my decision on this application.

Yours faithfully

B H Smith DipTP MRTPI  
Inspector

ENC



# The Planning Inspectorate

*An Executive Agency in the Department of the Environment and the Welsh Office*

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ

Direct Line	0117-987-8927
Switchboard	0117-987-8000
Fax No	0117-987-8769
GTN	1374-

Dr R K Home  
Chartered Town Planner  
91 Mortimer Road,  
London  
N1 4LB

YourRef:

OurRef:  
T/APP/J3910/A/96/271043/P5

Date: 15 APR 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
APPEAL BY MRS A WOLTON  
APPLICATION NO: N.95.1518.F

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the North Wiltshire District Council to refuse planning permission in respect of an application for the use of land to accommodate a gypsy family and the retention of an amenity block for a temporary period of 3 years on land at the site of the former Sambourne Cottages, Minety, Malmesbury, Wiltshire. I conducted a hearing into the appeal on 25 March 1997. At the hearing, an application was made on behalf of Mrs A Wolton for an award of costs against North Wiltshire District Council. This is the subject of a separate letter.

2. In your statement submitted on behalf of the appellant you request that the application be treated as if it were for a permanent permission. You pointed out that temporary consents for gypsy sites are not advocated by Circular 1/94. At the hearing it was confirmed by the Council that the application was dealt with as submitted (other than an agreed minor amendment concerning the exact location and configuration of the site access). In other words, the Committee and any interested persons understood the proposal to be for a temporary period. The intention was, apparently, that a search would be made for an alternative site during this period. The proposed change from a temporary to a permanent permission is, in my opinion, so fundamental as to alter the essential nature of the proposal. In order to ensure that the interests of others are not prejudiced and that the Committee can consider the full implications of a permanent permission, I consider that if that is what is now being sought then it should be the subject of a separate application.

3. The amenity block which once stood on this site has been demolished in compliance with an enforcement notice. You suggest that any future amenity block arrangements can fall within the scope of a site licence and so the reference to the retention of the amenity block should be deleted from the description of the proposal. I agree, after all there is no amenity

block to retain. I have therefore dealt with your client's appeal on the basis that it is for the use of the land to accommodate a gypsy family for a period of 3 years.

4. From my inspection of the site and its surroundings, and from the representations made, I consider the main issues in this case to be: first, whether the proposal would have a materially adverse effect on the character and appearance of the countryside bearing in mind the relevant development plan policies; second, whether use of the proposed access by vehicular traffic and the absence of footways on this section of the B4040 would be unduly prejudicial to the safety of drivers and pedestrians using the highway; and, third, if that is so, whether such objections are outweighed by the special needs of a gypsy family.

5. The appeal site adjoins the outside of a bend in the B4040 Malmesbury to Cricklade road, some 0.5m north east of the built extent of the village of Minety. It lies within generally flat farmland variously bounded and divided by hedgerows with a noticeable scatter of hedgerow trees. The site adjoins the curtilage of an isolated dwelling (Swiss Cottage) but is otherwise surrounded by agricultural land and the highway. It has a road frontage of about 45m and an average depth therefrom of some 17m. The site contains a concrete hardstanding sufficient to accommodate at least two caravans.

6. I note that the appeal site has a long and convoluted planning history. It appears that at one time there were two cottages on this land. Between 1963 and 1986 four separate applications for the erection a dwelling were refused. In 1982, an enforcement notice was served in respect of the unauthorised use of the site for stationing caravans for the purpose of providing residential accommodation and domestic storage. The notice was upheld on appeal in 1983 (Ref. T/APP/5408/C/82/1504/PE2). An application for use of the land as a caravan site to accommodate a gypsy family was refused in April 1991 and an appeal against that decision dismissed in November 1991 (Ref. T/APP/J3910/A/91/185754/P2). Various enforcement proceedings followed, including actions in the courts, to secure the removal a roadside wall and brick amenity building. The amenity building was eventually demolished by the Council under the terms of the enforcement notice in June 1996. The roadside wall remains.

7. Where an adopted or approved development plan contains relevant policies, Section 54A requires that an application for planning permission or an appeal shall be determined in accordance with the plan, unless material circumstances indicate otherwise. For the purposes of Section 54A in this case, the development plan comprises the North East Wiltshire Structure Plan incorporating Alteration Nos. 1 and 2 approved in April 1993 and the North Wiltshire Local Plan adopted in August 1993.

8. The North East Wiltshire Structure Plan is currently under review as part of the new county-wide Structure Plan which covers the period to 2011. The deposit draft published in August 1996 has just been the subject of an examination in public and the Panel's report is awaited. The deposit version of the North Wiltshire Local Plan Review has reached a parallel stage in its progress towards adoption, the public inquiry into objections to this plan closed in February 1997 but the Inspector's report is not expected to be received by the Council before January 1998.

9. The Council consider the most relevant policies in the approved North East Wiltshire Structure Plan to be Policies H19, which indicates that new dwellings in the countryside will not be permitted unless needed in connection with agriculture or forestry; H24, which

indicates that mobile homes and residential caravans will be treated in the same manner as permanent dwellings; and H25, which says that having regard to the provisions of the Caravan Sites Act 1968, special consideration will be given to both public and private provision for gypsy caravans as these have particular requirements. The adopted North Wiltshire Local Plan does not contain specific policies relating to gypsy sites, although the Council cite the more general Policies H10, H13 and C7. These are concerned with the protection of the open countryside where new dwellings, mobile homes and residential caravans will not normally be permitted (Document 3 pages 10 and 11).

10. Circular 1/94 made it clear that structure plans should incorporate guidance on gypsy site provision. This led to the inclusion of Policy DP17 in the deposit County Structure Plan, latest version of this Policy comprises Document 4. This indicates, and I paraphrase, that special consideration should be given to proposals for gypsy sites which should not be considered against other policies for towns and villages due to their particular requirements, they will need to have a minimum impact on the natural and built environment, meet the needs of occupants and provide acceptable access and services.

11. Two specific policies relating to gypsy sites were included in the consultation draft of the North Wiltshire Local Plan Review (RH17 and RH18). These were subsequently amalgamated into a single policy (RH17) in the deposit Review Plan considered at the local plan inquiry. Policy RH17 is a criteria based policy which gives special consideration to bona fide gypsy proposals which will be permitted subject to conformity with relevant criteria (Appendix 13 of the Council's Statement).

12. I have found it necessary to dwell on policy considerations because a significant part of your case is that there have been considerable changes in planning policy since the appeal was dismissed in November 1991. First, the Structure Plan (Second Alteration) was approved in 1993. Second, Circular 1/94 has been published and advises, among other things, that the planning system should recognise the need for accommodation consistent with gypsies' nomadic lifestyle. It states that the proposed repeal of local authorities' duty to provide gypsy sites is expected to lead more applications for private sites, often the gypsies' preferred approach. It requires specific gypsy sites policies in development plans (as does PPG12) and states that the aim should always be to secure provision appropriate to gypsies' accommodation needs while protecting amenity. Third, the Criminal Justice and Public Order Act 1994 repealed the duty of local authorities to provide sites for gypsies and abolished the "designation" procedures. It introduced country-wide sanctions against unauthorised gypsy encampment. Circular 18/94 offers guidance on relevant provisions of the 1994 Act. Finally, there is the fact that both the approved Structure Plan and adopted Local Plan and the Reviews of both Plans post-date the 1991 appeal decision.

13. I also note that both Circular 1/94 and 18/94 advise that it will rarely be appropriate to make a permission for a gypsy site subject to a temporary or personal condition.

14. You contend that deposit Local Policy RH17 is very significant, not least because the previous local plan did not include a policy on gypsy site provision and the Inspector in 1991 had to rely upon general housing policies. Yet in their report to committee on this application (Document 3) officers placed undue reliance on the approved development plan despite the fact that Policy H25, which was spelt out in full, had been overtaken by events with the repeal of certain provisions of the Caravan Sites Act 1968, and in the absence of a gypsy sites policy in the Local Plan members' attention was drawn to Policies H10, H13 and

C7 which, again, were spelt out in full. There was only a passing reference to Policies RH17 and RH18 (the forerunners of the new RH17), and even then it was in the context of objections to these Policies.

15. The Council respond by saying they were bound to have regard to the approved development plan as required by the statute. They also attach weight to draft policies as material considerations. It is also the case that in 1991 the Inspector had regard to Policy H25 of the then First Alteration to the Structure Plan. This was carried forward into the current Second Alteration and although it pre-dates the changes to the 1968 Act, its message giving special consideration to both public and private gypsy sites remains essentially the same. As for the report to Committee, members would have been aware of the contents of Policies RH17 and RH18 and the report quotes extensively from Circular 1/94. Not least the reference to the aim to secure provision while protecting amenity.

16. I acknowledge that on the face of it the Committee report concentrates upon the development plan by having regard to the most relevant policies in the approved Structure Plan and adopted Local Plan. These feature more prominently than RH17 and RH18 of the draft Local Plan Review. But there are copious quotes from Circular 1/94 which represent the latest Government advice on site provision. But whatever weight is attached to the various policies and government guidance, the need to determine this appeal in relation to land use factors remains. The appellants status as a gypsy is not in doubt and a further material consideration is that the site is owned by a member of a gypsy family. However, given the location of the site it inevitably follows that due account must be taken of the impact of this proposal on the character and appearance of the open countryside in which it is situated. To that extent at least little has changed since the last appeal except that caravans were on the site at that time.

17. It is your case that the proposal would not cause undue harm to the countryside. Gypsy sites are almost always in the countryside as their owners cannot realistically compete in the market for land within settlements. This site has long been separated from the surrounding agricultural land and was once in residential use. Policy RH17 (revised) is the most up to date and relevant policy. It is a permissive policy and its requirements are met by compliance with all the relevant criteria. The proposed caravans (a mobile home and touring caravan) would not be so conspicuous in the landscape as to cause the "demonstrable" harm referred to in the Policy. The site is contained by the wall and mature hedgerows. It is next to an existing building and the siting of caravans within this small site is not particularly relevant. The fact that the caravans might be seen is not a sufficient reason for refusal. The three public footpaths which converge on the site are little used and the views from the paths screened by hedgerows.

18. I agree that weight should be attached to Policy RH17 commensurate with the stage reached in the progression of the towards adoption. I also accept that the test should be whether the proposal causes demonstrable harm to the amenities, rural character or environment of the countryside. Having carefully considered the matter, I find that I cannot disagree with the Council and the two appeal Inspectors. I consider the site to be prominent in this generally flat open landscape. I believe that wheresoever positioned on this small site where the potential for screening is most limited, the caravans would be most apparent in views from lengthy stretches of the B4040 either side of the site. They would appear as alien features in what I regard as an attractive, wholly rural and largely unspoilt landscape. They



would also be seen from public footpaths and from other distant viewpoints. I conclude that the proposal would not conform to the first two criteria of Policy RH17.

19. You point out that the Explanatory Memorandum in support of Policy DP17 of the deposit draft Structure Plan recognises that gypsy sites are sometimes best met by locations outside settlements. Hence the Policy states that proposals should not be considered against other policies for towns and villages. However, as the Council explained, they considered this matter against countryside policies. Indeed, I note that Policy DP17 requires proposals to have a minimum impact on the natural environment. I am not persuaded that that requirement can be met in this case.

20. Criterion 9 of Policy RH17 seeks to protect the amenities of residential properties. The Council suggest that residents of Swiss Cottage would be adversely affected by noise and disturbance emanating from activities on the appeal site. It seems to me that some disturbance is inevitable but you say there is no intention to carry out commercial activity, or indeed park a lorry, at the site. I am satisfied that such matters could be controlled by the imposition of a suitable condition on any permission and, therefore, I think it unlikely that the level of noise and disturbance would amount to the demonstrable harm referred to in criterion 9.

21. Criterion 5 of Policy RH17 requires proposals to be acceptable in terms of access, parking and their effect on any highways. It is agreed on all sides that the repositioned access would afford good visibility for traffic emerging from the site. It is also accepted that the intended provision of a turning facility would enable that traffic to leave the site in forward gear. However, the local highway authority are concerned that with traffic passing the site at speed (the 85th percentile wet weather speeds being measured at 46mph in one direction and 49mph in the other) vehicles turning into the site would constitute an unacceptable hazard on a B class road. Having regard to the stopping sight distances and the degree of forward visibility on the B4040 at the site access, and taking into consideration the fairly low level of traffic likely to be generated by the proposed use, I would expect the threat to highway safety to be slight. The absence of footways alongside the road between the site and Minety must inevitably pose road safety problems for pedestrians and motorists, not least at the narrow bridge over the railway. But while I acknowledge that the proposed development would be bound to have some effect of the free flow of traffic at the site, I do not consider the likely effect on road safety to be such as to warrant a refusal of permission for this reason if it is taken in isolation.

22. Having concluded that the proposal would have a materially adverse effect on the character and appearance of the countryside and thereby conflict with policies in both the approved and emerging development plans, I have to consider whether your client's special needs as a gypsy are such as to outweigh the foregoing objections.

23. As I understand it Mr and Mrs Wolton and their four children occupy a Housing Association flat in Swindon. The eldest child, Kevin, is likely to leave school this summer. The other three children are settled in schools in Swindon. It was felt that Kevin would benefit from attending the Comprehensive School in Malmesbury as he would then meet up with his former peer group from his earlier days at Minety Primary School which is in the Malmesbury catchment. That possibility which was to some extent dependent upon early occupation of the appeal site has now been overtaken by events.

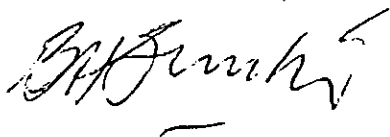
24. Mrs Wolton spends much of her time at the Wroughton gypsy site where her parents occupy a pitch. It is said that, being a traveller, she is not happy living in permanent housing accommodation. I can understand that but I do not think a sufficiently compelling reason to overturn the Council's decision and grant permission on the grounds of personal circumstances.

25. The fact that the appeal site is owned by a gypsy, Mrs Buckland, is a material consideration but I do not regard it as a decisive factor in this case. While the provision of public gypsy sites led to designation for Wiltshire under the previous legislation, you rightly point out that Circular 1/94 advises that applications should not be refused because the Council consider public provision in the area to be adequate. However, while you suggest that the number of unauthorised encampments in the County has increased since 1991, the Council say there has been a decrease while the number of pitches increased over the same period. They compare July 1991 with January 1997, as opposed to your whole years (January to January and July to July). That may account for the difference between you. However, even on your own figures there has been a slight decline in the number of unauthorised sites in the District. My own conclusion from these statistics is that the situation in the District is certainly no worse than was the case at the time of the last appeal decision and the fact that there are still some unauthorised encampments (8 in July 1996) is insufficient reason to override the planning objections to a temporary use of the appeal site.

26. I have taken into account all the other matters raised in the representations, including the difficulty in finding suitable sites elsewhere in the District, but I find them to be insufficient to outweigh the considerations that have led me to my decision.

27. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully



B H Smith DipTP MRTPI  
Inspector

## APPEARANCES

### FOR THE APPELLANT

Dr R K Home MA PhD DipTP MRTPI - Planning Consultant  
Mr N Durnford - formerly Gypsy Liaison Officer, Wiltshire CC  
Mrs M Harrold - Gypsy Liaison Officer, Wiltshire CC  
Mr P Buckland - Appellant's relative

### FOR THE PLANNING AUTHORITY

Mr C Prescod DipTP MRTPI - Principal Planning Officer, NWDC  
Mr J E Harding - Senior Assistant, Wiltshire CC

## DOCUMENTS

Document 1 - List of persons present at the Hearing.  
Document 2 - Notice of the Hearing and Circulation List  
Document 3 - Committee Report 25 March 1996  
Document 4 - Extract for deposit draft Structure Plan.  
Document 5 - Decision on T/APP/J3910/A/93/219433/P7.

## PLANS

Plan A - Application Plans (N95.1518.F) to various scales.  
Plan B - Access location to a scale of 1:1250 (Drwg No 179/1)  
Plan C - Access layout to a scale of 1:500 (Drwg No 179/2)  
Plan D - Location Plan



# The Planning Inspectorate

*An Executive Agency in the Department of the Environment and the Welsh Office*

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ

Direct Line 0117-987-8927  
Switchboard 0117-987-8000  
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GTN 1374-

Dr R K Home  
Chartered Town Planner  
91 Mortimer Road.  
LONDON  
N14LB

T/APP/J3910/A/96/271043/P5

15 APR 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND  
SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPLICATION FOR COSTS BY MRS A WOLTON

1. I refer to your application for an award of costs against the North Wiltshire District Council which was made at the hearing held at Council Offices, Monkton Park, Chippenham on 25 March 1997. The hearing was in connection with an appeal by Mrs A Wolton against a refusal of planning permission on an application for the use of land to accommodate a gypsy family and the retention of an amenity block for a temporary period of three years at the former Sambourne Cottages, Minety, Malmesbury, Wiltshire. A copy of my appeal decision letter is enclosed.

2. In support of your client's application, you claim that the Council acted unreasonably in that they failed to adhere to the advice of paragraphs 12 and 13 of Annex 3 to Circular 8/93. The report to the Committee that decided the application made only a passing reference to the most relevant policies, those are Policies RH17 and RH18 of the deposit draft North Wiltshire Local Plan. Further, the report failed to draw attention to Policy DP17 in the deposit draft Wiltshire County Structure Plan. Notwithstanding the previous history, the Council, in the proper exercise of their functions, should have approved the application. Despite changes in legislation, Government advice and the emergence of new development plan policies, the Council refused to shift their position in relation to this site although they now say significant weight should be attached to those changes. The highway objection in relation to the position of the proposed access was overcome by an agreed revision to the application which now meets the required visibility standards. The highway reason for refusal is merely a makeweight.



3. In response, the North Wiltshire District Council claim that they acted properly and reasonably in relation to the planning application. The Committee report sets out in detail the planning history of the site and it quotes copiously from Circular 1/94 which gives the latest Government advice. It sets out in full the approved development plan policies to which the Council must have regard according to Section 54A. Local Plan Policies RH17 and RH18 were in early draft form at that time and therefore attracted limited weight. Members of the Committee would have been aware of the wording of these policies even though the wording is not set out in the report. The draft Structure and Local Plans have since reached the post-inquiry and examination in public stage and are therefore now of more significance. At both the appeal inquiries in 1982 and 1991 the question of harm to the visual amenities of the area was a key material consideration in looking at planning merits. That remains the case today even though Government guidance has changed in other respects. The appellant has not approached the Council for assistance in the search for a suitable site. Significant evidence has been advanced in support of the reason for refusal on highway grounds. Not least the concern for pedestrian safety given the absence of footways on the B4040. The Council has been patient and not unreasonable in this case.

4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

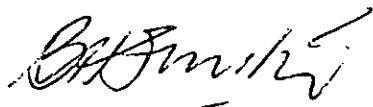
5. I consider that the Committee report running to some 15 pages of close type covers all aspects of the proposal and in such detail as to be extremely informative and wholly adequate as the basis for a decision. Moreover, I note that a panel of committee members visited the site. While I agree that it seems inconsistent that draft policies should get only a passing reference while approved development plan policies are spelt out in full, I have no reason to doubt that members would, as the officers say, have access to the wording of all relevant policies. Certainly, the report gives a comprehensive view of changes in Government policy by giving a whole series of quotes from the more relevant parts of Circular 1/94. It seems to me that the officers gave the Committee a very full appraisal of the planning context to inform a planning judgement in this case. It may be unfortunate, as opposed to unreasonable, that not all the policies were spelt out in detail, but I do not consider that this amounts to unreasonable behaviour in the terms of Circular 8/93 or has led to your client incurring unnecessary expense. Furthermore, the Council did call upon the local highway authority to bring evidence in support of the highway reason for refusal. Substantial evidence was given in relation to traffic speeds at the appeal site and in regard to the potential hazard to pedestrians using the road. It was not therefore unreasonable that the Council should pursue the highway objections at the hearing. I therefore conclude that

your application for an award of costs is not justified.

**FORMAL DECISION**

6. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mrs A Wolton for an award of costs against the North Wiltshire District Council.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'B H Smith', with a stylized flourish at the end.

B H Smith DipTP MRTPI  
Inspector

# ENFORCEMENT REGISTER INFORMATION SHEET

E/ 294

APPEAL yes no

Plan's Ref

## ADDRESS

LAND ADJOINING  
SWISS COTTAGE  
MINDRY

## BREACH of CONTROL

THE CONSTRUCTION IN PART OF  
A CONCRETE BLOCK, CONSTRUCTED  
STONED AND BRICKWORK BUILDING  
APPROXIMATELY 6m LONG x 3m WIDE

Issuing Authority NWDC

Date Issued 18.10.91

## STOP NOTICES

Date Served

Requiring

Date(s) served

25.10.91

4  
28.10.91

Takes effect 1.12.91

Compliance by 1.3.92

Dates Extended by  
Secretary of State

Date withdrawn

## REQUIREMENTS of ENFORCEMENT

TO REMOVE THE SAID BUILDING AND MATERIALS  
AND ASSOCIATED DRAINAGE WORKS FROM THE SITE

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

# IMPORTANT -

THIS COMMUNICATION AFFECTS  
YOUR PROPERTY

District Secretary's Department.

G.C. Betteridge, LL.B. (Solicitor), District Secretary

*North  
Wiltshire*

DX 34208 Fax (0249) 443152

**E**

294

tel: CHIPPENHAM (0249) 443322 ext:593 (

NORTH WILTSHIRE DISTRICT COUNCIL  
Monkton Park, CHIPPENHAM, SN15 1ER

Dear Sir/Madam,

18th October, 1991

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

## ● ENFORCEMENT NOTICE

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

The Council have issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your interest in the land. Unless an appeal is made to the Secretary of State as described below, the Notice will take effect on the date shown in the box below and you must then ensure that the required steps for which you may be held responsible are taken within the period or periods specified in the Notice.

If you wish to appeal against the Notice, you should first read carefully the enclosed booklet entitled "Enforcement Notice Appeals - A Guide to Procedure". Then, you or your agent should complete the enclosed appeal form and send it, together with the extra copy of the Enforcement Notice enclosed herewith to the address on the appeal form. Your appeal MUST BE RECEIVED by the Department of the Environment BEFORE THE NOTICE TAKES EFFECT.

● There is a requirement on the Council to specify the reasons why the local planning authority consider it expedient to issue the Notice and these reasons are set out in the ANNEX overleaf.

Yours faithfully,

*G.C. Betteridge*

District Secretary

DATE ON WHICH NOTICE TAKES EFFECT  
AND BEFORE WHICH ANY APPEAL  
MUST BE RECEIVED 1st December, 1991

To:

Mrs. Amanda Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mr. Kevin Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mrs. D.R.A. Toseland  
13 Hay Lane  
Nr. Wroughton  
Wiltshire



Reasons for issue:

1. The site lies outside the framework or physical limits of any established settlement, in an area in respect of which it is the policy of the local planning authority, in the interests of rural amenity that only development essential to agricultural need or otherwise appropriate to a rural area shall be permitted.
2. The building is situated in a prominent location adjacent to a public highway and surrounded by open countryside such that it constitutes a detrimental urban incursion to the pleasant amenities and rural character of the area

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)  
**ENFORCEMENT NOTICE**

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

WHEREAS :

- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of four years before the date of issue of this Notice on the land or premises ("the land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.
- (3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said Section 87, for the reasons set out in the ANNEX to this Notice.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of THREE MONTHS from the date on which this Notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 1st December, 1991

ISSUED 18th October, 1991

Signed

G.C. Bennet

Monkton Park,  
Chippenham, SN15 1ER.

SCHEDULE 1 .....

(over)

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

Land adjoining Swiss Cottage, Sambourne Road, Minety, Wiltshire shown stippled on the attached plan

SCHEDULE 2 - ALLEGED BREACH OF PLANNING CONTROL

The construction, in part, of a concrete block, constructed stone and brickwork building approximately 6m. long x 3.5m. wide.

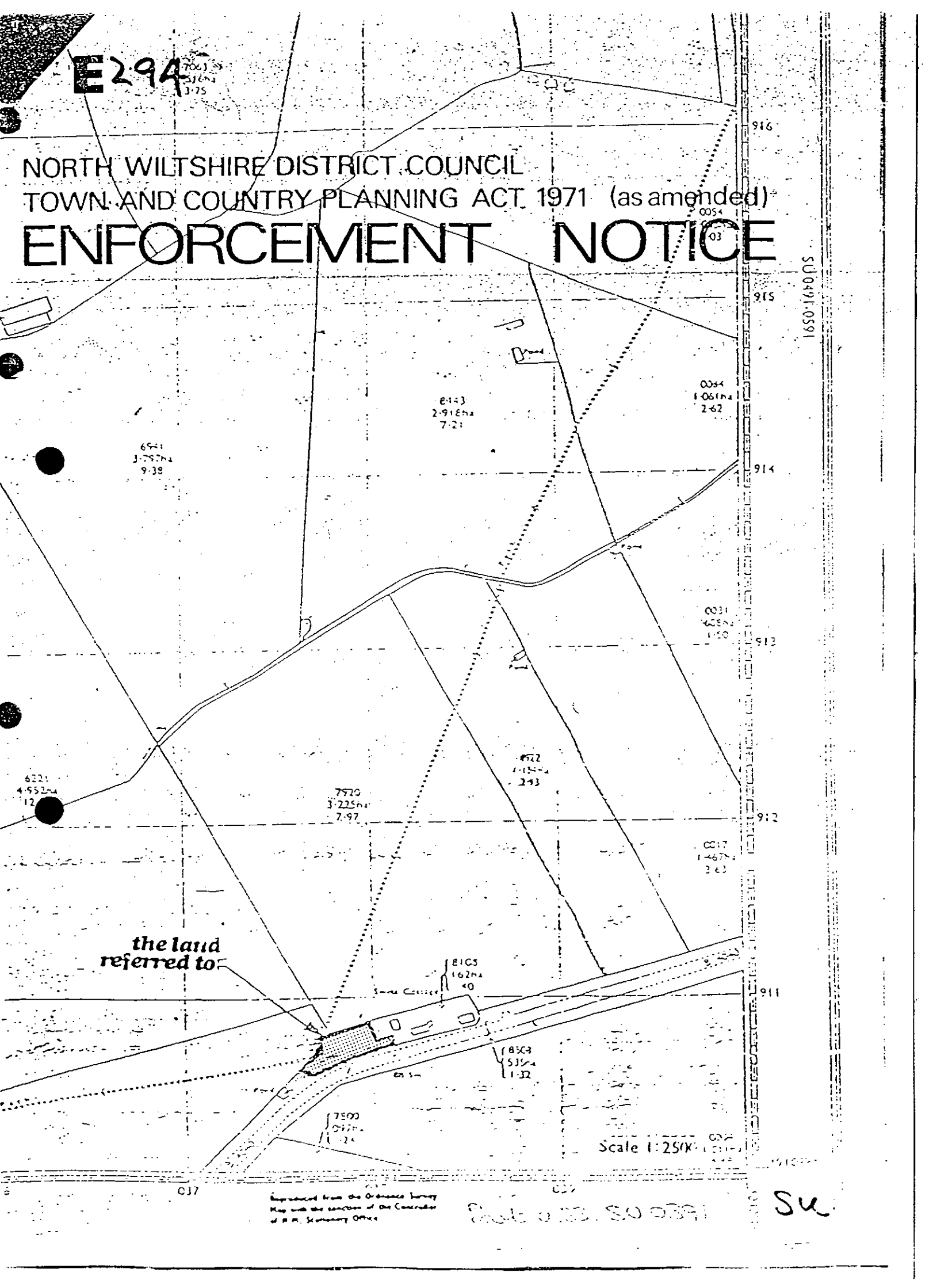
SCHEDULE 3 - STEPS REQUIRED TO BE TAKEN

To remove the said building and materials and associated drainage works from the site.

E294

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT, 1971 (as amended)

ENFORCEMENT NOTICE



# IMPORTANT

THIS COMMUNICATION AFFECTS  
YOUR PROPERTY

District Secretary's Department,  
G.C. Betteridge, LL.B. (Solicitor), District Secretary

DX 34208 Fax (0249) 443152

tel: CHIPPENHAM (0249) 443322 ext: 593 (

**E**

294

*R Burton*  
*(3)*  
*North 294*  
*Wiltshire*

NORTH WILTSHIRE DISTRICT COUNCIL  
Monkton Park, CHIPPENHAM, SN15 1ER

Dear Sir/Madam,

18th October, 1991

## NORTH WILTSHIRE DISTRICT COUNCIL TOWN AND COUNTRY PLANNING ACT 1971 (as amended) ENFORCEMENT NOTICE

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

The Council have issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your interest in the land. Unless an appeal is made to the Secretary of State as described below, the Notice will take effect on the date shown in the box below and you must then ensure that the required steps for which you may be held responsible are taken within the period or periods specified in the Notice.

If you wish to appeal against the Notice, you should first read carefully the enclosed booklet entitled "Enforcement Notice Appeals - A Guide to Procedure". Then, you or your agent should complete the enclosed appeal form and send it, together with the extra copy of the Enforcement Notice enclosed herewith to the address on the appeal form. Your appeal MUST BE RECEIVED by the Department of the Environment BEFORE THE NOTICE TAKES EFFECT.

There is a requirement on the Council to specify the reasons why the local planning authority consider it expedient to issue the Notice and these reasons are set out in the ANNEX overleaf.

Yours faithfully,

*G.C. Betteridge*  
District Secretary

DATE ON WHICH NOTICE TAKES EFFECT  
AND BEFORE WHICH ANY APPEAL  
MUST BE RECEIVED 1st December, 1991

To:

Mrs. Amanda Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mr. Kevin Wolton  
The Caravan  
Land adj. to Swiss Cottage  
Sambourne Road  
Minety  
Malmesbury  
Wiltshire

Mrs. D.R.A. Toseland  
13 Hay Lane  
Nr. Wroughton  
Wiltshire

ANNEX - (This does not form part of the enforcement notice)

Reasons for issue:

1. The site lies outside the framework or physical limits of any established settlement, in an area in respect of which it is the policy of the local planning authority, in the interests of rural amenity that only development essential to agricultural need or otherwise appropriate to a rural area shall be permitted.
2. The building is situated in a prominent location adjacent to a public highway and surrounded by open countryside such that it constitutes a detrimental urban incursion to the pleasant amenities and rural character of the area

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)  
**ENFORCEMENT NOTICE**

Land adjoining Swiss Cottage, Minety, Malmesbury, Wiltshire

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WHEREAS :

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THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 1st December, 1991

ISSUED 18th October, 1991

Signed

G.C. Benbridge

Monkton Park,  
Chippenham, SN15 1ER.

SCHEDULE 1 .....

(over)

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

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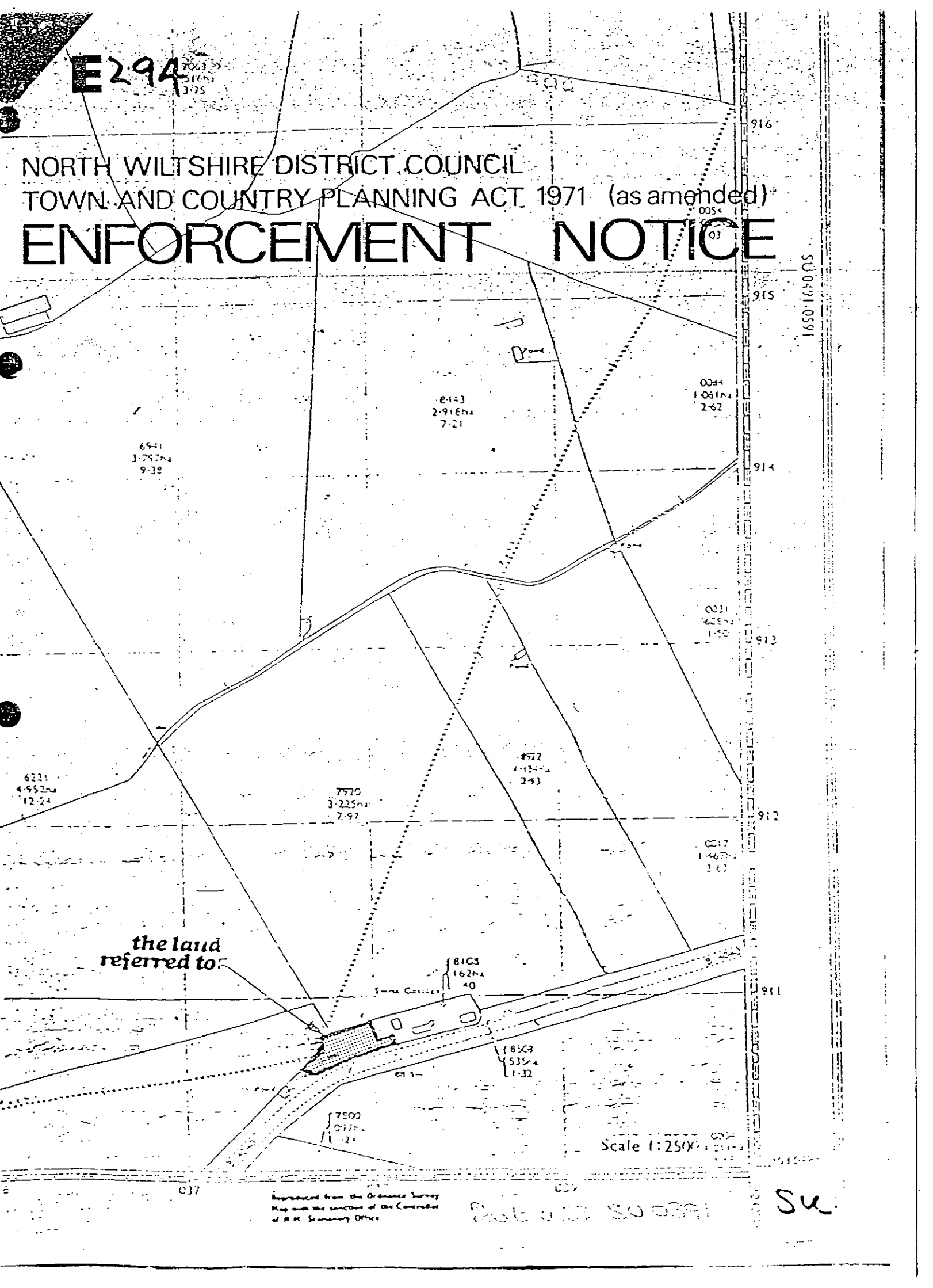
To remove the said building and materials and associated drainage works from the site.



**E294** 7063 25  
1061 1  
3-75

NORTH WILTSHIRE DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT, 1971 (as amended)

**ENFORCEMENT NOTICE**



the land  
referred to

Scale 1:2500

Reproduced from the Ordnance Survey  
Map with the sanction of the Controller  
of H.M. Stationery Office

Date 01/01/80 SU 00391

Su