

**ENFORCEMENT REGISTER
INFORMATION SHEET****E/** 535 A.

APPEAL yes no

Plan's Ref

ADDRESS

LAND AT
COMMONWOOD LANE
SHALSTON

BREACH of CONTROL

THE MAKING OF A MATERIAL CHANGE IN
THE USE OF LAND FROM AGRICULTURAL TO
A CONTINUING USE FOR FARM PURPOSES AND
IN ADDITION, USE AS A BUILDING YARD
FOR THE STORAGE OF BUILDING AND
OTHER MATERIALS

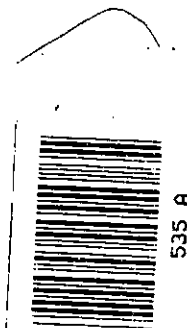
Issuing Authority NWDC

Date Issued 27.11.89

STOP NOTICES

Date Served

Requiring



Date withdrawn

Date(s) served

27.11.89

Takes effect 1.1.90

Compliance by 1.4.90

Dates Extended by
Secretary of State**REQUIREMENTS of ENFORCEMENT**

TO REMOVE THE BUILDING AND OTHER MATERIALS FROM
THE LAND AND TO CEASE TO USE IT FOR THE
PURPOSES OF THE STORAGE OF BUILDING AND OTHER MATERIALS

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

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

Land at Commonwood Lane, Sherston, Malmesbury, Wiltshire

WHEREAS :

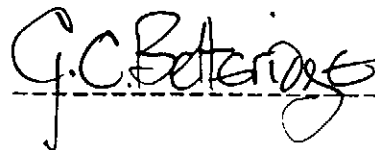
- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control after the end of 1963 on the land or premises ("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 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 January 1990

ISSUED 27th November 1989

Signed



Monkton Park,
Chippenham, SN15 1ER.

/ SCHEDULE 1

(over)

SCHEDULE 1 - Land or Premises to which this notice relates

Land at Commonwood Lane Sherston Wiltshire which is shown stippled on the attached plan.

SCHEDULE 2 - Alleged breach of planning control

The making of a material change in the use of the land from agricultural to a continuing use for that purpose and, in addition, use as a builders' yard and for the storage of building and other material.

SCHEDULE 3 - Steps required to be taken

To remove the building and other materials from the land and to cease to use it for the purposes of the storage of building and other materials.

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

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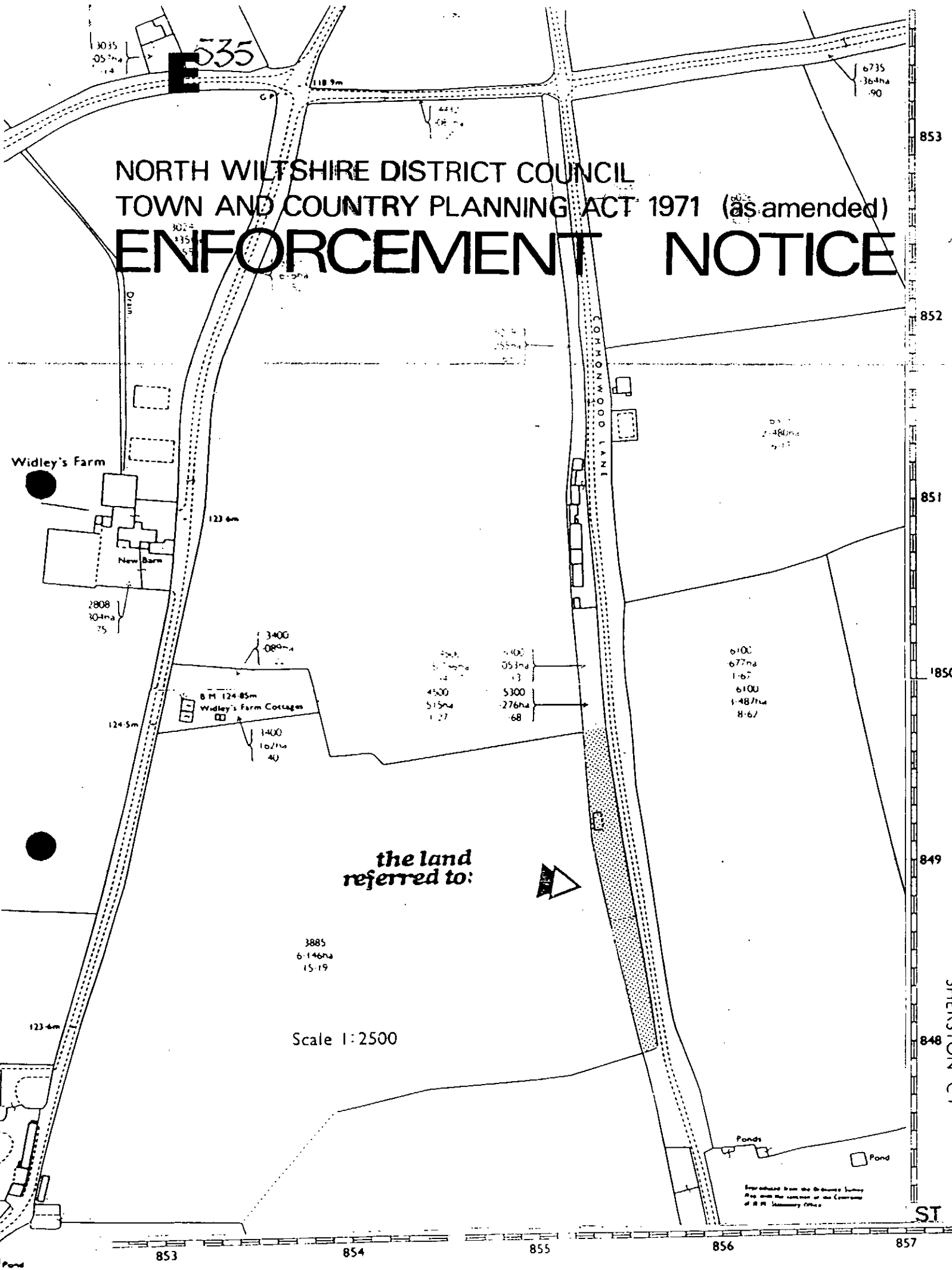
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NORTH WILTSHIRE DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)
ENFORCEMENT NOTICE





DEPARTMENT OF THE ENVIRONMENT
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GTN 1374

Margaret Scott

535

Mr Nigel Cant
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Stinchcombe
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|-------------------|-----------|
| PLANNING DEPT. | |
| 19 NOV 1990 | |
| PASSED TO | DATE REC. |
| | |
| | |

Councils ref: M^CD/KP AD/1306/7
Your reference

NC/mr
Our reference

Date APP/C/89/J3910/15
APP/D/90/J3910/1
15 NOV 90

Sir

TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 195
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
LAND AT COMMON WOOD LANE, SHERSTON, MALMSBURY, WILTS
APPEAL BY A T NEAL LTD

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector Mr H Brinkworth BA DipTP MRTPI, who held a local inquiry into your clients' appeals against:

(a) an enforcement notice, issued by the North Wiltshire District Council on 27 November 1989, relating to the alleged material change of use of land at Common Wood Lane, Sherston, Malmsbury from agricultural use to agricultural use and use as a builders yard for the storage of building and other materials; and,

(b) the decision of the same council refusing to grant an established use certificate in respect of the above mentioned land for storage of timber, stone and stone tiles and second hand bricks for use on older houses in the area.

2. The appeal against the enforcement notice was initially made on the grounds set out in section 174(2)(b) and (e) of the Town and Country Planning Act 1990 (formerly section 88(2) of the Town and Country Planning Act 1971) and grounds (a) and (h) were added at the inquiry. In addition, submissions were made at the inquiry which were proper to grounds (c) and (g): these have been considered accordingly. The application for an established use certificate was dated 29 July 1989 and was based on section 191(a) of the 1990 Act (section 94(1)(a) of the 1971 Act).

3. A copy of the Inspector's report of the inquiry is enclosed. His conclusions are set out in paragraphs 31 to 39 of the report and his recommendations at paragraphs 40 and 41. A copy of these paragraphs is appended as annex A to the letter and forms part of it. The report has been considered.



100%
RECYCLED PAPER

4. The formal decisions are set out in paragraphs 13 and 14 below. Neither an established use certificate nor planning permission is being granted for the use for which the certificate was sought. The enforcement notice is being upheld subject to correction and variation and planning permission is being refused for the use to which the notice relates.

REASONS FOR THE DECISIONS

5. The Secretary of State notes that at the inquiry your clients amended the area of land for which an established use certificate was sought, by removing a section of rotavated land towards the south of the site, leaving, effectively, two areas some 60m apart. A further small area of land to the north was removed from the application and this latter adjustment was reflected in the site area to which the enforcement notice should relate.

The established use appeal and the appeal against the enforcement notice on grounds (b) and (e)

6. The Inspector's conclusions, on the established use appeal and the appeal against the enforcement notice on grounds (b) and (e), are in paragraphs 31 to 35 of his report. The Secretary of State has formed somewhat different views on these matters for the reasons which follow. Having regard to the judgement of the High Court in the case of *Burdle & Williams v the Secretary of State for the Environment and New Forest Rural District Council* (1972) 3 AER 240 & 1 WLR 1207, it is necessary - in determining whether a material change of use has taken place on any land - to identify the relevant planning unit and then to consider whether there has been a change in the character of the use of the land comprised in that unit. In this instance, the Inspector has concluded that at the beginning of 1964 the appeal site formed part of a larger area of land - then owned by Mr A H Palmer - and that the larger area was then the planning unit. He has also concluded that Mr Palmer used the unit for the purposes of agriculture; that Mr Palmer was also engaged in general farm maintenance work on dry stone walls and fences; and that there was some use made of the land for storage in connection with the maintenance activity. These conclusions are agreed: in addition, it is accepted from the evidence put forward at the inquiry that Mr Palmer was also engaged in what he described as estate maintenance contracting. For the Council, it was submitted that any storage use of the land associated with his maintenance work was ancillary or incidental to the use of that land for agriculture. However, because agriculture - as defined in section 336(1) of the 1990 Act - and farm/estate maintenance contracting are intrinsically separate activities, the Secretary of State takes the view that, as a matter of planning law, the use of the planning unit in connection with such contracting was incapable of being ancillary or incidental to the use of the unit for the purposes of agriculture. In this instance, the issue to be determined is whether the storage use by Mr Palmer amounted to a primary use of the land in addition to the agricultural use (ie whether the site was in mixed use) or whether the storage was merely de minimis. It is agreed with the Inspector - for the reasons he gives - that the divisions Mr Palmer made within the planning unit were for the convenience of keeping animals in separate parts of the land; that Mr Palmer was first and foremost a farmer; and that all of the unit was in agricultural use, with no part exclusively used for storage of items and materials connected with contracting. Whilst consideration has been given to the evidence of the persons called as witnesses on behalf of your client as to the use made of the land by Mr Palmer, it is agreed with the Inspector that the 1971 aerial photograph shows no definite signs of storage, and it is noted that the occupier of Commonwood Farm in the vicinity of the site disputes (by letter dated 28 August 1990) that the contracting activity began more than a few years ago. Moreover, applications for planning permission dated 4 July 1963 and 10 May 1972 (the latter was made by Mr

Palmer) described the contemporary uses of the land as respectively "horticulture" and "pig keeping"; and in a letter dated 13 August 1980 conveying the decision on an appeal to the Secretary of State against the refusal of planning permission for the erection of an agricultural worker's bungalow on the planning unit, an Inspector had made no reference to the land being in use for any storage purpose. In all the circumstances the view is taken that, as a matter of fact and degree, any storage use of the planning unit for purposes unconnected with the use of the land for agriculture was on the balance of probability de minimis before 1 January 1964 (ie the planning unit was in use for the primary purpose of agriculture and was not in mixed use). Although in 1975 Mr Palmer decided to substitute calf rearing for pig keeping, his evidence at the inquiry is that the former was also more or less a full time activity and it is considered that there was no material change of use from the primary one of agriculture at this stage. However, by 1983 a decision had been taken by Mr Palmer to give up calf rearing and to concentrate on contracting work and by late 1988 or early 1989 the planning unit had been divided, with that part comprising the present appeal site having been sold to your clients who now use the land for the storage of building and similar materials. For these reasons, the view is taken that there has been a change in the character of the use of the land from a primary use for the purpose of agriculture to a primary use for the storage of building and other materials, that this amounted to a material change of use as a matter of fact and degree, and that this change took place after the end of 1963. The established use appeal and the appeal against the enforcement notice on grounds (b) and (e) therefore fail.

The appeal against the enforcement notice on ground (c)

7. It was submitted on behalf of your clients that the appeal site was not in use as a builders yard as alleged in the enforcement notice. Reference was made to appeal decisions taken by the Secretary of State in September 1984 and October 1988, as reported respectively at 1985 JPL 278 and 1989 JPL 70, in support of the submissions. The Inspector's conclusions on these matters are in paragraph 36 of his report.

8. The Secretary of State notes that there is no statutory definition of the term "builders yard" and considers that it should be given its ordinary meaning. This was the approach adopted in the determination of the 2 earlier appeals referred to on behalf of your clients. In those instances, the view was taken that use as a builders yard involved a number of components, but it is considered that the absence of one or more of those elements in the present appeal use does not automatically exclude the land now in question from being so described. Your clients are engaged in building work and use the site for the purpose of storing building materials in connection with such work. In all the circumstances, the view is taken that the inclusion of this term within the description in schedule 2 of the enforcement notice is reasonable.

The appeal against the enforcement notice on ground (a) and the deemed planning applications

9. The Inspector's conclusions on the appeal against the enforcement notice on ground (a) and the deemed planning applications are in paragraphs 37 and 38 of his report. The Secretary of State agrees with the Inspector's conclusions and has decided not to grant planning permission for the development in question for these reasons.

The appeal against the enforcement notice on ground (g)

10. On behalf of your clients it was submitted that it was wrong for the requirements of the enforcement notice (in schedule 3 to the notice) to include the removal of the building referred to at the inquiry as the "pole

barn", since this would deny the right to use the building for the purposes of agriculture. The Inspector's conclusions on this matter are in paragraph 39 of his report.

11. The Secretary of State notes that the building in question was erected during the period when any use of the appeal site for the storage of contractor's materials was, in his view, no more than de minimis. It is therefore logical to conclude that it was erected for the purpose of the primary use of the land during that period, namely for agricultural purposes. For this reason, the view is taken that its removal from the site should not be a requirement of the enforcement notice. Whilst it is noted that in fact it was not the Council's intention that schedule 3 to the enforcement notice should be construed in this way, for the avoidance of doubt it has been decided to correct the notice by clarifying the adjectival function of the word "building" in this schedule.

The appeal against the enforcement notice on ground (h)

12. The Inspector's conclusions on the appeal against the enforcement notice on ground (h) are in paragraph 39 of his report. The Secretary of State agrees with these conclusions and has accordingly decided to extend the period for complying with the requirements of the enforcement notice.

FORMAL DECISIONS

The Established Use Certificate Appeal

13. For the reasons given above, the Secretary of State is satisfied that the refusal of North Wiltshire District Council to grant an established use certificate was well-founded. He hereby dismisses your clients' appeal and declines to grant an established use certificate for the use of land at Common Wood Lane, Sherston, Malmsbury for the storage of timber, stone and stone tiles and secondhand bricks for use on older houses in the area. On the application deemed to have been made under the provisions of section 196(6) of the 1990 Act (section 95(6) of the 1971 Act) the Secretary of State declines to grant planning permission for any of the uses for which the certificate was sought.

The Enforcement Notice Appeal

14. For the reasons given above, the Secretary of State, in exercise of his powers under section 176(2) of the 1990 Act (section 88A(2) of the 1971 Act), hereby directs that the enforcement notice be corrected and varied as follows:

- (1) after the words "NOTICE IS HEREBY GIVEN", the words "THREE MONTHS" shall be deleted and the words "SIX MONTHS" substituted therefor;
- (2) in Schedule 1, the word "stippled" shall be deleted and the words "edged by heavy black line" substituted therefor;
- (3) in Schedule 3, after the first appearance of the word "building" the word "materials" shall be added;
- (4) the plan attached to this letter shall be substituted for the plan attached to the enforcement notice.

Subject thereto the Secretary of State upholds the enforcement notice as varied and dismisses the appeal.

RIGHT OF APPEAL AGAINST THE DECISIONS

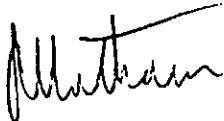
15. This letter is issued as the Secretary of State's determination of your clients' appeals. Leaflets C and D, enclosed for those concerned, set out the rights of appeal to the High Court against the decisions, on a point of law.

APPLICATION FOR COSTS ON BEHALF OF THE APPELLANT

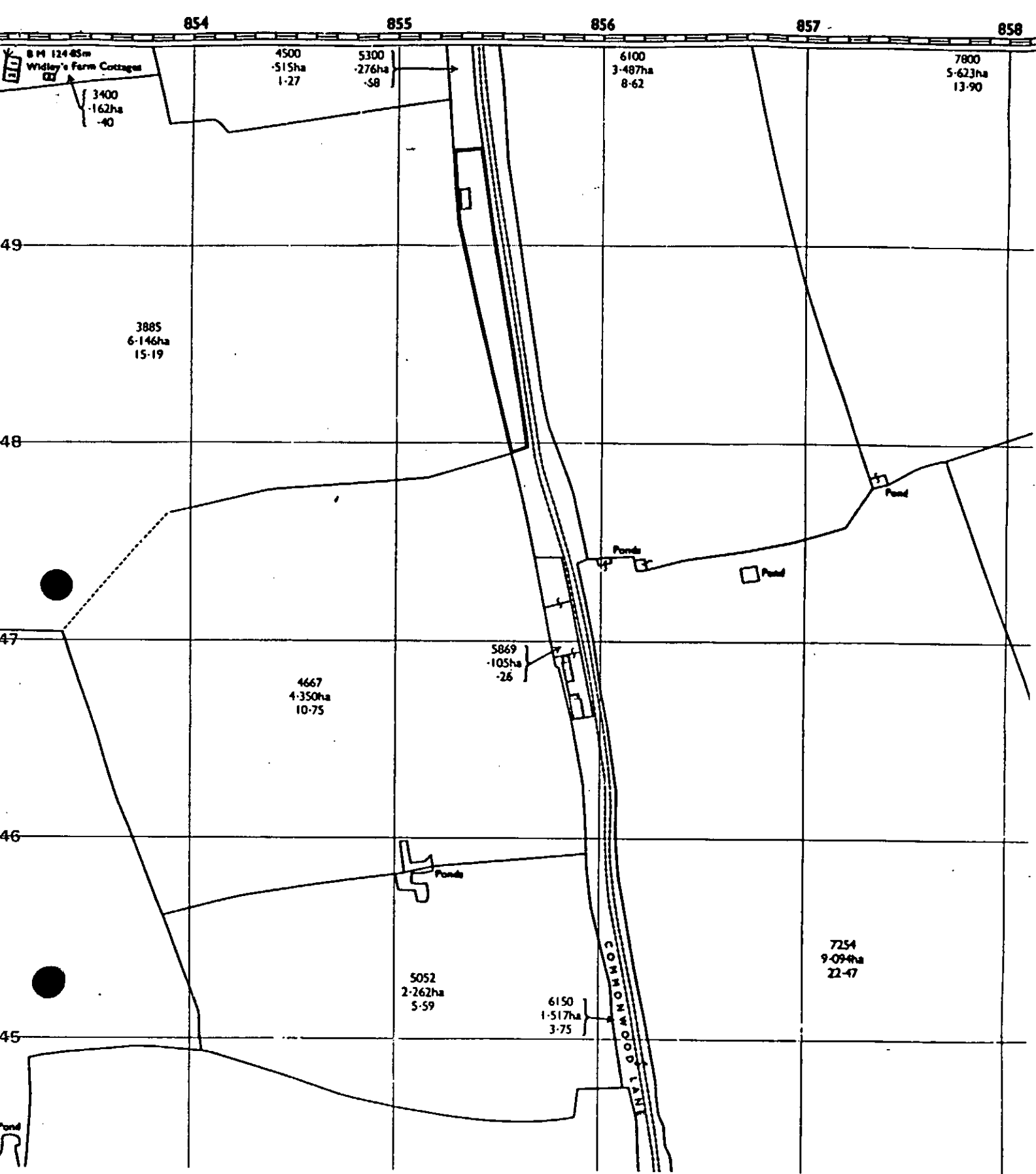
16. At the inquiry you submitted an application for costs on behalf of your clients which the Council opposed. The submissions made on behalf of the appellants and the Council on costs and the Inspector's conclusions and recommendation on the matter, are set out in the separate costs report, a copy of which is enclosed. You submitted on your clients' behalf that the Council had acted unreasonably in that insufficient guidance was given as to the nature of the information needed to substantiate the claim for a certificate of established use, their response being merely that sufficient evidence was needed. You also submitted that the Council's action, in issuing an enforcement notice solely on the ground of refusal of the certificate, was arbitrary. The Council maintained that the appellants' response to correspondence showed that they understood what was needed in the way of supporting evidence. The issue of the enforcement notice was entirely reasonable where an inappropriate use was taking place in an Area of Outstanding Natural Beauty.

17. In appeals against enforcement notices and refusals of established use certificates, the parties are normally expected to meet their own expenses regardless of the outcome of the appeal. The parties' submissions, the Inspector's conclusions and his recommendation have been carefully considered in the light of the policy for awards of costs published in the Department of the Environment Circular 2/87. The Secretary of State accepts the Inspector's conclusions and recommendation. He has therefore decided that an award of costs against North Wiltshire District Council on the ground of unreasonable behaviour would not be justified and the application is accordingly refused.

I am Sir
Your obedient Servant



R J LATHAM
Authorised by the Secretary of State
to sign in that behalf



This is the plan referred to in the
Secretary of State's decision letter
dated 15 NOV 90

Reference APP/C/89/J3910/15 &
APP/D/90/J3910/1

R. J. Latham

R.J. Latham

Authorised by the Secretary of State
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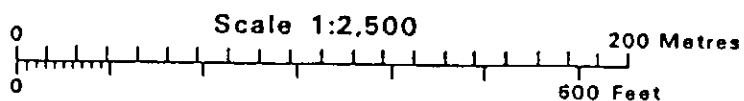
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Department of the Environment

REF G00166



Extract from OS sheet ST 8584

National Grid Reference 38560/18453



Base map reproduced from the Ordnance Survey map

CONCLUSIONS

31. The legal matters at issue are not for me to decide but bearing in mind my findings of fact I conclude as follows. The primary use of the appeals sites was for agricultural purposes in 1963 because by then Mr Palmer had established his pig rearing enterprise. The business was operated from this and the other land he owned to the north. The divisions he had made within the total area were for the convenience of keeping the animals in separate parts but I have no doubt from the weight of sworn evidence on the matter that from at least 1963 he was also storing some items such as poles and stone around the pole barn and on the southern section.

32. It is not uncommon in cases where personal recollection of events is called for going back 27 years to have little by way of incontrovertible proof on which to rely. This case is no exception but I have no doubt that Mr Palmer was, as he claimed, involved in carrying out general farm maintenance on dry stone walls and fences. The question on which the Council were not satisfied was whether the degree of this storage use was significant in planning terms to the extent that it could be described as the principal or sole use subsisting on the EUC land at the end of 1963. On that point I take note of what Mr Palmer said about his activities, and substantiated by the other local people who spoke for him, namely that he was first and foremost a pig farmer spending some 40 hours a week in that capacity.

33. It follows that he could have had limited time left for the stone wall repairs and fencing. I consider therefore that this part of his work was secondary at the relevant date and that that was the way he continued to operate for at least 20 years. The switch from pigs to calves makes no difference. Furthermore by confirming that he kept hay for the pigs in the pole barn as well as timber and poles, and that the bottom land (ie at the southern end) was both used for keeping boars from the sows and also cutting up poles and logs, it is apparent that the whole of this area was for agriculture as well as the claimed use.

34. This is borne out by what little can be deduced from the 1971 aerial photograph. There are some shapes which could well be pig arks as suggested but there is nothing that I can see to show definite signs of storage. If that were the case I would expect to see some sort of order in the arrangement of say stone from timber. The 1981 photo also shows more activity, which

could possibly reflect Mr Palmer's move into calf rearing, but still no positive sign of independent storage. By 1985 however there was undoubtedly an increase in the scale of work which Mr Palmer did as a farm maintenance contractor because by then the animal rearing had stopped and contracting became his main if not his sole occupation. The northern land had been sold and the appeals land was used for the purposes claimed. As such a material change of use occurred from a mixed use for agriculture and storage to a primary use for the latter. For the purposes of the application for an EUC the storage of building materials for dry stone walling and fencing has not at all times since the end of 1963 subsisted as the primary use of the land.

35. I conclude therefore that the application for an EUC should not succeed. For the same reasons it follows that ground (e) of the appeal against the notice fails. Likewise a material change of use occurred before the date when the notice was issued. Whereas at the beginning of 1964 the planning unit comprised the whole of the land, that is including the adjoining northern land, in 1985 that land was sold to Major Moore. The agricultural element ceased, the unit of occupation was confined to the appeals land and its primary use became that for which the EUC was claimed. I consider that these circumstances led to a material change in the character of the land and hence that ground (b) should fail.

36. I see little merit in the claim by the appellants that the allegation in Schedule 2 of the notice is wrong in referring to a builders yard. In my opinion a builders yard, while it may well contain other items such as those listed in the cases referred to (Docs 19 and 20) both dry stone walling and fencing could be described as building operations. Therefore the materials used in their construction could equally be called building materials. If however it is concluded that they constitute "other operations" defined in Section 55(1) of the 1990 Act, rather than building operations, I see no difficulty in excluding reference to builders yard.

37. Turning to ground (a) I consider it is important that the value of the appeals land to the area as a whole within the Cotswolds Area of Outstanding Natural Beauty should determine its use. At the same time it cannot be denied that the site is well screened from most public points of view and that if the existing hedges were retained under a condition at a minimum height of 2m and no storage permitted above 1.5m as volunteered by the appellants little visual harm would be done to those interests. On the other hand Commonwood Lane is too narrow for industrial or commercial traffic and the use by the appellants has given rise to difficulty for other traffic. I do not consider a condition designed to restrict the numbers or size of vehicles visiting the site would be reasonable or enforceable. There could also be no guarantee that the limited scale of storage now taking place would always be the case.

38. I recognise that the advice for the promotion of small businesses such as this is important in national and local terms. However this is not the only site owned by the appellants and no evidence was given that other sites or land is not available in a settlement. I consider that although the Local Plan has not been through all its stages it would be wrong to permit the use of sites in AONB's or outside settlements without good reasons. The strength of these policies protecting the countryside and areas of visual quality would be weakened. I conclude that neither the appeal against the notice on ground (a) nor those against the deemed applications should they fall to be determined should succeed.

39. The Council had nothing to say against allowing a longer period for compliance with the terms of the notice in accordance with ground (h) and I would see little harm if it were extended to 6 months. No formal appeal was made on ground (g) and the Council confirmed that the word "building" in the first line of Schedule 3 was to be construed in its adjectival sense. The pole barn can therefore remain to be used for some agricultural purpose or in connection with an incidental or ancillary use if desired.

RECOMMENDATIONS

40. I recommend that the appeal against the Council's refusal to grant an Established Use Certificate be dismissed. If the deemed application for planning permission falls to be considered I recommend it should not be granted. If permitted, conditions should be imposed restricting the height of hedges to 2m, no storage allowed exceeding 1.5m in height and that access be restricted to the northern area only with no storage north of the pole barn to enable vehicles to manoeuvre within the site. I also recommend that the site should be reduced to that sought by the appellants.

41. I recommend that the appeal against the notice be dismissed and the notice upheld subject to the period for compliance being extended as suggested in paragraph 39. Planning permission should not be granted on the deemed application but if it is decided to do so that it should be limited as for the EUC. If thought necessary the notice should be varied to exclude reference to a builders yard.

Application for Costs

42. I am submitting a separate report and recommendation on the application for the award of costs which was made on behalf of the appellant Company at the inquiry

I have the honour to be,
Sir
Your obedient Servant

Inspector.