



# Appeal Decision

# APPENDIX 1

Site visit made on 08 August 2005

by **Keith Turner** LLB(Hons) DipArch(Dist) RIBA MRTPI MCI Arb

an Inspector appointed by the First Secretary of State

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Date

**30 AUG 2005**

Appeal Ref: APP/V3120/F/05/2000736

Arberys, 11-12 Market Place, Wantage, Oxfordshire OX12 8AB

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Rainbach against a listed building enforcement notice issued by Vale of White Horse District Council.
- The Council's reference is WAN/16246/15-E.
- The notice was issued on 7 December 2004.
- The contravention of listed building control alleged in the notice is:  
Ground floor 18<sup>th</sup> Century Panelled Room (as shown on Plan G attached)
  1. Fixing of timber battens to wall to receive plywood sheeting to completely cover the 18<sup>th</sup> Century panelling, the fire surround, cupboards and the French windows.
  2. Erection of timber stud and plywood partitions and fixing of new doors.
  3. Removal of two 18<sup>th</sup> Century timber doors, one at the room entrance and the other to a cupboard.
  4. Installation of electrical fittings including but not limited to hand driers, extractor fans, wiring and wiring conduits and light switches.
  5. Installation of pipe work, pumping equipment and sanitary fittings.
  6. Laying of new floor coverings.Ground Floor Shop frontage to Market Place (as shown on Plan G attached)
  7. Removal of two sets of glazed doors fronting Market Place as shown on Plan G
- The requirements of the notice are:  
Ground floor 18<sup>th</sup> Century Panelled Room (as shown on Plan G attached)
  1. Carefully remove all pipe work, pumping equipment and sanitary fittings including soil and waste pipes, hot and cold water pipes associated with the works.
  2. Carefully remove all electrical fittings including but not limited to hand driers, extractor fans, wiring and wiring conduits associated with the works.
  3. Carefully remove new floor coverings and repair any damage to the floor boards associated with the works.
  4. Carefully take down the stud and plywood partitions and new doors, unscrewing fixings to all ceilings and floors. Remove all associated materials from site.
  5. Carefully take down plywood coverings to walls and unscrew battens fixed to 18<sup>th</sup> Century panelling. Remove all associated materials from site.
  6. Repair any fixing holes in panelling and ceiling using fillers approved by the Council and prepare, rub down and re-paint panelling and ceiling to colours to be approved by the Council.
  7. Recover door to cupboard and entrance door from storage and re-hang both doors using original hinges. Remove all associated material from site.Ground Floor Shop frontage to Market Place (as shown on Plan G attached)
  8. Remove modern part glazed doors and sub frames and re-hang glazed doors to Market Place frontage as referred to in the Second Schedule and shown on Plan G.
- The period for compliance with the requirements is six weeks.
- The appeal is made on the grounds set out in section 39(1)(e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

**Summary of Decision: The appeal is dismissed, and the listed building enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.**

### Procedural Matters

1. Requirement 6 of the notice indicates that details of the filler to be use for repairing the panelling and the colour the panelling and the ceiling are to be painted must be submitted to the Council and approved by them prior to work commencing. It was established in the case of *Kaur v SSE and Greenwich London Borough Council (1991) 61 P&CR 249; [1990] JPL 814; (EPL 2-3653)* that a recipient of a notice is entitled to know with precision what he must do in order to comply with its requirements. For this reason, schemes to be agreed are not acceptable within the requirements of a notice.
2. Letters, dated 9 August 2005, were sent by the Planning Inspectorate to the parties explaining this and requesting a more precise requirement from the Council. In a reply, dated 12 August 2005, they specified the type of filler and paint colours required. These were agreed by the Appellant by e-mail, a copy of which was enclosed with the Council's letter.
3. I am required to correct a Notice where this can be done without injustice to either party and provided it does not render the requirements more onerous. The parties have agreed the matters to be covered which do not extend the scope or extent of the requirement. Accordingly I shall correct the notice and determine the appeal on that basis.

### Ground (e)

#### Policy Framework

4. The appeal premises comprise a grade II listed building. S16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, when considering whether to grant listed building consent for any works to a listed building, that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
5. Policy EN8 of the Oxfordshire Structure Plan echoes this statutory duty. Policy HE11 of the Vale of White Horse Local Plan requires proposals for the change of use, alteration or extension of listed buildings to be formulated to ensure that their special architectural or historic interest is preserved. Policy HE12 indicates that proposals for alterations will not be permitted unless they are accompanied by enough information to permit full and proper consideration of their effect upon the character of the building. The emerging Local Plan does not materially alter this approach.
6. There is no statutory requirement to have regard to the provisions of the development plan when considering applications to grant listed building consent. However, the development plan is generally regarded to be a material consideration in such circumstances and I shall consider it in that context.
7. The parties have made extensive reference to Planning Policy Guidance Note 15 (PPG 15). This provides advice in relation to the alteration of listed buildings and represents well-established government policy on the historic environment. I shall accord it substantial weight in reaching my decision.

Main Issue

8. The main issue raised by this ground of appeal is whether the works carried out have preserved the character of the building and features of special architectural or historic interest which it possesses.

Reasons

*The Panelled Room*

9. The works carried out relate to two separate parts of the building. The first set took place within what is described as the 18<sup>th</sup> Century panelled room. This space was and remains separated from the larger open area of the building which lies behind the shop front to Market Place.
10. The works have been carried out in order to provide toilet facilities and a store for drinks and pump equipment associated with the bar use. The Appellants suggest that the Council, in granting planning permission for uses within Class A3 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, would have taken into account the need for alterations to the building to accommodate these facilities. The Council concede this but do not accept that the facilities are located in the most appropriate part of the building given the character and quality of the panelled room. They also point out a reminder was added to the planning permission indicating that listed building consent would be required for any alterations.
11. Paragraph 2.12 of PPG15 indicates clearly that it is generally preferable to consider permission and consent applications together. It also states that a decision on a planning application cannot be taken as predetermining the outcome of a subsequent application for listed building consent. The advice indicates that negotiation is the best means of achieving sensitive accommodation of works to a listed building necessary for a change of use. That opportunity did not occur in this instance. Whilst there may be difficulties in locating the accommodation elsewhere, these must be balanced against the harm to the building.
12. The works comprise the covering of all the walls in the room, and the French windows to the rear yard, with plywood sheeting on timber framework. The remaining space has then been divided by plywood faced, timber-framed partitions to form the toilets and store. All the plumbing, wiring, equipment and plant associated with these areas has been attached to the new walls or incorporated within them. The original door to the room has been removed and is stored on the premises. A panelled cupboard door has been removed and is also stored. New floor coverings have been laid over the original floorboards.
13. The Appellant does not appear to dispute that the pine panelling and panelled doors, the fireplace and other features, such as the French windows, are of special architectural or historic interest. It is suggested that because they remain intact, they have been preserved. Furthermore, given the new use of the building as a bar, for which the Council granted planning permission, these features would be better protected in this manner from undue wear and tear.
14. The nature of the works is such that I was unable to observe the panelling and other features within the room. I must, therefore, rely upon the documents to determine their importance in the context of paragraph 3.5 of PPG15. The Council submitted a report prepared for the Arbery Building Trust. This document provides a detailed description of the building.

Paragraph 4.7 refers to the panelled room as dating from the 18<sup>th</sup> Century with a 19<sup>th</sup> Century fireplace inserted. It had a fine framed and panelled door, and 20<sup>th</sup> century French windows. All of these features would have been present when the building was listed in 1950, though only the fireplace is specifically referred to in the description of that time.

15. A photograph submitted by the Council provides a limited view of the panelling. Whilst not particularly ornate, it does represent a survival of 18<sup>th</sup> Century panelling and the only example in Wantage, according to the Council. The panelled door and cupboard door were clearly an integral part of this décor which has a distinctive appearance as well as forming part of the historical context of the building. It appears that the fireplace was one of some quality. Whilst these features may be preserved in the literal sense, their concealment behind bland, featureless walls in a store and toilet cubicles is not in the spirit of the Act. Section 7 refers to works affecting the character of the building. I take this to mean that "preservation of the building" contained in S16 of the Act means preservation of the character of the building.
16. This listed building contains features of special architectural or historic interest to which the Arbery Trust Report refers, and these include those affected by the unauthorised works. Those features combine together, along with its setting and general context to establish the character of this building. Alterations to listed buildings are accepted only when they do not unacceptably harm their character. I consider that concealing elements which contribute to that character cannot preserve it. They remain in place, but they cannot be seen or appreciated. As such the items may be preserved, but the character of the building is not.
17. Turning now to the sub-division of the room into three separate spaces, this affects the perception of the plan-form and layout of the building as well as masking some of its historical context. Paragraph C.58 of PPG15 acknowledges that the plan of a building is one of its most important characteristics. Paragraph 59 recognises the harm arising from too much sub-division by advising that new partitions should be kept to a minimum. I accept that toilet accommodation would be required in the building, but, having regard to this advice, I do not consider sub-division of a separate space with an integrated scheme of décor, such as the panelled room, to be an appropriate means of providing it.
18. The Council also refer to damage to the original fabric of the building arising from the fixing of some timber framing through the pine panelling. I was unable to determine the actual extent of this, but it is probable that some intermediate fixing between the floor and ceiling might have occurred. Such works would damage the face of the panelling and detract from its appearance. It would not, therefore, preserve that particular element of special architectural or historic interest.

#### *The Shop Doors*

19. The shop front of the appeal premises contains two doorways. Prior to the unauthorised works, each had a pair of timber doors each containing a single, etched glass panel within it. These doors are currently stored in the building. The stiles and rails are quite slender imparting a delicate and refined appearance to the doors. One leaf was secured by concealed bolts, the second closing on to it with a roller catch. Each pair was locked by means of a metal bar secured to the frame on either side and padlocked.
20. The Appellant contends that the doors were not suitable for the new use of the listed building. This appears to be based upon two matters. First, the meeting stiles of each pair

of doors were too slender to permit the installation of modern lever locks, and second, the glass panels would have been vulnerable to damage.

21. Whilst the absence of modern secure locks might often be a serious problem in terms of building security, in this instance, each entrance has an external metal security gate more or less flush with the display windows. Those gates are secured by metal bars and padlocks. They are sufficiently far forward of the doors so as to prevent easy access to them, nor can the gates be climbed since the fascia soffit is too close to their tops. This degree of protection, together with metal bars and padlocks behind the doors themselves would seem to provide a reasonable degree of security.
22. The replacement doors are of modern appearance and each is half glazed. Whilst they do accommodate modern lever locks and bolts mounted on their internal faces, they are not high security doors. Given that they contain glass panels it is likely that they would offer little more security against intruders than their predecessors.
23. Glass doors are always more susceptible to damage than solid timber doors. However, the original doors have survived for very many years with the premises used for shop or commercial purposes. Whilst there may be a greater risk of damage with the building in Class A3 use, that is a matter of judicious management. Merely storing the doors away does not preserve the character of the building, nor does it display the architectural features of special interest which it possesses. Their replacement with modern doors of no particular merit detracts from the imposing façade of this prominent historic building and its distinctive shop front.

#### *Conclusions*

24. For the reasons given above I conclude that the works which are the subject of the Notice do not preserve the character of the listed building even though the features of special architectural or historic interest might be protected. Consequently, I find that they do not accord with the spirit of the legislation and policy framework pertaining to the protection of the built heritage. Therefore I find that the appeal under Ground (e) fails and listed building consent will not be granted.

#### **Ground (h)**

25. The Appellant considers the period for compliance with the requirements of the Notice to be too short. This is because a bar and restaurant business is now established and operating within the building. Removal of the toilet accommodation and cold store in so short a time would provide no opportunity to seek alternative locations and solutions for this essential accommodation.
26. The Council have referred to their efforts over many months to give advice on suitable alternative locations, but these have not been taken up. However, the Appellant is entitled to await the outcome of any appeal before taking steps to rectify matters.
27. It is clear that the works required would disrupt the business and, without toilets it could not operate. I am also aware that there may be some technical obstacles to overcome with alternative locations. It is in the best interests of the building, in the long term, that it remains in active use. Consequently, I consider it appropriate to allow more time to minimise disruption to the business and any hardship to the Appellant. For these reasons I find his suggested period of six months, in these circumstances, to be reasonable in relation

to the panelled room. To this limited extent the appeal under Ground (h) succeeds and the Notice will be varied accordingly.

28. In relation to the doors, I agree with the Council that these could be re-instated quite quickly, even allowing some time for additional security measures to be considered if required. Accordingly, I shall not vary the period for compliance with Requirement 8.

**Formal Decision**

29. I direct that the listed building enforcement notice be corrected by deleting from the Third Schedule the following:

*"6 Repair any fixing holes in panelling and ceiling using fillers approved by the Council and prepare, rub down and re-paint panelling and ceiling to colours to be approved by the Council."*

And substitute therefor:

*"6 Repair any fixing holes in panelling using putty filler and prepare, rub down and re-paint panelling using paint colour eau de nil. Repair any fixing holes in ceiling using plaster based filler and prepare, rub down and re-paint the ceiling white."*

I direct that the listed building enforcement notice be varied by deleting the paragraph beginning *"THE COUNCIL HEREBY GIVES NOTICE..."* and substituting therefore:

*"THE COUNCIL HEREBY GIVES NOTICE that pursuant to the provisions of section 38 of the Act it requires the steps specified in items 1 to 7 in the Third Schedule to be taken within six months from the date when this Notice takes effect and that the steps specified in Item 8 in the Third Schedule be taken within six weeks from the date when this Notice takes effecting order to restore the building to its former state."*

Subject to the correction and variation, I dismiss the appeal and uphold the listed building enforcement notice, and refuse listed building consent for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

*Keith J. O'S*



# Appeal Decisions

## APPENDIX 2

Site visit made on 05 September 2005

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

REF: U111 3120312  
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Date

**03 OCT 2005**

**Appeals A: APP/V3120/C/04/2000254 – 2000257**

**Willowdene, Great Coxwell, Faringdon**

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr G Sopp, Mr D Porter, Mr T Wheller & Mr G Firth against an enforcement notice issued by Vale of White Horse District Council.
- The Council's reference is GCO/1297/12-E.
- The notice was issued on 4 November 2004.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use in the land from residential to a mixed use consisting of:
  - (a) as to part of the land, unchanged from the residential use: and
  - (b) as to part of the land, non-residential uses namely, use as a distribution base.
- The requirement of the notice is cease to use the land or any part of the land for non-residential purposes and particularly for distribution purposes.
- The time for compliance with the requirement is 12 calendar months.
- The appeals are proceeding on the grounds set out in Section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeals are dismissed and the enforcement notice upheld.**

**Appeal B: APP/V3120/A/04/2001162 (formerly 1158177)**

**Willowdene, Great Coxwell, Faringdon, Oxfordshire SN7 7LU**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr G D Sopp against the decision of Vale of White Horse District Council.
- The application Ref: GCO/1297/11, dated 15 July 2003, was refused by notice dated 10 May 2004.
- The development proposed is change of use from residential to mixed use of distribution base and overnight accommodation. Extension to rear drive and construct hardstanding for vehicle wash area.

**Summary of Decision: The appeal is dismissed.**

### Procedural Matters

1. Since the prescribed fees have not been paid within the specified period in respect of the appeals by Mr D Porter, Mr T Wheller and Mr G Firth against the enforcement notice, the applications for planning permission deemed to have been made under Section 177(5) of the Act, as amended, and the appeals on ground (a) have lapsed and the planning merits of the alleged development cannot be considered when deciding these appeals. However, the deemed planning application and the appeal on ground (a) by Mr G Sopp will continue as his appeal is fee exempt due to the Section 78 appeal. All the appeals will continue on ground (f).

2. I have reworded the description of the development given in the notice of refusal of the planning application, the subject of the Section 78 appeal, to accord more closely with that given in the planning application submitted to the Council, as amended.

#### **Ground (a) & Section 78 Appeal**

3. The **main issues** are first, the effect of the development upon the character and appearance of the surrounding area and in particular, the North Vale Area of High Landscape Value; secondly, the effect of the development upon the amenities of neighbouring residential properties; and thirdly, the effect of the development on highway safety.
4. The **development plan** comprises the adopted Vale of White Horse Local Plan 1999 and adopted Oxfordshire Structure Plan 2011. The Local Plan is under review with a Second Deposit Draft Local Plan 2011 published in June 2004.
5. Policy D1 of the adopted Local Plan is primarily concerned with the design and layout of new build development and seeks a high standard of design in terms of site coverage, visual impact and relationship to nearby properties. Para 8.17 in the reasoned justification states that it may also be important to consider the visual impact of vehicles and any necessary works such as new accesses and turning areas to accommodate them, as well as the wider impact of any increased traffic on the local road network. Policy D2 seeks to ensure that new development does not cause demonstrable harm to the occupiers and users of neighbouring development in terms of a range of matters including visual intrusion and noise. Policy C3 seeks to protect the North Vale Area of High Landscape Value from development likely to have a harmful impact on its prevailing character and appearance.
6. The relevant policies in the emerging Local Plan are similar to those in the existing Local Plan. Policy DC1 seeks to ensure that development is designed to a high standard. Policy DC9 states that development will not be permitted if it would unacceptably harm the amenities of neighbouring properties and the wider environment in terms of a range of matters including visual intrusion and noise. Policy NE7 states that development which would harm the prevailing character and appearance of the North Vale Area of High Landscape Value will not be permitted unless there is an overriding need for the development and all steps will be taken to minimise the impact on the landscape.
7. The site is situated in attractive open countryside on the south side of the main road leading from the A420 to the small village of Great Coxwell, one mile south-west of Faringdon. It comprises a large detached dwelling house, Willowdene, with a triple garage, sited in the north-west corner with access off the main road. There is an extensive area of landscaped garden and pond to the rear with a large gravel parking area and a recently constructed driveway leading to a second vehicular access off a private drive to a golf course with clubhouse, which adjoins the site on its south and east sides. The site adjoins a residential property to the west and there is a residential property and horse riding school on the opposite side of the road to the north. Open fields separate this small group of built developments from the main part of the village of Great Coxwell to the north-west.
8. The site is in a mixed use of residential accommodation and use for the distribution of frozen fish with employees sleeping on the site during the week and returning to their homes for the weekend. As I saw on my visit the residential use of the dwelling house goes well beyond what would be regarded as the normal residential use of a dwelling house and



exhibits the characteristics of a guest house, falling within Class C1 of the Use Classes Order.

9. I conclude from the evidence submitted by the Council and the appellant that the pattern of use is that employees arrive at the site on Tuesdays and that during Wednesdays, Thursdays and Fridays an articulated lorry makes one delivery of frozen fish per day via the rear entrance to the site. The fish is then transferred from the lorry to a fleet of some 8 transit-type vans on the rear gravel parking area. The articulated lorry departs and the vans depart to distribute the frozen fish, returning in the evenings with their drivers sleeping in the dwelling house during the week before returning to their homes for the weekend.
10. At the time of my visit on a Monday morning there was no commercial activity taking place on the site. I found that it had all the appearance and character of a residential site with a large detached dwelling house set in a landscaped garden in a quiet rural area surrounded by hedgerows, fields and a golf-course. While it was possible to hear traffic noise from the A420, the sound was distant and unobtrusive.
11. I conclude from my site visit, that in terms of visual impact the activity that takes place on the site is largely screened to view from the surrounding area by the tall thick hedgerows which surround the site including the conifer hedges. However, I conclude from the evidence given on the nature of the distribution use that it entails commercial vehicles coming and going from the site on a regular basis with the attendant noise of doors opening and closing, engines starting and vehicles manoeuvring and the noise of the unloading and loading of frozen fish and its transfer into the fleet of transit-type vans. I therefore conclude that the introduction of this commercial use into this quiet rural area with its attendant noise, activity and traffic movements on four days a week, would harm unacceptably the character and appearance of this Area of High Landscape Value, contrary to Policy C3 of the adopted Local Plan and Policy NE7 of the emerging review of the Local Plan. If I were to allow the use it could in my view set a precedent for similar commercial ventures in similar rural locations to the cumulative detriment of the character and appearance of the North Vale Area of High Landscape Value.
12. I further consider that because of the closeness of the site to neighbouring residential properties and the quiet nature of this rural location, the amenities of the occupants of these nearby dwellings would be harmed unacceptably through noise and disturbance from the development contrary to Policy D2 of the adopted Local Plan and Policy DC9 of the emerging review of the Local Plan. While I note that the main vehicular access used by the commercial vehicles is now the secondary access at the rear of the site, this would have little effect in terms of reducing the level of noise and disturbance arising from the unloading and loading activities as these activities take place in the open on the rear gravel parking area of the site adjoining the boundary of "Hills", the residential property on the west side of the site. I also consider that because the site is open to view from the upper rooms of "Hills", the amenities of the occupants of that dwelling would be further harmed through visual intrusion.
13. I have considered the concerns expressed by local residents and the owner of the golf course at possible traffic hazards from the development. I am concerned that because of the nature of the use, the traffic movements generated by the development, with an articulated vehicle and transit-type vans coming and going from the site on a regular basis, would increase the

risk of accidents occurring to other users of the adjacent highway including pedestrians and horse riders.

14. For the above reasons, I conclude that the development would harm unacceptably the character and appearance of the North Vale Area of High Landscape Vale and the residential amenities of neighbouring residents and would increase unacceptably the risk of accidents occurring to other users of the highway in the vicinity of the site, contrary to the adopted and emerging planning policies for the area. I have considered whether planning conditions could overcome the problems identified. However, I consider that the various conditions suggested by the Council and the appellant restricting matters such as hours of use, numbers of vehicles and the use of the rear vehicular access only, would not be sufficient to overcome the strong planning objections to the development.
15. For the above reasons the appeals on ground (a) and under Section 78 fail.

**Ground (f)**

16. Having regard to my findings on the planning merits of the development, I consider the requirements of the notice to be necessary and reasonable to remedy the breach of planning control. The appeals on ground (f) therefore fail.

**Conclusions**

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should be dismissed.

**Formal Decisions**

**Appeals A: APP/V3120/C/04/2000254 - 2000257**

18. I dismiss the appeals and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made by Mr G Sopp under Section 177(5) of the 1990 Act as amended.

**Appeal B: APP/V3120/A/04/2001162 (formerly 1158177)**

19. I dismiss the appeal.

*E. C. Anne Parkhill*

INSPECTOR



# Appeal Decision

Site visit made on 15 August 2005

by **David Stephenson OBE BSc(Eng) CEng MICE**

an Inspector appointed by the First Secretary of State

## APPENDIX 3

e-mail: [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk)

Date **05 SEP 2005**

**Appeal Ref: APP/V3120/A/05/1180913**

**9 Bryan Way, Wantage, Oxfordshire OX12 9EH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S Sanders against the decision of Vale of White Horse District Council.
- The application Ref: WAN/18828, dated 29 September 2004, was refused by notice dated 25 November 2004.
- The development proposed is the moving of fencing up to boundary line.

### Preliminary Matters

1. Although the Appellant has indicated that he is prepared to amend the location of the fence, in my view this would amount to a material alteration to the proposal as described in the application form and as shown on the plans. I am dealing with this case on the basis of the original description and plans that are before me.

### Decision

2. **I dismiss the appeal.**

### Reasons

3. There are a number of footpaths in the Charlton Heights Estate that provide a pedestrian link from the end of a cul-de-sac to adjacent roads. 2 of these adjoin the appeal site, one to the north of the site linking Clements Close with Aldworth Avenue and one to the west of the site linking the Close with Bryan Way. The areas of open space which are associated with these 2 paths and which would be enclosed as a result of this proposal form part of a general open-plan landscaped design that, in my opinion, contributes to the character and appearance of the estate.
4. The proposed move of the fencing up to the boundary line would reduce this open landscaped space and would materially narrow and create a more tunnelled appearance to the footpaths, adversely affecting the character of the area. I acknowledge that other paths in the area are narrow, such as that between Aldworth Avenue and Fettiplace and part of the path to the north of the site where it runs between buildings, but in my view their existence does not warrant allowing a detrimental change elsewhere. I conclude that the proposal would have an adverse effect on the character and appearance of the area that would be detrimental to the visual amenity for adjoining residents and users of the public rights of way, in conflict with Policy H19 of the Local Plan (LP)<sup>1</sup> which is part of the development plan for the area.

<sup>1</sup> Vale of White Horse Local Plan, adopted in 1999

5. Although Thames Valley Police describe the area as having a low crime rate I am more inclined to the professional view of the Police that the extension of the boundary fences would give a greater opportunity for crime and vandalism to occur than to the Appellant's argument regarding the potential removal of a hiding place. I conclude that the proposal would not improve security or deter crime and this would conflict with LP Policy D8.
6. I note the matter of a restrictive covenant, but if one were to exist this would need to be dealt with by legislation other than planning. The existence of a condition on the original planning permission for the Estate restricting the erection of walls, fences or gates would not necessarily prevent permission being granted, but the reason for its imposition adds weight to my conclusion regarding the amenity value of the open nature of the area. The matter of dog fouling and litter, although one which I accept is unsocial, is not one to which I can attribute much weight.
7. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. For the reasons given above, I conclude that the proposal would conflict with development plan policies and that this conflict would not be outweighed by any of the other matters raised. I conclude finally that the appeal should not succeed.

A handwritten signature in black ink, reading "David Stephenson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

INSPECTOR



# Appeal Decision

Inquiry held on 28 June 2005

Site visit made on 28 June 2005

by **Roger Priestley BA(Hons) DipTP MRTPI FRGS**

an Inspector appointed by the First Secretary of State

## APPENDIX 4

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Date

25 AUG 2005

**Appeal Ref: APP/V3120/C/04/1161878**

**Land at the rear of The Fold, Harcourt Hill, Oxford OX2 9AS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr B R Caisbrook against an enforcement notice issued by the Vale of White Horse District Council.
- The Council's reference is NHI/6287/13-E.
- The notice was issued on 11 August 2004.
- The breach of planning control as alleged in the notice is the erection of a new building and hardstanding on the area shown edged and coloured red on the plan attached to the notice.
- The requirements of the notice are:
  - (a) Remove the building and the hardstanding; and
  - (b) Remove from the land all building materials, building equipment and rubble arising from compliance with requirement (a) and restore the land coloured red to its original condition before the breach took place.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. The deemed application also falls to be considered.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as set out below in the Formal Decision.**

**Appeal Ref: APP/V3120/A/04/1171115**

**Land at the rear of The Fold, Harcourt Hill, Oxford OX2 9AS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr B R Caisbrook against the Vale of White Horse District Council.
- The application Ref NHI/2355/2 is dated 8 October 2004.
- The development proposed is the erection of an agricultural building.

**Summary of Decision: The appeal is dismissed and planning permission refused.**

### Procedural Matters

The enforcement notice plan

1. The appellant indicates that the land in his ownership also includes the building known as The Conduit House and the narrow, rectangular shaped, strip of land situated beyond it to the south east. I consider it to be unnecessary, however, to substitute a corrected plan as the operational development the subject of the enforcement notice is shown with sufficient clarity and precision on the notice plan.

#### The grounds of appeal

2. At the commencement of the inquiry the appellant confirmed that the appeals on grounds (c) and (d) relate only to the hardstanding.

#### The s.78 appeal

3. The agricultural building as proposed would be the enforcement building re-located. It is a sectional building of timber construction of around 12m x 6m. It has a shallow pitch corrugated asbestos panel roof with a height at the ridge of some 3.3m. Prior to its erection in its present position in 2002/3 it had been situated alongside the driveway of the appellant's former residence The Fold which has since been redeveloped.
4. The application as submitted, although for full permission, showed alternative sites, one being close to the entrance to field and directly to the rear of the dwelling known as Lothlorian and the other being on the opposite side of the field just to the east of The Conduit House. The appellant confirmed at the inquiry that permission was now being sought in respect of the former and I proceed on this basis.

#### The "withdrawn" enforcement notice

5. When issuing the notice the subject of this appeal the Council issued a separate notice relating to the same land alleging a change of use from agriculture to use for the storage of non agricultural items, materials and equipment. On further investigation the view was taken that this enjoyed a lawful use. The notice was withdrawn.

#### Post inquiry correspondence

6. Since the close of the inquiry further written representations have been submitted, including an affidavit on behalf of the appellant from Miss Halliday who keeps horses on the land. I have taken these representations into account.

#### The site and surrounds and background to the appeals

7. The enforcement building and the hardstanding beneath and adjoining it are centrally located within a field of around 4.3ha situated off Harcourt Hill, approximately 1 mile to the west of Oxford. The site lies to the south east of Harcourt Hill and is approached via a driveway serving residential properties off that road. Four recently constructed detached houses lie immediately to the north of this drive, on land previously occupied by The Fold. To the south of the drive is Lothlorian, a property set in well wooded grounds. The south western boundary of the appeal land adjoins the rear boundaries of dwellings fronting Vernon Avenue, and to the north east the paddock slopes gently down to the A34. To the south east is open countryside. The site falls within the Oxford Green Belt and is within a local landscape designation known as the North Vale Area of High Landscape Value.
8. The 4.3ha site is used by Miss Halliday who operates a riding school on the opposite side of the A34. The appellant initially indicated that Miss Halliday rented just the upper and lower paddocks within the overall site but then stated that she leased the whole site. Although at the time of my visit there were just 2 horses present I understand that there can be up to 7 on the land at any one time. There are no stables; Miss Halliday has kept horses for around 60 years and believes they survive quite happily in the open. She indicates that

the horses on the appeal land are either retired owing to age or recovering from injuries which can last up to 12 months.

9. The hardstanding insofar as it lies beyond the building extends to the south west by some 16.6m to link with the hardcore driveway into the field approximately 40m from the field access gate. North east of the appeal building the hardstanding projects around 2m. At its edge on this side of the building I measured the hardstanding to be some 36cm (14") above the level of the gently sloping paddock. To the south east the hardstanding extends for a distance of around 9m beyond the appeal building and is then bordered to the south west by a concrete building with a very low asbestos roof used formerly, until 2003, as a hay/tack store. For health and safety reasons the use of this building ceased.

### **Planning Policy**

10. Policy G4 of the Oxfordshire Structure Plan 2011 states that within the Green Belt around Oxford land will be kept permanently open and development severely restricted. The main purposes of the Oxford Green Belt are set out, and development is stated to be inappropriate unless it maintains openness and does not conflict with the Green Belt purposes. In the case of new buildings development is additionally inappropriate except in certain specified circumstances, including agriculture and forestry. G4 goes on to state that care will be taken to ensure that the visual amenities of the Green Belt are not injured. Policy EN9 seeks to ensure that the conservation of Oxford's architectural and historic heritage and its landscape setting will take priority in considering proposals for development in and around the city.
11. The Vale of White Horse Local Plan (1999) states in Policy G1 that in the Green Belt there will be a general presumption against inappropriate development which, by definition, is harmful. G2 seeks to ensure that the openness of the Green Belt is maintained. Policy G3 allows proposals for outdoor sport and recreation provided certain criteria is met, and G9 indicates that the presumption against inappropriate development will be maintained in relation to proposals for change of use and operational development. These 'development plan' provisions broadly reflect national policy guidance set out in PPG2 – Green Belts.
12. My attention is directed also to the related Policy GS3 of the emerging Local Plan 2011, but as this document remains in the course of preparation it carries limited weight at this time.

### **The s.174 appeal, ground (c)**

13. The hardstanding in the appellant's submission comprises permitted development under Class B(e) of Part 6 to Schedule 2 of the General Permitted Development Order (GPDO) 1995. The Council say that it cannot attract permitted development rights because the tests set out under Part 6 are not met.
14. Although Mr Caisbrook indicated that the horses were fed daily, sometimes twice a day, he added that during summer months they largely grazed the grass growing in the paddock. This to my mind is consistent with the information provided in Miss Halliday's affidavit. Having regard to the judgment in *Sykes v. SSE and Another [1980]*, and as a matter of fact and degree, I am satisfied that despite the amount of feed being provided from off-site a sufficiently substantial element of grazing occurs. This is not a situation where grazing is completely incidental or ancillary to the keeping of horses.

15. That said, the “development” in this instance is the hardstanding and Class B contains the proviso that it be “reasonably necessary for the purposes of agriculture within the unit”. It is used, however, as the appellant himself states for many purposes including the storage of building materials the subject of the withdrawn enforcement notice. It is also used by English Heritage for the parking and turning of a trailer and van in connection with their visits to The Conduit House. Given the degree to which it is used in connection with the storage of building materials, I cannot accept that the hardstanding as laid out meets the test of being reasonably necessary for the purposes of agriculture.
16. Should I be wrong on this, I do not consider that the hardstanding meets the proviso set out at Class B.1(a). Despite the indication that Miss Halliday’s lease covers the whole site, the central area which includes the access drive, the hardstanding and the buildings, is clearly separated by fencing from the upper and lower paddocks. It includes also the land where the appellant stores building materials. Given the degree of separation from the upper and lower paddocks and the nature of its use, I consider as a matter of fact and degree that this central area in the terms of Class B.1(a) is properly viewed as a discrete, separate, parcel of land. It is less than 0.4ha in area and for this reason therefore the hardstanding cannot attract permitted development rights. The appeal on ground (c) must fail.

**The s.174 appeal, ground (d)**

17. This similarly relates just to the hardstanding, and the appellant maintains that it has been in existence since 1992. Mr Allison, who has used the path to The Conduit House when exercising his dog, has been familiar with the land since that time and in his letter of 12 June he recalls a hardstanding being in existence. Mr and Mrs Smith in their letter of objection refer to a hardstanding becoming overgrown but do not specify dates. The aerial photographs submitted by the appellant that show the site in 1991 are indistinct and do not assist. The aerial photograph produced by the Council dated 30 August 1999 shows no indication of a hardstanding on the appeal land. Whatever, however, may have been the situation in 1992, and indeed at the material date, I take the view that an entirely separate operation took place in around 2002 when chippings were laid, rolled and levelled prior to the re-erection of the timber building which had previously been located within the grounds of The Fold. The appellant has failed to demonstrate that the appeal hardstanding, on the balance of probability, was laid more than 4 years prior to the date of the notice. Accordingly the ground (d) appeal must therefore also fail.

**The s.174 appeal (ground (a) and the deemed application) and the s.78 appeal**

**Main Issue**

18. Although the site falls within the North Vale Area of High Landscape Value the Council takes no issue on this and I do not disagree. From what I have heard, read and seen, rather, I consider the single main issue in these appeals is whether the development amounts to appropriate development in the Green Belt and, if not, whether there are very special circumstances to justify allowing inappropriate development.

**Reasons**

*s.174- The hardstanding*

19. The hardstanding in the Council’s submission fails to maintain openness and causes harm to the visual amenities of the Green Belt. To my mind, however, the hardstanding does not



impact at all on the openness of the Green Belt. Openness, which is the most important attribute of the Green Belt, is in policy terms preserved. Nor do I believe that it conflicts with the main Green Belt purposes set out in PPG2 and SP Policy G4. I consider, having regard to PPG2 paragraph 3.12, that it therefore comprises appropriate development in Green Belt terms. I appreciate that PPG2 goes on to state that the visual amenities of the Green Belt should not be injured by development and am conscious that the north east edge of the hardstanding is raised above the level of the lower paddock. The difference in level, however, is insignificant in the landscape setting and the visual amenities of the Green Belt are not harmed. In these circumstances I conclude that planning permission is merited and in this respect the appeal on ground (a) succeeds.

*s.174 - the appeal building*

20. This building was erected well before Mr Caisbrook kept 2 pigs on the land during 2004 and its predominant purpose is for the storage of hay, tack and other items brought into the site in connection with Miss Halliday's equestrian enterprise. It is appropriate in the circumstances to apply the 'essential facilities' proviso of PPG2 paragraphs 3.4 and 3.5. The Council has approached the enforcement on this basis and no point on this is taken by the appellant who advances an 'essential' case on grounds of secure storage associated with the number of horses on the land.
21. The evidence as to whether or not the building can properly comprise an essential facility is contradictory. Miss Halliday in her affidavit and Mr Caisbrook in his meeting with Council Officers in November 2004 refer to the need to store some 300 bales of hay, as well as straw, tack and other feeds. The Council's contemporaneous notes of the site meeting with Miss Halliday on 9 December 2004, at which time there were 26 bales of hay in the building plus wood preservative, other chemicals, fencing and tack, record amongst other things an indication that she had no difficulty with regular stocking with hay. Despite, moreover, the later indication that the low concrete building had previously been used for storage by Miss Halliday, the appellant's letter to the Council dated 11 November 2003 indicated that such storage on the land, which by that time had been used by Miss Halliday for 7 years, had become necessary "due to difficulties caused by the A34 being rather more busy". Whilst finding no strict similarity between this case and the 'stables' appeals to which the Council refer, there is not the evidence that a building of this size can reasonably be regarded as an essentially facility the terms of paragraphs 3.4 and 3.5 of PPG2.
22. The building is inconsistent with the fundamental aim in the Green Belt of keeping land permanently open. Although sited close to the existing, low, concrete building, and notwithstanding that there was previously a building in this location, removed some time before 1999, it is almost in the middle of the field and conflicts with the purpose of safeguarding the countryside from encroachment. Visual harm is caused and given such an open position the concerns expressed on behalf of local residents as to a conflict with the purpose of preserving the landscape setting of Oxford are also well founded. In summary, the structure comprises inappropriate development which, by definition, is harmful to the Green Belt. The loss of openness, the conflict with the purposes of Green Belt designation and the adverse effect on visual amenity by reason of siting result in significant additional harm.
23. The appellant comments that he has always had the provision of a storage facility on the land and adds that the concrete building could be removed and the timber building re-

positioned to take its place. That, however, would entail a different location and as a consequence is not an option in this appeal. No positive factors are advanced and I do not find the very special circumstances to clearly outweigh the harm to the Green Belt. The harm, moreover, cannot be overcome through attaching planning conditions. There is conflict with the local and national Green Belt policies described above, and there are not the circumstances to merit a decision other than in accord with the development plan. This element of the ground (a) appeal therefore fails.

*The s.78 appeal*

24. The proposal, to re-site the timber building close to the field entrance, just to the rear of Lothlorian, is described as an agricultural building, but in the light of the predominant use by Miss Halliday and on the basis of the appellant's own case it is again appropriate to apply the 'essential facilities' test.
25. In this regard, and in addition storage requirements considered above, I have also taken into account the appellant's proposals to develop for a pig enterprise utilising around 1.2ha of the site. Mr Caisbrook anticipates a throughput of around 150 pigs per annum, and has recently placed 3 pig arcs in the upper paddock. Another 7 are proposed. He considers that  $\frac{1}{4}$  of the building would be needed for storage of feed for the pigs. In the absence, however, of any formal business plan, and whilst I am aware that by way of feasibility 2 pigs were kept on the land for around 8 months in 2004, I am unable to ascribe any significant weight to this project.
26. For the reasons as described in the enforcement case this proposal would also amount to inappropriate development in Green Belt terms. The siting of the building on this edge of the field, however, would substantially remove the injury to the visual amenities of the Green Belt, and in this more secluded position there would be no conflict with Policy EN9. Nevertheless, the building before me is the 12m x 6m structure consisting of the 4 x 3m sections and with this size in mind I again do not find the very special circumstances to clearly outweigh the Green Belt harm. I recognise that the Council accepts the principle of a building to be located to the rear of Lothlorian but on the evidence at this time there is in my view no essential justification for more than 2 of the 4 bays. Notwithstanding that the appellant is willing to accept the conditions suggested by the Council, including preventing its use for livestock, I am not persuaded that these would sufficiently overcome the Green Belt objections. This appeal also fails.

**Conclusions**

27. For the reasons given above and having regard to all other matters raised, including the reference to nearby stables which do not appear to have the benefit of planning permission, I conclude that the appeal should succeed in part only. I will grant planning permission for the hardstanding but otherwise I will uphold the notice and refuse to grant planning permission on the other part. I shall dismiss the s.78 appeal.

**Formal Decision**

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28. I allow the appeal on ground (a) insofar as it relates to the hardstanding and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990

Act as amended, for the construction of a hardstanding, as already carried out, at land to the rear of The Fold, Harcourt Hill, Oxford OX2 9AS.

29. I dismiss the appeal and uphold the enforcement notice as insofar as it relates to the erection of a building, and I refuse planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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30. I dismiss the appeal and refuse planning permission for the erection of an agricultural building, at land to the rear of The Fold, Harcourt Hill, Oxford OX2 9AS.

*R. Westley*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mr B R Caisbrook  
He also gave evidence

St Hilarion, Harcourt Hill, Botley, Oxford OX2 9AS

### FOR THE LOCAL PLANNING AUTHORITY:

Mr S Whale

of Counsel, instructed by the Vale of White Horse  
District Council

He called

Mr M Deans BA(Hons) BTP Area Planning Officer  
MRTPI

### INTERESTED PERSONS:

Mr N Lizba DipTP DipCP MRTPI

JPPC, Bagley Croft, Hinksey Hill, Oxford OX1 5BS  
(representing the Harcourt Hill Residents Association)

Mrs J C Laver

44 North Hinksey Lane, Oxford OX2 0LY

Mrs M Hainge

Harcourt House, Harcourt Hill, Oxford OX2 9AS

## DOCUMENTS

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|-----------------|--|
| Document 1(1-2) | Lists of persons present at the inquiry.   |
| Document 2      | The Council's letter of notification of the inquiry.                             |
| Document 3(1-8) | Letters of objection.  |
| Document 4      | The appellant's proof of evidence and related appendices 1-5 – the s.174 appeal. |
| Document 5      | The appellant's proof of evidence and related correspondence – the s.78 appeal.  |
| Document 6      | Statement of Common Ground   |
| Document 7(1-2) | Proof of evidence, and summary proof, of Mr M Deans/                             |
| Document 8      | Appendices (1-12) to the evidence of Mr M Deans.                                 |
| Document 9      | Extract from Vale of White Horse Local Plan.                                     |
| Document 10     | Extract from Oxfordshire Structure Plan.   |
| Document 11     | Notes of case – S Oxfordshire DC v. Geoffrey East and SSE [1987].                |
| Document 12     | Sykes v. SSE and Another [1980].   |
| Document 13     | Closing submissions for Vale of White Horse DC.                                  |
| Document 14     | Statement of Mrs J C Laver.  |

## PLANS

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| Plan A | The plan attached to the enforcement notice.   |
| Plan B | The application plan (Location Plan, B1 and 1:250 scale plan of agricultural building, B2) |