

ENFORCEMENT REGISTER INFORMATION SHEET

E/ 537

APPEAL

yes

no

Plan's Ref

ADDRESS

LAND ADJOINING THE
MALMESBURY BY-PASS (A429)
MALMESBURY

BREACH of CONTROL

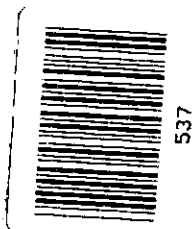
Issuing Authority NWDC

Date Issued 24.7.89

STOP NOTICES

Date Served

Requiring



Date(s) served

24.7.89

Takes effect 1.9.89

Compliance by 1.12.89

Dates Extended by
Secretary of State

Date withdrawn

REQUIREMENTS of ENFORCEMENT

TO REMOVE FROM THE SAID LAND THE
BUILDING AND ITS COMPONENTS.

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

The carrying out without planning permission of building operations on the land, namely the erection and construction of a steel frame/concrete block and asbestos building (shown hatched black for the purposes of identification on the said plan) of approximately 20 metres by 15 metres in area and 4 metres in height not being permitted development in terms of Part 6 of Schedule 2 to the Town and Country Planning General Development Order 1988.

Mrs. M. Scott

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

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



North Wiltshire District Council

Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 130

Our ref **E** 537 Enquiries to Mr McDonald

Your ref

24th July, 1989

Dear Sir/Madam,

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


Land adjoining the Malmesbury By-Pass (A429) 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.

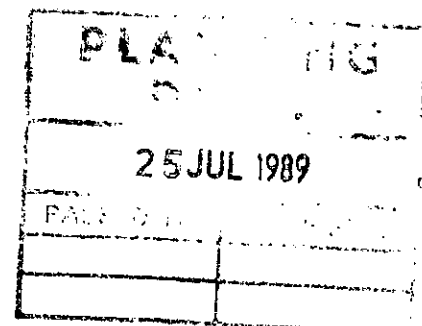
Yours faithfully,


District Secretary

DATE ON WHICH NOTICE TAKES EFFECT
AND BEFORE WHICH ANY APPEAL
MUST BE RECEIVED 1st September, 1989

To:

John A. Herbert
"Riverview"
St. John's Street
Malmesbury
Wilts.



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

Reasons for issue:-

1. The erection of a new building in this location is contrary to Policy A1 of the Malmesbury Local Plan which seeks to protect the river valleys around the historic town of Malmesbury and maintain its setting and amenity.
2. The erection of a building in this location would be seriously detrimental to the character of the area, its visual amenities and the setting of the historic town of Malmesbury.
3. The site is situated near to residential properties where an intensive agricultural business would be likely to lead to problems of nuisance detrimental to the amenities presently enjoyed by those properties.

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WHEREAS :

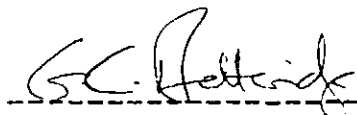
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NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of Three months from the date on which this Notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 1st September, 1989

ISSUED 24th July, 1989

Signed



Monkton Park,
Chippenham, SN15 1ER.

/ SCHEDULE 1

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

Land adjoining the Malmesbury By-Pass (A429) Malmesbury, Wiltshire shown edged red on the attached plan.

SCHEDULE 2 - ALLEGED BREACH OF PLANNING CONTROL

The carrying out without planning permission of building operations on the land, namely the erection and construction of a steel frame/concrete block and asbestos building (shown hatched black for the purposes of identification on the said plan) of approximately 20 metres by 15 metres in area and 4 metres in height not being permitted development in terms of Part 6 of Schedule 2 to the Town and Country Planning General Development Order 1988.

SCHEDULE 3 - STEPS REQUIRED TO BE TAKEN

To remove from the land the said building and its components.

48545

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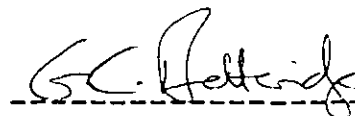
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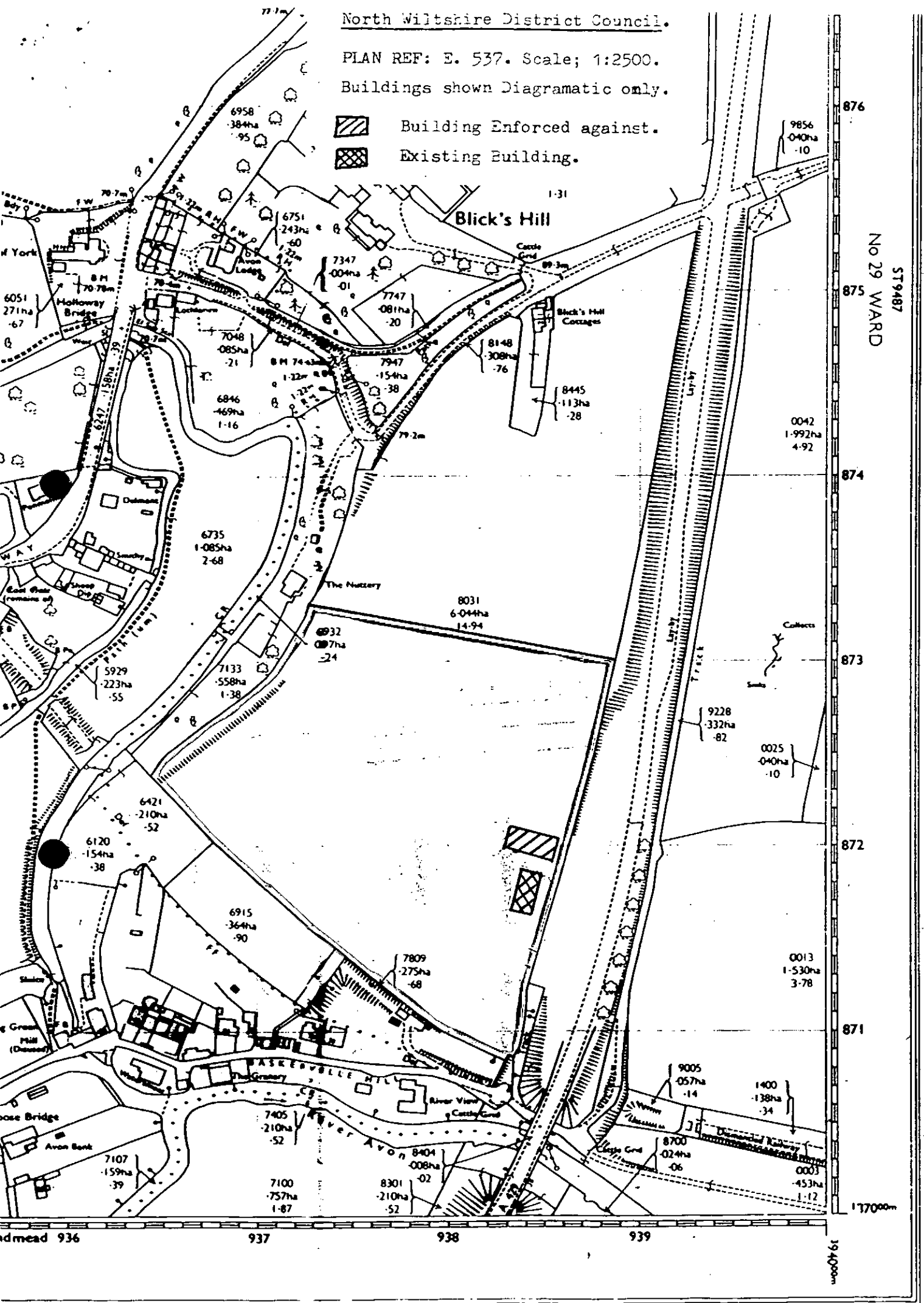
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 Building Enforced against.
 Existing Building.



Margaret Scott



Planning Inspectorate

Department of the Environment

Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct Line 0272-218915/36/38
Switchboard 0272-218811
GTN 1374

£537

Nigel Cant
Chartered Town Planning Consultant
Lamport Court
Stinchcombe
Nr Dursley
Gloucestershire
GL11 6AR

Council reference:
AD/1236
Our reference
T/APP/C/89/J3910/6/P6

16 MAY 90

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
HOUSING AND PLANNING ACT 1886: LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR J A HERBERT
LAND AND BUILDINGS ADJOINING THE MALMSBURY BYPASS, MALMSBURY, WILTSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal. This appeal is against an enforcement notice issued by the North Wiltshire District Council concerning the above-mentioned land and buildings. I held an inquiry into the appeal on 10 April 1990 and I inspected the site on the following day. At the inquiry an application for an award of costs was made on behalf of the appellant against the Council and I deal with this separately below.

2. a. The notice was issued on 24 July 1989.

b. The breach of planning control alleged in the notice is the carrying out without planning permission of building operations on the land, namely the erection and construction of a steel frame/concrete block and asbestos building (shown hatched black on the plan attached to the notice) of approximately 20m by 15m in area and 4m in height not being permitted development in terms of Part 6 of Schedule 2 to the Town and Country Planning General Development Order 1988.

c. The requirements of the notice are to remove from the land the said building and its components.

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

e. The appeal was made on the grounds set out in section 88(2)(b) of the 1971 Act as amended but at the inquiry ground 88(2)(h) was added.

3. The evidence was taken on oath where appropriate.



THE APPEAL ON GROUND (b)

4. Under this ground of appeal you claim that the erection of the building was commenced within the period of operation of the Town and Country Planning General Development Order 1977 and not the 1988 General Development Order as alleged in the notice. Further, you claim that the building meets the criteria for permitted development under Class VI "Agricultural buildings, works and uses" of the 1977 Order and hence no breach of planning control has taken place.

5. As regards the date of commencement of the erection of the building the personal evidence of Mr Herbert, the appellant, was that the site was cleared of topsoil, marked out and trenches for the steel frames dug on 9 November 1988. Confirmation of this date was in his letter of 6 March 1989 and in the written testaments of Mr Ponting, a JCB driver who undertook the work, and of Mr Hemmings, the supplier of the building, who surveyed the site on that day. Evidence was also given by Mr Herbert and in Mr Hemming's statement that the erection of steelwork commenced on 29 November 1988. After a delay said by Mr Herbert to be caused by bad weather the building was finished in March 1989.

6. The personal evidence of the Council's enforcement officer was that he had paid particular attention to the site since the erection there of a barn in about June 1986. Between November 1988 and the end of February 1989 he had passed the site many times by car and would have noticed any construction work had it been taking place but he saw nothing to report. His earliest record of works for the construction of the building was made on 3 March 1989 following a complaint from local residents when he saw workmen erecting the blockwork walls of the appeal building between its steel frames.

7. In my view there is substantive sworn evidence that the works of construction of the building commenced on 9 November 1988 with the marking-out of the site and the digging of trenches. I attach more weight to this evidence than that of the Council which is largely uncorroborated. The appearance of the preliminary works may have resembled little more than topsoil clearance rather than the commencement of a building and within the farmyard setting may not have been very noticeable. Whilst I do not doubt the integrity of the Council's witness I think it possible that the works may have gone unnoticed by him prior to March 1989 as he drove by on the bypass. Equally they could have escaped the attentions of local residents.

8. My finding on a balance of probabilities is that the construction of the building commenced on 9 November 1988. This preceded the date of the coming into effect of the 1988 General Development Order which was 5 December 1988. Consequently the General Development Order (GDO) relevant to this appeal is that of 1977. It is in relation to Class VI of this Order that the question of whether the building was permitted development falls to be considered.

9. In regard to the qualifying criteria under Class VI of the 1977 GDO the Council do not dispute that the land is an agricultural unit exceeding one acre in area and that the building was designed for the purposes of agriculture. The area of the building is about 336 sq m, clearly within the criterion of 465 sq m. However they consider that it is not requisite for the use of the land for the purposes of agriculture.

10. The relevant circumstances are that the land occupies about 10 acres and Mr Herbert also farms a further 7 acres nearby. The barn subject of the appeal is sited next to the barn erected in 1986 and both are used mainly for cattle

and the storage of feed and farm equipment. The first erected barn also houses a few sheep. The land is used principally for growing hay and silage for feed and also for grazing the cattle. Mr Herbert's current intention is to rear 45 cattle in 3 groups of 15 and small numbers of other livestock.

11. In support of the Council's case, a representative of Wiltshire's Property Services Department gave evidence that the agricultural building requirements of the land could be met in only one of the barns. But his calculations are not supported by statistics supplied by ADAS and from my inspection of the site I consider that the present farming activity on the land could not reasonably be accommodated in only one barn. He also gave evidence that the farm would require only part-time employment and would be of doubtful viability. But from the evidence concerning Mr Herbert's activities I am satisfied that the farm is a business, albeit small, and not a hobby as claimed by the Council, and that the present small profit can be expected to rise. The viability of a farming enterprise is not a criterion of Class VI of the 1977 GDO. Whilst the farming activity requires some imported feedstuffs it relies principally on hay and silage from the land. I therefore do not regard the use of the barn as the type of intensive farming for which agricultural buildings would normally fall outside the terms of Class VI of the 1977 GDO.

12. I therefore find that the barn, the subject of this appeal, is requisite for the use of the land for the purposes of agriculture. Since it also meets the other criteria of Part VI of the 1977 GDO I conclude that its erection was permitted development under the terms of that Order. Consequently no specific planning permission for it was required and its erection did not constitute a breach of planning control. The appeal on ground 88(2)(b) therefore succeeds and it is unnecessary for me to consider the other grounds of appeal or the deemed planning application.

13. Since the relevant GDO is that of 1977 rather than 1988 the allegation of the notice is in error. I do not agree with your contention that this has rendered the notice invalid because following the successful appeal on legal grounds I could have corrected the allegation without causing injustice. But since I am quashing the notice such a correction becomes unnecessary.

14. I have had regard to all other matters raised in the representations but they do not alter my conclusions.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I hereby allow your client's appeal and direct that the notice be quashed.

RIGHT OF APPEAL AGAINST DECISION

16. 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.

APPLICATION FOR COSTS

17. On behalf of the appellant it was claimed that the Council had acted unreasonably in issuing the notice, causing the unnecessary expense of the inquiry. They should have seen that permitted development rights existed and that reference to the 1988 GDO was incorrect. They had paid insufficient regard to expediency in using enforcement action and in the relevant report to committee. They had not pursued adequately the appellant's letter of 6 March 1989 nor discussed matters with him in accordance with the advice of Circular 22/80.

18. In reply the Council said that if they were wrong on any matters they were not necessarily unreasonable. This was a sensitive locality and a strict application of development control was appropriate. Their investigations had been reasonable within the terms of paragraph 17 of Circular 2/87. Since the relevance of the 1977 GDO or the 1988 GDO had taken much of the day to examine the inquiry was not unnecessary.

MY CONCLUSIONS ON COSTS

19. In determining the application for costs I have borne in mind that in planning and enforcement appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeals, and costs are only awarded, in accordance with Circular 2/87, against a party that has acted unreasonably. Accordingly I have considered the application in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances in this appeal.

20. My view is that the relevance of the General Development Orders and permitted development rights raised complex issues, justifiably a subject of the inquiry. The Council's view on them, and the issuing of the notice were not unreasonable, albeit incorrect. Further discussion or correspondence between the Council and the appellant would have been unlikely to obviate the inquiry due to the divergence of evidence. Expediency was adequately covered in the Annex to the notice and in evidence. Since this is a visually sensitive location within a Conservation Area I consider that the Council acted properly in attempting to use their enforcement powers. My conclusion is that the Council have not acted unreasonably in this instance and that the appellant was not put to the expense of the inquiry unnecessarily.

FORMAL DECISION ON COSTS

21. For the above reasons and in exercise of the powers transferred to me, I hereby determine that the appellant's application for an award of costs against the Council be refused.

I am Sir
Your obedient Servant



A J DIXON BA MSc(Eng) MRTPI MCIT
Inspector

APPEARANCES

FOR THE APPELLANT

Mr P Pennyfather	of Advanced Planning Associates, 42 London Road Stroud
------------------	--

He called:

Mr N Cant Dip TP MRTPI	Agent for the appellant
Mr J Herbert	Appellant
Mr A Jones FRICS	Malmsbury business man

FOR THE COUNCIL

Mr J McDonald	Principal Officer for the Council.
---------------	---------------------------------------

He called:

Mr R Williams DipTP, MRTPI, MBIM, MIAS	Principal Planning Officer
Mr R Burton	Enforcement Officer
Mr A Lewis	Land agent for Wiltshire CC

INTERESTED PERSONS

Mrs S Bacon	for Malmesbury Preservation Trust, 48, High Street, Malmesbury, Wilts
Mrs A Stevens	for Council for Protection of Rural England, Elm Leaze, Malmesbury
Mr P Oura	for Malmesbury Civic Trust, 44 Corn Gastons, Malmesbury
Mrs N Grant	for Malmesbury Resident's Association, 2 Cross Hayes Lane, Malmesbury

DOCUMENTS

- Document 1 - Inquiry attendance list
- Document 2 - Inquiry notification letter
- Document 3 - Bundle of letters supporting the Council
- Document 4 - Petition supporting the Council
- Document 5 - Mr Cant's bound volume of appendices containing:
(A) Enforcement notice
(B) letter from DOE, Bristol, 5 January 1990
(C) A C Nurden Ltd, Hire Docket
(D) A C Nurden, Driver's log
(E) A C Nurden and RMC, Invoices
(F) Knockdown Quarry, Invoice
(G) Letter from Council, 7 March 1989
(H) Letter from appellant, 6 March 1989
(I) Enforcement notice appeal
(J) Letter from Mr Cant 22 November 1989
(K and L) Correspondence from MAFF and Wilts CC
- Document 6 - Sworn statement of Mr M Hemmings
- Document 7 - Sworn statement of Mr A Ponting
- Document 8 - Specification and Tender from M R Hemmings Construction
- Document 9 - Correspondence between Nigel Cant and Gloucestershire CC
- Document 10 - Report to Development Control Committee, 13 March 1989
- Document 11 - Enforcement Officer's report, 3 March 1989
- Document 12 - Letter from Wiltshire CC, 4 June 1986
- Document 13 - 2 letters from North Wilts DC, 13 May 1986
- Document 14 - Enforcement officer's report 7 April 1986
- Document 15 - Accounts of J A and Mrs J Herbert for year to 31 October 1989
- Document 16 - Agricultural report from Wiltshire CC, 5 March 1990
- Document 17 - Mr Lewis's calculations of building and labour requirements, and viability
- Document 18 - Letter from ADAS, 5 April 1990
- Document 19 - North Wiltshire Local Plan and Proposals Map, sheet 8A
- Document 20 - Malmsbury Local Plan and Town Centre Inset Map

PHOTOGRAPHS

- Photo 1 - 3 photographs submitted by Mr H A Spengler JP

NORTH WILTSHIRE DISTRICT COUNCIL

ENFORCEMENT REGISTER INFORMATION SHEET

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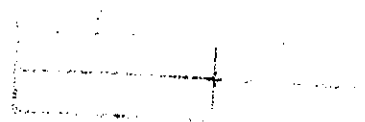
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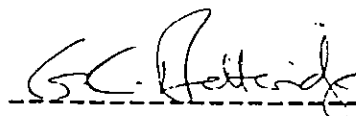
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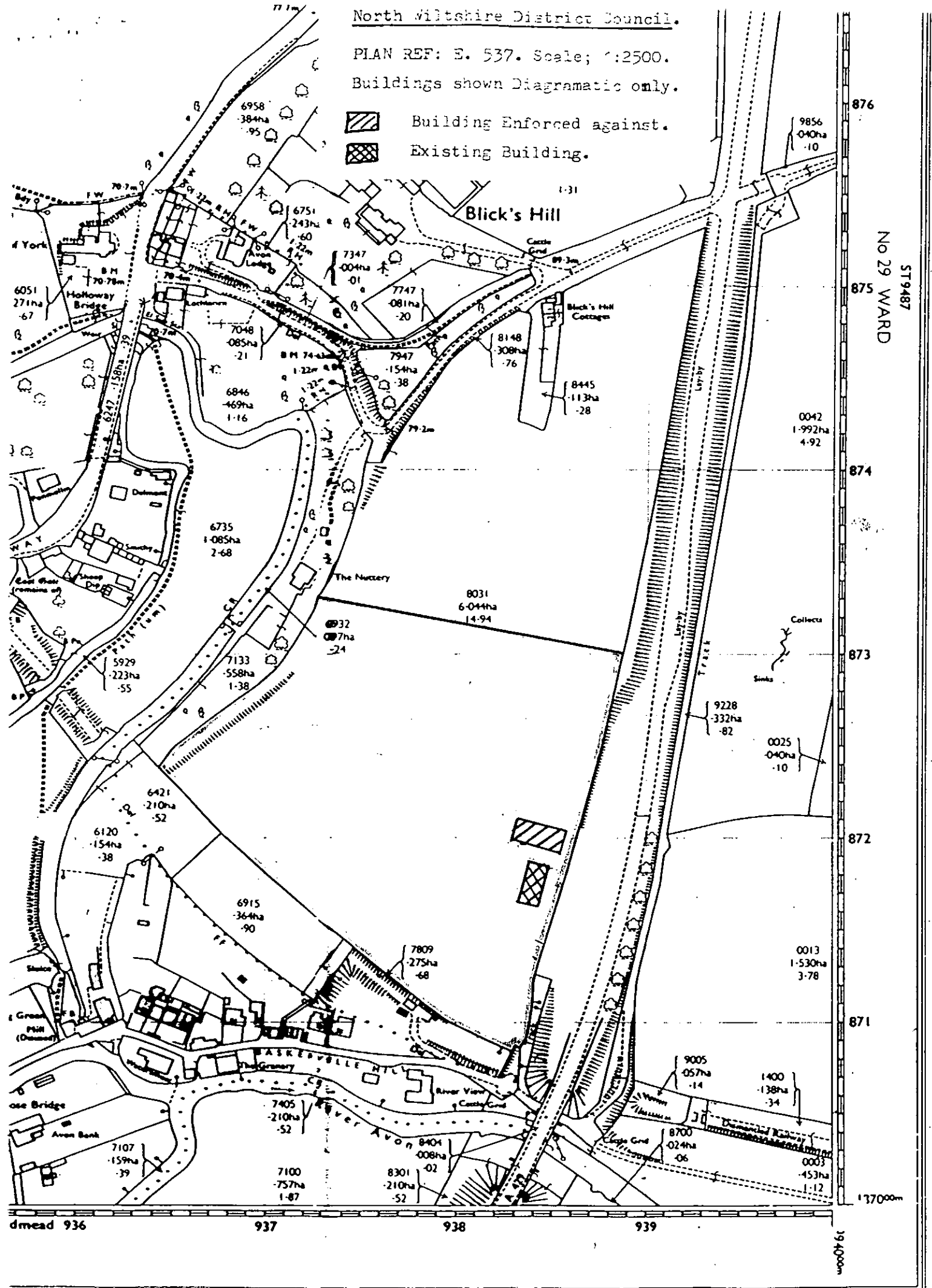
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24th July, 1989

Dear Sir/Madam,

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

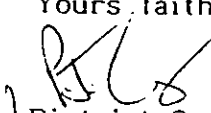
Land adjoining the Malmesbury By-Pass (A429) Malmesbury, Wiltshire

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,


District Secretary

DATE ON WHICH NOTICE TAKES EFFECT
AND BEFORE WHICH ANY APPEAL
MUST BE RECEIVED 1st September, 1989

To:

John A. Herbert
"Riverview"
St. John's Street
Malmesbury
Wilts.

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

Reasons for issue:-

1. The erection of a new building in this location is contrary to Policy A1 of the Malmesbury Local Plan which seeks to protect the river valleys around the historic town of Malmesbury and maintain its setting and amenity.
2. The erection of a building in this location would be seriously detrimental to the character of the area, its visual amenities and the setting of the historic town of Malmesbury.
3. The site is situated near to residential properties where an intensive agricultural business would be likely to lead to problems of nuisance detrimental to the amenities presently enjoyed by those properties.

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

Land adjoining the Malmesbury By-Pass (A429) Malmesbury, Wiltshire.

WHEREAS :

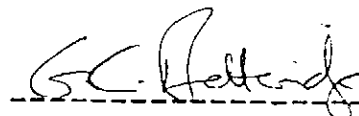
- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of four years before the 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 September, 1989

ISSUED 24th July, 1989

Signed



Monkton Park,
Chippenham, SN15 1ER.

/ SCHEDULE 1

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

Land adjoining the Malmesbury By-Pass (A429) Malmesbury, Wiltshire shown edged red on the attached plan.

SCHEDULE 2 - ALLEGED BREACH OF PLANNING CONTROL

The carrying out without planning permission of building operations on the land, namely the erection and construction of a steel frame/concrete block and asbestos building (shown hatched black for the purposes of identification on the said plan) of approximately 20 metres by 15 metres in area and 4 metres in height, not being permitted development in terms of Part 6 of Schedule 2 to the Town and Country Planning General Development Order 1988.

SCHEDULE 3 - STEPS REQUIRED TO BE TAKEN

To remove from the land the said building and its components.

Margaret Scott



Planning Inspectorate

Department of the Environment

Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct Line 0272-218915/36/38

Switchboard 0272-218811

GTN 1374

±537

Nigel Cant
Chartered Town Planning Consultant
Lamport Court
Stinchcombe
Nr Dursley
Gloucestershire
GL11 6AR

Council reference:

AD/1236

Our reference

T/APP/C/89/J3910/6/P6

16 MAY 90

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
HOUSING AND PLANNING ACT 1886: LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR J A HERBERT
LAND AND BUILDINGS ADJOINING THE MALMSBURY BYPASS, MALMSBURY, WILTSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal. This appeal is against an enforcement notice issued by the North Wiltshire District Council concerning the above-mentioned land and buildings. I held an inquiry into the appeal on 10 April 1990 and I inspected the site on the following day. At the inquiry an application for an award of costs was made on behalf of the appellant against the Council and I deal with this separately below.

2. a. The notice was issued on 24 July 1989.

b. The breach of planning control alleged in the notice is the carrying out without planning permission of building operations on the land, namely the erection and construction of a steel frame/concrete block and asbestos building (shown hatched black on the plan attached to the notice) of approximately 20m by 15m in area and 4m in height not being permitted development in terms of Part 6 of Schedule 2 to the Town and Country Planning General Development Order 1988.

c. The requirements of the notice are to remove from the land the said building and its components.

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

e. The appeal was made on the grounds set out in section 88(2)(b) of the 1971 Act as amended but at the inquiry ground 88(2)(h) was added.

3. The evidence was taken on oath where appropriate.



THE APPEAL ON GROUND (b)

4. Under this ground of appeal you claim that the erection of the building was commenced within the period of operation of the Town and Country Planning General Development Order 1977 and not the 1988 General Development Order as alleged in the notice. Further, you claim that the building meets the criteria for permitted development under Class VI "Agricultural buildings, works and uses" of the 1977 Order and hence no breach of planning control has taken place.

5. As regards the date of commencement of the erection of the building the personal evidence of Mr Herbert, the appellant, was that the site was cleared of topsoil, marked out and trenches for the steel frames dug on 9 November 1988. Confirmation of this date was in his letter of 6 March 1989 and in the written testaments of Mr Ponting, a JCB driver who undertook the work, and of Mr Hemmings, the supplier of the building, who surveyed the site on that day. Evidence was also given by Mr Herbert and in Mr Hemming's statement that the erection of steelwork commenced on 29 November 1988. After a delay said by Mr Herbert to be caused by bad weather the building was finished in March 1989.

6. The personal evidence of the Council's enforcement officer was that he had paid particular attention to the site since the erection there of a barn in about June 1986. Between November 1988 and the end of February 1989 he had passed the site many times by car and would have noticed any construction work had it been taking place but he saw nothing to report. His earliest record of works for the construction of the building was made on 3 March 1989 following a complaint from local residents when he saw workmen erecting the blockwork walls of the appeal building between its steel frames.

7. In my view there is substantive sworn evidence that the works of construction of the building commenced on 9 November 1988 with the marking-out of the site and the digging of trenches. I attach more weight to this evidence than that of the Council which is largely uncorroborated. The appearance of the preliminary works may have resembled little more than topsoil clearance rather than the commencement of a building and within the farmyard setting may not have been very noticeable. Whilst I do not doubt the integrity of the Council's witness I think it possible that the works may have gone unnoticed by him prior to March 1989 as he drove by on the bypass. Equally they could have escaped the attention of local residents.

8. My finding on a balance of probabilities is that the construction of the building commenced on 9 November 1988. This preceded the date of the coming into effect of the 1988 General Development Order which was 5 December 1988. Consequently the General Development Order (GDO) relevant to this appeal is that of 1977. It is in relation to Class VI of this Order that the question of whether the building was permitted development falls to be considered.

9. In regard to the qualifying criteria under Class VI of the 1977 GDO the Council do not dispute that the land is an agricultural unit exceeding one acre in area and that the building was designed for the purposes of agriculture. The area of the building is about 336 sq m, clearly within the criterion of 465 sq m. However they consider that it is not requisite for the use of the land for the purposes of agriculture.

10. The relevant circumstances are that the land occupies about 10 acres and Mr Herbert also farms a further 7 acres nearby. The barn subject of the appeal is sited next to the barn erected in 1986 and both are used mainly for cattle

Reference:
T/APP/C/89/J3910/6/P6

APPEARANCES

FOR THE APPELLANT

Mr P Pennyfather

of Advanced Planning
Associates, 42 London Road
Stroud

He called:

Mr N Cant Dip TP MRTPI

Agent for the appellant

Mr J Herbert

Appellant

Mr A Jones FRICS

Malmsbury business man

FOR THE COUNCIL

Mr J McDonald

Principal Officer for the
Council

He called:

Mr R Williams DipTP, MRTPI, MBIM, MIAS

Principal Planning Officer

Mr R Burton

Enforcement Officer

Mr A Lewis

Land agent for Wiltshire CC

INTERESTED PERSONS

Mrs S Bacon

for Malmesbury Preservation
Trust, 48, High Street,
Malmsbury, Wilts

Mrs A Stevens

for Council for Protection
of Rural England, Elm Leaze,
Malmsbury

Mr P Oura

for Malmsbury Civic Trust,
44 Corn Gastons, Malmsbury

Mrs N Grant

for Malmsbury Resident's
Association, 2 Cross Hayes
Lane, Malmsbury

DOCUMENTS

- Document 1 - Inquiry attendance list
- Document 2 - Inquiry notification letter
- Document 3 - Bundle of letters supporting the Council
- Document 4 - Petition supporting the Council
- Document 5 - Mr Cant's bound volume of appendices containing:
 (A) Enforcement notice
 (B) letter from DOE, Bristol, 5 January 1990
 (C) A C Nurden Ltd, Hire Docket
 (D) A C Nurden, Driver's log
 (E) A C Nurden and RMC, Invoices
 (F) Knockdown Quarry, Invoice
 (G) Letter from Council, 7 March 1989
 (H) Letter from appellant, 6 March 1989
 (I) Enforcement notice appeal
 (J) Letter from Mr Cant 22 November 1989
 (K and L) Correspondence from MAFF and Wilts CC
- Document 6 - Sworn statement of Mr M Hemmings
- Document 7 - Sworn statement of Mr A Ponting
- Document 8 - Specification and Tender from M R Hemmings Construction
- Document 9 - Correspondence between Nigel Cant and Gloucestershire CC
- Document 10 - Report to Development Control Committee, 13 March 1989
- Document 11 - Enforcement Officer's report, 3 March 1989
- Document 12 - Letter from Wiltshire CC, 4 June 1986
- Document 13 - 2 letters from North Wilts DC, 13 May 1986
- Document 14 - Enforcement officer's report 7 April 1986
- Document 15 - Accounts of J A and Mrs J Herbert for year to 31 October 1989
- Document 16 - Agricultural report from Wiltshire CC, 5 March 1990
- Document 17 - Mr Lewis's calculations of building and labour requirements, and viability
- Document 18 - Letter from ADAS, 5 April 1990
- Document 19 - North Wiltshire Local Plan and Proposals Map, sheet 8A
- Document 20 - Malmsbury Local Plan and Town Centre Inset Map

PHOTOGRAPHS

- Photo 1 - 3 photographs submitted by Mr H A Spengler JP

and the storage of feed and farm equipment. The first erected barn also houses a few sheep. The land is used principally for growing hay and silage for feed and also for grazing the cattle. Mr Herbert's current intention is to rear 45 cattle in 3 groups of 15 and small numbers of other livestock.

11. In support of the Council's case, a representative of Wiltshire's Property Services Department gave evidence that the agricultural building requirements of the land could be met in only one of the barns. But his calculations are not supported by statistics supplied by ADAS and from my inspection of the site I consider that the present farming activity on the land could not reasonably be accommodated in only one barn. He also gave evidence that the farm would require only part-time employment and would be of doubtful viability. But from the evidence concerning Mr Herbert's activities I am satisfied that the farm is a business, albeit small, and not a hobby as claimed by the Council, and that the present small profit can be expected to rise. The viability of a farming enterprise is not a criterion of Class VI of the 1977 GDO. Whilst the farming activity requires some imported feedstuffs it relies principally on hay and silage from the land. I therefore do not regard the use of the barn as the type of intensive farming for which agricultural buildings would normally fall outside the terms of Class VI of the 1977 GDO.

12. I therefore find that the barn, the subject of this appeal, is requisite for the use of the land for the purposes of agriculture. Since it also meets the other criteria of Part VI of the 1977 GDO I conclude that its erection was permitted development under the terms of that Order. Consequently no specific planning permission for it was required and its erection did not constitute a breach of planning control. The appeal on ground 88(2)(b) therefore succeeds and it is unnecessary for me to consider the other grounds of appeal or the deemed planning application.

13. Since the relevant GDO is that of 1977 rather than 1988 the allegation of the notice is in error. I do not agree with your contention that this has rendered the notice invalid because following the successful appeal on legal grounds I could have corrected the allegation without causing injustice. But since I am quashing the notice such a correction becomes unnecessary.

14. I have had regard to all other matters raised in the representations but they do not alter my conclusions.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I hereby allow your client's appeal and direct that the notice be quashed.

RIGHT OF APPEAL AGAINST DECISION

16. 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.

APPLICATION FOR COSTS

17. On behalf of the appellant it was claimed that the Council had acted unreasonably in issuing the notice, causing the unnecessary expense of the inquiry. They should have seen that permitted development rights existed and that reference to the 1988 GDO was incorrect. They had paid insufficient regard to expediency in using enforcement action and in the relevant report to committee. They had not pursued adequately the appellant's letter of 6 March 1989 nor discussed matters with him in accordance with the advice of Circular 22/80.

18. In reply the Council said that if they were wrong on any matters they were not necessarily unreasonable. This was a sensitive locality and a strict application of development control was appropriate. Their investigations had been reasonable within the terms of paragraph 17 of Circular 2/87. Since the relevance of the 1977 GDO or the 1988 GDO had taken much of the day to examine the inquiry was not unnecessary.

MY CONCLUSIONS ON COSTS

19. In determining the application for costs I have borne in mind that in planning and enforcement appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeals, and costs are only awarded, in accordance with Circular 2/87, against a party that has acted unreasonably. Accordingly I have considered the application in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances in this appeal.

20. My view is that the relevance of the General Development Orders and permitted development rights raised complex issues, justifiably a subject of the inquiry. The Council's view on them, and the issuing of the notice were not unreasonable, albeit incorrect. Further discussion or correspondence between the Council and the appellant would have been unlikely to obviate the inquiry due to the divergence of evidence. Expediency was adequately covered in the Annex to the notice and in evidence. Since this is a visually sensitive location within a Conservation Area I consider that the Council acted properly in attempting to use their enforcement powers. My conclusion is that the Council have not acted unreasonably in this instance and that the appellant was not put to the expense of the inquiry unnecessarily.

FORMAL DECISION ON COSTS

21. For the above reasons and in exercise of the powers transferred to me, I hereby determine that the appellant's application for an award of costs against the Council be refused.

I am Sir

Your obedient Servant



A J DIXON BA MSc(Eng) MRTPI MCIT
Inspector

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

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



Ray
537
**North Wiltshire
District Council**

Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 130

Our ref **E** 537

Enquiries to Mr McDonald

Your ref

24th July, 1989

Dear Sir/Madam,

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District Secretary

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AND BEFORE WHICH ANY APPEAL
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John A. Herbert
"Riverview"
St. John's Street
Malmesbury
Wilts.

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

Reasons for issue:-

1. The erection of a new building in this location is contrary to Policy A1 of the Malmesbury Local Plan which seeks to protect the river valleys around the historic town of Malmesbury and maintain its setting and amenity.
2. The erection of a building in this location would be seriously detrimental to the character of the area, its visual amenities and the setting of the historic town of Malmesbury.
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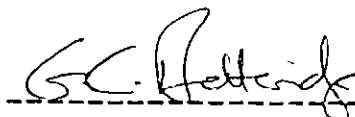
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ISSUED 24th July, 1989

Signed



Monkton Park,
Chippenham, SN15 1EP.

/ SCHEDULE 1

SCHEDULE 1 - LAND OR PREMISES TO WHICH THIS NOTICE RELATES

Land adjoining the Malmesbury By-Pass (A429) Malmesbury, Wiltshire shown edged red on the attached plan.

SCHEDULE 2 - ALLEGED BREACH OF PLANNING CONTROL

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SCHEDULE 3 - STEPS REQUIRED TO BE TAKEN

To remove from the land the said building and its components.

North Wiltshire District Council.

PLAN REF: E. 537. Scale; 1:2500.

Buildings shown Diagrammatic only.

-  Building Enforced against.
-  Existing Building.

