N/84/1416/ENF

NORTH WILTSHIRE DISTRICT COUNCIL

ENFORCEMENT REGISTER INFORMATION SHEET

E/ 401		
APPEAL	yes	no
Plan'g Ref		

ADDRESS

THE PADDOCK.
HANKERTON.

BREACH of CONTROL

THE MAKING OF A MATERIAL CHANGE IN THE USE OF THE LAND FROM USE FOR THE PURPOSE OF AGRICULTURE TO USE FOR THE STORAGE OF BUILDERS MATERIALS AND PLANT.

Notice Quashed @ Appeal

Issuing Authority N W D C

Date Issued 12. 6. 84

Date(s) served 12. 6. 84

STOP NOTICES

Date Served

Requiring

Date withdrawn

Takes effect 20. 7. 84

Compliance by 20. 4. 85.

Dates Extended by Secretary of State

REQUIREMENTS of ENFORCEMENT

(i) TO CEASE THE USE OF THE LAND FOR STORAGE OTHER THAN AGRICULTURAL STORAGE.

(ii) TO REMOVE FROM THE LAND THE SHEDS AND SIMILAR STRUCTURES THEREON

(iii) TO REMOVE FROM THE LAND THE SAID BUILDER'S MATERIALS AND PLANT.

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

Enforcement Quashed 26.3.85

R. BURTON

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

	TO	DATE RECEIVED
PLANNING DEPARTMENT	LB	13/6

13 JUN 1984

District Secretary's Department
D. F. Lewis
Solicitor to the Council

North Wiltshire District Council
Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 132

Our ref E 401 Enquiries to Mr. McDonald

Dear Sir/Madam, 12th June, 1984

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

ENFORCEMENT NOTICE

The Paddock, Hankerton.

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 and the fee specified in the box below, 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,

Solicitor

DATE ON WHICH NOTICE TAKES EFFECT and BEFORE WHICH ANY APPEAL MUST BE RECEIVED - 20th July, 1984	FEE WHICH MUST ACCOMPANY APPEAL - £47

To:

Mr. Lawrence W. Nurden,
1 Hillwell,
Hankerton,
Malmesbury,
Wilts.
SN16 9LE

ANNEX - (This does not form part of the Enforcement Notice)

REASONS FOR ISSUE:

1. *The development has a detrimental effect on the character and appearance of this area in particular and rural amenity in general and, if permitted, would set a precedent for further similar undesirable proposals.*

2. *The land lies outside the limits of any established settlement or its reasonable extension, in an area for which it is the policy of the local planning authority that existing uses shall for the most part remain undisturbed and only development essential to agricultural need shall be permitted.*

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

The Paddock, Hankerton.

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 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 development by the making of the material change in the use of the land 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 NINE 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 20th July, 1984

ISSUED 12th June, 1984.

Signed

Monkton Park,
Chippenham, SN15 1ER.

/ SCHEDULE 1 . . . . . .

(over)

ENFuse1

SCHEDULE 1 - Land or premises to which this Notice relates

Land comprising Ordnance Survey parcel 9144 Hankerton, Malmesbury, Wiltshire shown stipple-edged on the attached plan.

SCHEDULE 2 - Alleged breach of planning control

The making of a material change in the use of the land from use for the purpose of agriculture to use for the storage of builders' materials and plant.

SCHEDULE 3 - Steps required to be taken

(i) To cease the use of the land for storage other than agricultural storage.

(ii) To remove from the land the sheds and similar structures thereon.

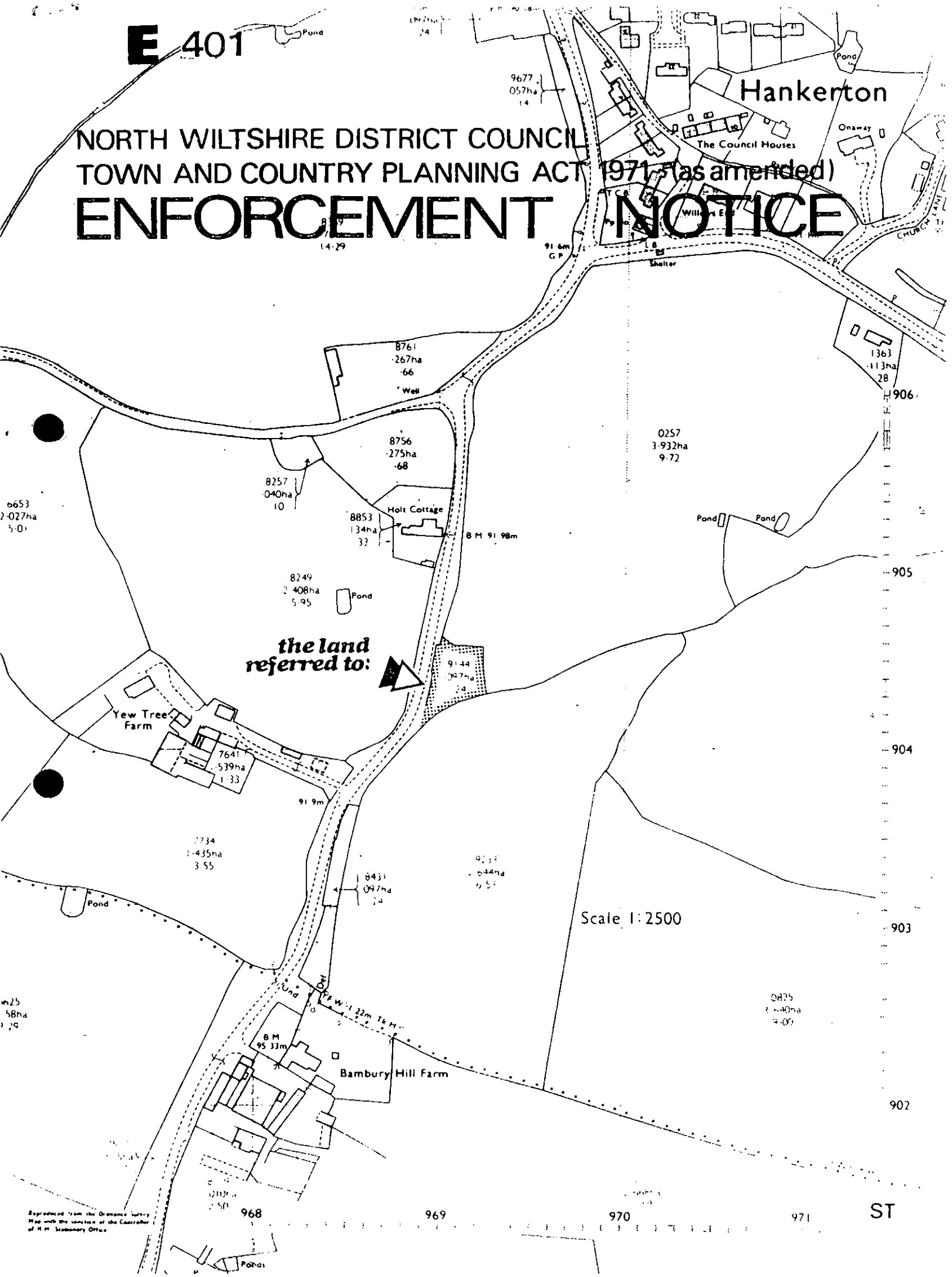
(iii) To remove from the land the said builders' materials and plant.

E 401

NORTH WILTSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE



Department of the Environment and
Department of Transport
Common Services
Room 1408
Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321

Direct line 0272-218 938
Switchboard 0272-218811 GNT 2074

Council Ref AD/DA/636(a) and (b)
N/84/0489/F and N/84/1416/ENF

Your reference
WGS/BJ

Our reference
T/APP/J3910/C/84/2120/P6 and
T/APP/J3910/A/84/17893/P6

Date
26 MAR 85

Messrs Fielder and Jones
10 Oxford Street
MALMESBURY
Wilts
SN16 9AZ

Enforcement - Quashed
PP. Appeal - allowed.

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY MR L W NURDEN
LAND AT THE PADDOCK, HANKERTON, MALMESBURY, WILTS

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. These appeals are against an enforcement notice issued by the North Wiltshire District Council and against a refusal of planning permission by that council concerning the above-mentioned land. I held a joint local inquiry into the appeals on 22 January 1985.

2. a. The date of issue of the notice is 12 June 1984.

b. The breach of planning control alleged in the notice is the making of a material change of use of Ordnance Survey Parcel No 9144, Hankerton, Malmesbury, Wiltshire (shown stipple edged on the enforcement notice plan) from use for the purpose of agriculture to use for the storage of builders' materials and plant, since the end of 1963 and without the grant of planning permission.

c. The requirements of the notice are:-

1. to cease the use of the land for storage other than agriculture storage;

2. to remove from the land the sheds and similar structures thereon;

3. to remove from the land the said builders' materials and plant.

d. The period for compliance with the notice is 9 months.

e. The appeal was made on grounds 88(2)(a) and (e) but at the inquiry you submitted that the enforcement notice is invalid.

3. The development for which planning permission was refused is change of use to builders yard at The Paddock, Hankerton.

4. The evidence was taken on oath.

SITE AND SURROUNDINGS

5. This 0.097 ha [illegible] site fronts upon a Class III road between the villages of Hankerton [illegible] Charlton, and lies in open fields to the south of the

built-up part of the village of Hankerton. It is bounded by deciduous hedges (except for a short length of the road frontage and the access on to the road) and at the time of my inspection it contained an old corrugated iron shepherd's hut, a portakabin, a lean-to shed and a caravan, and was used for the open storage of builders' materials such as stones, tiles, scaffolding, corrugated asbestos and iron sheets, window frames and shed panels.

YOUR CLIENT'S CASE

The main points are:

Validity

6. The previous use of the site was not that of agriculture, but of a cottage and garden. The cottage had fallen into disrepair and the site was overgrown when Mr Nurden removed the remaining walls of the cottage and cleared the site in 1961. The well still remains on the site. The allegation is consequently incorrect and the notice is therefore invalid.

Ground (e)

7. Mr Nurden has given direct evidence on oath, of running his family tilers and builders business from this site (at much the same level as at present) since 1961, when he had been required by the former rural district council to discontinue the use of his council house garden in nearby Hankerton, for the storage of stone etc. Other evidence, on oath has been given by Mr L J Cooper, a long standing resident of Hankerton and former parish councillor (for 30 years) who has known your client since 1954-55, and who confirms the existence of his business on the appeal site since the early 1960s. Documentary evidence showing the existence of the business use in or before 1963 is submitted, which again, confirms the existence of the use of the site for the storage of stones, tiling materials and building materials since 1963, and continuance of that use at much the same level of activity on this land.

8. The district council, however, have not been able to produce any direct evidence to show that this use did not exist in 1963 and the advice of the parish council appears to have changed from initially alleging that the use did not exist before 1963, to (more recently) the fact that they "could not state for certain not in use". None of the present parish councillors lived in Hankerton in 1963 and no one has been able to give direct evidence on oath, that the use did not exist at that time.

Ground (a) and Section 36 appeal

9. Mr Nurden only made his application for permission because the council had refused planning permission for a builders storage shed in 1982 and he was then told by them that he had to apply for a change of use of the site to a builders yard. This yard is essential for his small local business which specialises in Cotswold stone tiling and entails the employment of himself, his son and a Youth Scheme trainee and provides a service to the local community, including the district council and local farmers. The site could be adequately screened, the use does not generate any traffic dangers and has existed on this land, without complaint, for many years.

10. If permission were to be granted, then it should not be a personal permission since Mr Nurden's son might want to continue the business. There is no

objection to any condition regulating the height of the materials stored on the site, provided that such a condition does not prejudice any future application for a building. The suggested 'landscape' condition is acceptable.

THE COUNCIL'S CASE

The main points are:

Validity

11. Whilst the wording of the enforcement notice can be criticised and the council are unable to produce any direct evidence to dispute the previous cottage and garden use, the grounds of appeal referred to a former "scrubland" (ie agricultural) use and the site itself is known as "The Paddock". The council's action is not, therefore, unreasonable and your client's interests have not been prejudiced if the previous use were not an agricultural use.

Ground (e)

12. The evidence now submitted is more impressive than when the council refused to grant an Established Use Certificate for this use in September 1984. This land originally belonged to the Charlton Park Estate, but that estate had had 3 agents since 1963 and their records of what has happened are not available. In June 1982 the parish council expressed the view that the appeal site was not used for the storage of tiles and builders' materials before 1963 and in September 1984, they were unable to confirm the date when the builders yard was commenced, but considered that the use had increased over the past 8 years. Rating Records show that the site was not considered worthy of rating as a builders yard until 1979 or 1980 and whilst there are letters from local businesses stating that the use existed in 1963, that was more than 20 years go. Memories can be unrealiable over such a long period, staff must have come and gone during that time and there are still no bills of sale or other documentary evidence to show that the use existed on this site in 1963.

Ground (a) and Section 36 appeal

13. This is an isolated site surrounded by agricultural land in an essentially rural area where the Council Development Plan requires existing land uses to remain mostly undisturbed and only development essential to agriculture and other acceptable rural uses should be permitted. The Structure Plan encourages rural businesses and, at times, permits the use of certain buildings in the countryside for employment purposes, but that policy does not apply to land outside buildings because of the greater impact on the amenity and character of the countryside than normally results from the use of open land for commercial purposes.

14. The district council seeks to help small businesses and a letter was sent to your client explaining the planning committee's concern at the appearance of the site and suggesting a meeting to discuss the future of the business. No response was however made, and whilst the council accepts the appellant's problems in finding a satisfactory site, the authority also has a duty to protect the amenities of the environment and to control development in the public interest. This is an attractive area of countryside, the parish council object to the continuance of the use and whilst it is a use which might be accommodated in redundant farm buildings, it is an eyesore and inappropriate for this exposed isolated site.

15. If, notwithstanding the council's representations it is decided to grant planning permission then conditions on the lines of conditions 21, 22 and 24 of Circular 1/85 should be imposed.

CONCLUSIONS

Validity

16. Whilst it is probable that the previous use of this land was not an agricultural use, there has been no misunderstanding about the basic allegation that the present use has involved a material change in use which has taken place without any planning permission. Your client's interests have not been prejudiced and it is therefore my view that there is no material defect or error in the notice, and that the defect or error which exists is susceptible to correction under Section 88A(2) of the 1971, as amended by the Act of 1981. I therefore conclude that the notice is not invalid.

Ground (e)

17. In view of the direct evidence of 2 people, the supporting documentary evidence now submitted and the absence of any significant evidence to the contrary, I conclude that it is probable that the use in question existed before the beginning of 1964. I note the council's view that the use may have intensified over the past 6 years, but there is no firm evidence to support that opinion, and from the evidence of the witnesses who were cross-examined and the documents before me, I conclude that the pre-1964 use has continued until the present day in such a way that no material change of use has taken place. Your client's appeal therefore succeeds on ground (e) and ground (a) does not fall to be considered.

The Section 36 appeal

18. Whilst my decisions on the enforcement notice mean that the present use of the site is now immune from further enforcement action, the appeal against the refusal of planning permission remains to be determined on its planning merits. It is not disputed that the use is unacceptable under basic Development Plan and Structure Plan policies affecting the countryside. The appearance of the site is the subject of local complaint, and the use is not essential for local agriculture. The place for a builders yard is within a built-up area rather than in open countryside such as this.

19. On the other hand, the use has been part of the local scene for many years, it does not involve a loss of agricultural land, it provides a local service and local employment, and it is the structures on the site rather than the open storage of building materials which are an 'eyesore'. That storage use could be adequately screened by further planting, especially along the road frontage, and as it is Government policy to encourage both small businesses and a positive approach to development control, the objections in this case are not so clear-cut as to warrant the discontinuance of the use. The balance of considerations would, however, be markedly different if it were not for the particularly 'local' nature of your client's business and his long use of this site. I therefore conclude that a personal planning permission for the continuance of the use would be appropriate. I note your reservations with regard to the stacking of materials on the site but the question of any proposal for a new building on this land is not for me to determine. Having seen the present condition of the site, it is my view that the council's suggested limitation on storage height is reasonable.

20. I have considered all other matters raised at the inquiry and in the letters from local people, but they are not sufficient to outweigh the above reasons which lead me to my decisions.

FORMAL DECISIONS

21. In exercise of the powers transferred to me, I hereby:-

1. Allow the appeal under Section 88 and quash the enforcement notice.

2. Allow the appeal under Section 36 and grant planning permission for the continued use of The Paddock, Hankerton as a builders yard, in accordance with the terms of application No N/84/0489/F dated 6 March 1984 and the plans submitted therewith subject to the following conditions:-

1. The use hereby permitted shall only be carried on by Lawrence William Nurden.

2. Details of a scheme of landscape planting for the site, and in particular of the road frontage, shall be submitted to the local planning authority within 6 months of the date of this letter, for their approval. The approved landscaping scheme shall be implemented in the following planting season and any trees or plants which within the period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

3. Materials shall not be stacked or deposited to a height exceeding 2 m above existing ground level.

22. Attention is drawn to the fact that an applicant for approval for the consents required in condition 2 has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally, or if the authority fail to give notice of their decision within the prescribed period. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation, other than Section 23 of the Town and Country Planning Act 1971.

RIGHTS OF APPEAL AGAINST DECISIONS

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

I am Gentlemen
Your obedient Servant

J. S. Cheer

J S CHEER FRTPI
Inspector

ENC

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

R. BURTON

401

District Secretary's Department
D. F. Lewis
Solicitor to the Council

North Wiltshire District Council
Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 132

Our ref E 401 Enquiries to Mr. McDonald

Dear Sir/Madam, 12th June, 1984

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

ENFORCEMENT NOTICE

The Paddock, Hankerton.

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.

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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,

Solicitor

DATE ON WHICH NOTICE TAKES EFFECT and BEFORE WHICH ANY APPEAL MUST BE RECEIVED - 20th July, 1984	FEE WHICH MUST ACCOMPANY APPEAL - £47

To:

Mr. Lawrence W. Nurden,
1 Hillwell,
Hankerton,
Malmesbury,
Wilts.
SN16 9LE

ANNEX - (This does not form part of the Enforcement Notice)

REASONS FOR ISSUE:

1. *The development has a detrimental effect on the character and appearance of this area in particular and rural amenity in general and, if permitted, would set a precedent for further similar undesirable proposals.*

2. *The land lies outside the limits of any established settlement or its reasonable extension, in an area for which it is the policy of the local planning authority that existing uses shall for the most part remain undisturbed and only development essential to agricultural need shall be permitted.*

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

The Paddock, Hankerton.

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 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 development by the making of the material change in the use of the land 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 NINE 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 20th July, 1984

ISSUED 12th June, 1984.

Signed

Monkton Park,
Chippenham, SN15 1ER.

/ SCHEDULE 1 . . . . . .

(over)

SCHEDULE 1 - Land or premises to which this Notice relates

Land comprising Ordnance Survey parcel 9144 Hankerton, Malmesbury, Wiltshire shown stipple-edged on the attached plan.

SCHEDULE 2 - Alleged breach of planning control

The making of a material change in the use of the land from use for the purpose of agriculture to use for the storage of builders' materials and plant.

SCHEDULE 3 - Steps required to be taken

(i) To cease the use of the land for storage other than agricultural storage.

(ii) To remove from the land the sheds and similar structures thereon.

(iii) To remove from the land the said builders' materials and plant.

E 401

NORTH WILTSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE