

# Appeal Decision

inquiry held on 26-27 July 2000 & visit of site and surroundings on 28 July 2000

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an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

09 OCT 2000

## Appeal A: T/APE 13515/C/99/1034553

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against enforcement notice.
- The appeal is brought by Mr F Howard against Chichester District Council.
- The site is located at Old Army Camp, Cemetery Lane, Westbourne.
- The Council's reference is WE/99/00195/CONCOM.
- The notice was issued on 4 November 1999.
- The breach of planning control as alleged in the notice is the change of use of the land to the operation of a grit blaster and paint finishing business and a commercial vehicle servicing, maintenance and repair business.
- The requirements of the notice are:-
- [i] Discontinue the use of the land for the operation of a grit blasting and paint finishing business;
- [ii] Remove all vehicles, vehicle parts, tools and equipment used in connection with the said grit blasting and paint finishing business from the land;
- [iii] Discontinue the use of the land for the operation of a commercial vehicle servicing, maintenance and repair business;
- [iv] Remove all vehicles, vehicle parts, tools and equipment used in connection with the said commercial vehicle servicing, maintenance and repair business from the land;
- [v] Remove the hardstanding from the position shown coloured yellow on the plan attached to the notice and surrounding earth bank from the position shown coloured green on the plan attached to the notice from the land.
- The period for compliance with the requirements is three months.
- The appeal was made on the grounds set out in section 174(2)[a],[d],[f] & [g] of the 1990 Act

**Decision: The appeal is dismissed and the notice is upheld with the compliance period extended to six months.**

## Appeal B: T/APE 13515/C/99/1032149

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against enforcement notice.
- The appeal is brought by Mr F Howard against Chichester District Council.
- The site is located at Old Army Camp, Cemetery Lane, Westbourne.
- The Council's reference is WE/99/00137/CONCOM.
- The notice was issued on 20 September 1999.
- The breach of planning control as alleged in the notice is the change of use of the land to use for a coach hire operating centre.
- The requirements of the notice are:-
- [i] Discontinue the use of the land and buildings for a coach hire-operating centre.
- [ii] Remove all coaches and buses from the land.
- [iii] Remove all coach and bus parts, tools and equipment used in connection with the repair of coaches and buses from the land
- [iv] Remove the hardstanding from the position shown coloured yellow on the plan attached to

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the notice and the surrounding earth bank from the position shown coloured green on the plan attached to the notice from the land.

- The period for compliance with the requirements is three months.
- The appeal was made on the grounds set out in section 174(2)[a] & [g] of the 1990 Act

**Decision: The appeal is dismissed and the notice is upheld with the compliance period extended to six months.**

### Appeal C: T/APP/L3815/C/99/1030237

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against enforcement notice.
- The appeal is brought by Mr F Howard against Chichester District Council.
- The site is located at Old Army Camp, Cemetery Lane, Westbourne.
- The Council's reference is WE/99/00193/CONCOM.
- The notice was issued on 2 September 1999.
- The breach of planning control as alleged in the notice is the change of use of the land to use for the storage of timber and metal casting boxes, logs, cars, patio tables and metal tanks.
- The requirements of the notice are:
  - Discontinue the use of the land for the storage of timber and metal casting boxes, logs, cars, patio tables and metal tanks
  - Remove all timber and metal casting boxes, logs, cars, patio tables and metal tanks from the land.
- The period for compliance with the requirements is one month.
- The appeal was made on the grounds set out in section 174(2)[a], & [d] of the 1990 Act

**Decision: The appeal is dismissed and the notice upheld.**

### Procedural matters

1. At the inquiry the appellant confirmed that the ground [d] appeal had been withdrawn in respect of appeal A. Concerning the ground [g] appeals in respect of appeals A and B, the Council had agreed that an extension to the period for compliance to six months was appropriate and this was acceptable to the appellants. No further evidence would be submitted in this regard.

### SITE DESCRIPTION

2. The site lies within predominantly open countryside to the east of the settlement of Westbourne. It is situated on the north side of Cemetery Lane, a private road leading south from Foxbury Lane, the B2147. It is broadly rectangular in shape and is mainly open and overgrown. It was previously an army camp. Three brick buildings are situated towards the north east boundary and are accessed by an internal access track. For the purpose of the inquiry, these are described as building A for the most northerly building, building B for the central building and building C for the southern most building. Open fields adjoin the site to the rear, the east and on the opposite side of Cemetery Lane. To the west is a County Council gypsy site and to the south west is the village cemetery. Residential properties are located further to the east fronting the north side of Cemetery Lane and both sides of Duffield Lane.

### PLANNING HISTORY

3. The history of the site is complex and the most relevant applications are detailed. Those pertinent to the whole site are outlined below and those specific to a particular appeal site



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area are indicated under the relevant appeal. An enforcement notice was served for the parking and storage of motor vehicles and civil engineering plant in 1979. Permission for the parking of 12 lightweight vehicles was refused in 1980. A temporary and personal permission for use of the land for parking and storage of motor vehicles and civil engineering plant was granted in 1981. An application to refurbish buildings A, B and C was refused in 1988 and an outline application for six industrial starter units was refused in 1991. Planning Contravention Notices were served on the appellant and Mr S Malloy in 1996. A Certificate of Lawfulness for the storage and distribution of builders' waste was refused in 1999. Further Planning Contravention Notices were served in 1999 on the appellant, Mr Malloy and Mr Hudson.

### PLANNING POLICY

4. The development plan comprises the approved West Sussex structure plan 1993 and the adopted Chichester District local plan First Review. The structure plan is being replaced by the Third Review 1998, which has reached an advanced stage but has not been formally approved. Policies are very similar to the approved plan but more emphasis is given to sustainable development. As this review has reached an advanced stage in its preparation, I will afford it appropriate weight.
5. The site lies within the countryside for the application of development plan policies. It is not covered by a special designation. It lies between the South Downs AONB to the north and the Chichester Harbour AONB to the south. Strategic policy G3 relates to the location of development and policies G6 and C1 relate to development in the countryside. Policy C8 concerns development in small existing buildings in the countryside. Policies E1 and E5 relate to business, industrial and warehousing development. Local policy B4 concerns the conversion and change of use of buildings for business use. Policies G5, G6 and policy RE1 relate to development in the rural area generally. Policy RE14 concerns proposals for the conversion and change of use of buildings in the rural area. Strategic policy T14 and local policy TR6 sets out the access requirements for development. This policy is being replaced by Policy T8 in the emerging Third Review.

### The main issues

I consider the main issues in all three appeals are as follows:

- [i] Whether the development would have a detrimental effect on the visual amenities of the countryside;
- [ii] whether it has an unduly adverse impact on the rural character of the locality and the living conditions of nearby residents by reason of noise, dust and disturbance and
- [iii] whether it would have a detrimental effect on highway movements and safety.

### APPEAL A

6. The site is rectangular in shape and embraces buildings B and C, a rectangular open area of land to the east and an earth bank on its eastern and northern sides.

### PLANNING HISTORY

7. Permission for the change of use of building B from a store to aluminium and fibreglass boat building operations was allowed on appeal in 1988. An application for concrete hardstanding and the erection of a temporary shelter for the construction of a one off aluminium boat was



refused in 1988. An application to retain the use of the building as a transport depot, civil engineering open storage was refused in 1989. An application to change the use of building C and land to the east to a waste transfer station was refused in 1993. An application to extend building B for workshop use was refused in 1998 and upheld on appeal.

#### APPEAL ON GROUND [a] & THE DEEMED APPLICATION

##### Inspector's reasons

8. Concerning the first issue, I find that buildings B and C are used by Mr Malloy, Airstrip Ltd, for the specialised blast cleaning and painting of metal objects and the recycling of waste containers. Building B is used for the blast cleaning operation and building C for paint spraying. A rectangular area of land to the east of the buildings is used for the storage of items that are waiting for or have received treatment. A small area of concrete hardstanding lies to the east of building B, but the remainder is hard packed earth and rough hard core to the east of building C. Some cars and small storage times are parked immediately on the west side of the buildings adjoining the access road.
9. The site is located in a narrow band of countryside that lies between the two AONB's. It is fairly flat and is crossed by electricity pylons. The land behind rises to a ridge of high ground within the South Downs AONB. The gypsy site adjoining is well screened and the site appears to lie in undeveloped landscape. A deciduous hedge marks the Cemetery Lane frontage and both the eastern and western boundaries are well screened with mature hedging.
10. Many items cleaned by the business are very large, such as military equipment, tanks, guns, lorry trailers, waste skips and water tanks. Smaller items include cast iron railings, aluminium car wheels and pine furniture. Other equipment and articles stored outside include a forklift truck, for moving items around site, a skip for waste products, metal pallets, tyres and gas cylinders. The items are stored haphazardly, look untidy and contribute to visual clutter on the site. Notwithstanding the frontage hedge, the large stored items are clearly visible from the access gate and area to the west of the access where there is no hedgerow, notwithstanding the position of the two buildings. They would be more visible in winter months. They look incongruous in the rural area and detract from the visual amenity of the countryside.
11. Policy RE14 is relevant to the appeal. Criterion [iv] relates to the curtilage of the existing buildings but this is not defined within the policy. Moreover, there is no defined curtilage around any of the buildings. The guidance in PPG7 and strategic policy concerning the reuse of rural buildings is directed to the reuse and adaptation of such buildings. In this case, although two existing buildings are being used for the business, the extent of open storage greatly exceeds the area covered by the two buildings. My view is that the development fails to meet the principle of the guidance concerning reuse of the buildings as it is not contained within the buildings and involves a large area of open storage. The use materially reduces the openness of the countryside and detracts from its visual amenity, contrary to policy RE2.
12. Turning to the second issue, the inquiry was told that the noise generated by the business is clearly audible in Cemetery Lane and at dwellings in this lane and Duffield Lane when the wind is in certain directions. The Council says that the noise is comparable in loudness to traffic noise from A27, which has generated a large volume of objections. Further noise and disturbance is generated from the compressor, the additional traffic generated by the use and the manoeuvring of vehicle and equipment within the site. Mrs Witts, representing the



Woodmancote Residents Association, lives at Oakwood, on the west side of Duffield Lane. He said that the noise is intermittent. Sometimes there is no noise for two weeks but on other occasions, there could be continuous noise for about two hours. Occasionally there is weekend working.

The nearest dwellings to the site are gypsy caravans, located about 115m from Building B and Harwood in Cemetery Lane, about 190m away. The cemetery lies in relatively close proximity and an extension has been approved. No noise evidence was presented to the inquiry. The inquiry was told that the Environment Agency and the Council's Environmental Health Officer have visited the site but the business was not required to undertake any action as a result.

My site visit was undertaken on a windy day when the wind was from the south. Traffic noise from the A27 was very apparent within the site, on Cemetery Lane and at the two dwellings I visited. The grit blasting was in operation and towards the western site boundary, one could hear noise from the compressor with a hissing and blasting noise above. It is likely that this noise would be heard within the gypsy site. It was possible to hear the grit blasting in Cemetery Lane as a continuous, background rumbling noise. There were occasional louder bursts. The traffic noise was more prominent. I could not hear the grit blasting within the garden of Harwood and at Oakwood, I could only just hear a slight hissing noise at the end of the long garden.

Westbourne Parish Council and the Woodmancote Residents Association refer to the deposit of sand on washing etc under certain weather conditions. There have also been reports of bonfires on the site. Mr Malloy concedes that on one occasion he grit blasted a large yacht outside the buildings, which took one week. He also acknowledged that he has burnt pallets from time to time but has now stopped. I saw that building B has holes in the roof, walls, doors etc through which dust could escape. Mr Malloy accepted that fine dust escapes through the extraction system. He said that about 75 per cent of dust is contained and that this level could be increased to 99 per cent if the extraction equipment was upgraded.

Building B is of basic design, and has no architectural merit. Although it appears structurally sound, substantial works would be needed to overcome the harm caused to local residents and the amenity of the countryside. When the wind is in certain directions an industrial noise can be heard in the lane and the nearest residential properties. There is sometimes weekend working. Moreover, the movement of tanks and other large items to and from the site would be slow and noisy and would be incompatible with the rural character of Cemetery Lane. Such movements, although limited in number, could have an adverse impact on mourners in the cemetery. My conclusion is that the use has an unacceptable effect on the amenities of local residents and other users of the countryside contrary to criterion 7 of policy RE14.

Turning to the impact on highway movements and safety, I find that customers bring about half the items to the site and Mr Malloy collects larger items himself. Other work is undertaken off site. The use is a low traffic generator and including staff movements, generates about twenty movements a day. There are occasional visits by large, slow moving vehicles, including low loaders, transporting tanks and yachts. The site visit showed that some traffic generated travels from the west through Westbourne village, although Mr Malloy claims that he encourages use of the northern part of Foxbury Lane.

8. Foxbury Lane at its junction with Cemetery Lane falls within the 30-mph speed limit. The road is not lit. I consider that a 4.5m "x" dimension is appropriate for Cemetery Lane



considering the nature and extent of its usage. The visibility leaving Cemetery Lane, is only 20m in both directions due to presence of boundary hedgerows. This falls significantly below the recommended 90m in DETR Design Bulletin 32 [which has superseded PPG13.]. The hedges are outside the appellant's control.

19. The low loaders would need to manoeuvre in the carriageway in order to enter or leave Foxbury Lane. The winding nature of this lane reduces the forward visibility for drivers who would have restricted visibility of vehicles leaving Cemetery Lane and trespassing onto the opposite carriageway. A number of personal injury accidents have been recorded in vicinity of junction and in my opinion, the type of vehicles generated by the use would exacerbate highway safety conditions and be detrimental to the character of the rural road network, contrary to criterion 6 of RE14. They would also be incompatible with the narrow streets in the centre of Westbourne village.
20. Cemetery Lane is a designated public footpath, which continues on the north side of Foxbury Lane. Mrs Witts said it is well used by walkers and horse riders. Although the footpath is separately demarcated at the eastern and western ends, for a substantial length of the lane, walkers and riders would have to share the carriageway and would be inconvenienced by close proximity to the large, slow moving transporters.
21. Although I accept that most users of site would use Cemetery Lane to the west of the site entrance, some vehicles may exit to the east. This would involve unsuitable country roads in poor condition. Duffield Lane is a private road and public footpath with inadequate sight lines onto Woodmancote Lane and the Cemetery Lane/South Lane junction is substandard. Vehicles would pass residential properties in Duffield Lane and South Lane.
22. The appellant argues that Council has failed to strike the appropriate balance between economic development and environmental conservation. This previously developed land does not possess intrinsic qualities, which warrant conservation in its own right. The structure plan gives a strong presumption for job creation activities, policy E1 criterion [d], and the business assists the achievement of sustainable transport objectives, the conservation of the nation's heritage and the recycling of vehicles and artefacts.
23. Government advice in PPG4 aims to encourage economic development and the growth of small firms. Mr Malloy's business is such a small firm and he employs two people. The company meets a special need for the renovation of historic military vehicles, the refurbishment of railings and guttering, the distressing of timber for building reconstruction and the recycling of industrial components. The business is well established and fills a useful niche in the market. It has a strong measure of customer support. Nevertheless, many customers travel from some distance, including London, and generate additional vehicle movements contrary to national objectives for reducing the need to travel.
24. The business does not need to be sited in the rural area. Development generally is encouraged to establish within the built up areas. Mr Dunn, the County Councillor, said that the development pressure in the corridor is great. There is a surplus of industrial premises in the district and there are many vacant spaces on industrial estates. Mr Malloy accepted that he had not made concerted attempts to find an alternative site but said that most modern industrial estates would not welcome his kind of business. *why not*
25. Strategic policy E5 indicates that exceptionally new business development may be permitted where a firm cannot conveniently find existing accommodation. Mr Malloy has not contacted estate agents or the Council's Economic Development unit. Although



understand the difficulties associated with this particular kind of business, vacant business floorspace is available and Mr Filtress said he knew of a suitable site. I do not find the evidence so compelling that exceptionally permission should be granted to retain the business in this location.

26. I have had regard to the conditions put forward for my consideration in the context of Circular 11/95. The detrimental visual impact of the outside storage and parking could be reduced by the provision of appropriate landscaping and a scheme was put before me, having been agreed by the appellant and the Council. This would involve the creation of 2m bunds and associated landscaping. The landscaping would take many years to be effective and the larger, stored items would still be visible. The use requires a large area of open ground for storage and although Mr Malloy said he would accept a condition restricting the extent of outside storage, my view is that such a condition could be regarded as onerous as it would be unduly restrictive. It would also be difficult to enforce.
27. Improvements to building B and new extraction equipment would be necessary to reduce dust emission to acceptable levels. Mr Malloy expressed his agreement to such measures, and said that he would be prepared to invest money in sound proofing if required. These measures would be likely to be costly and could well be considered to be onerous. A condition imposing controls on the days and hours of operation would help to limit the noise and disturbance to residents and the rural area. However, this would not reduce the external noise generated by the movement of vehicles to and from the site and the manoeuvring of vehicles and equipment within the site. Moreover, it would be difficult to monitor outside working. The highway safety problems could not be mitigated by condition. The number of conditions that would be required and the possibility that a couple may be held to be unreasonable reinforces my view that the use is inappropriate in this location. Consequently, my conclusion is that the imposition of conditions would not satisfactorily overcome the identified harm.

#### Conclusions

28. Although strategic and local planning guidance aim to encourage employment opportunities, this should not be at the expense of amenity. The structure plan review, policy G8, seeks to secure a healthy rural economy providing the environment is not harmed. The cumulative impact of the business resulting from the loss of rural amenity, the noise and dust and the highway problems leads me to the overall conclusion that the use is unacceptable in this location. The appeal on ground [a] fails and planning permission will not be granted on the deemed application.

#### APPEAL ON GROUND [f]

29. The appellant claims that the requirement [v] is excessive. It is unreasonable to require the removal of the hardstanding and the earth bunds. The notice does not refer to the formation of a hardstanding or the earth banks in the alleged breach of control. Nor does it specify any harm caused by these features. The Council argues that the bunding is part of the unlawful use and should be removed. Its retention may encourage another breach. My view is that any future use of the buildings would require some hardstanding for employee parking. The hardstanding is at ground level and cannot be seen from public viewpoints. The bunds are relatively low, vegetated and set against the backdrop of the eastern boundary hedge. In my mind, they result in no harm to the rural character of the countryside. Accordingly, I conclude that the requirement [v] is unnecessary and excessive in order to rectify the breach.



## AL DECISION

shall therefore vary the notice to delete this requirement and the appeal on ground [f] succeeds to this extent.

### PEAL ON GROUND [g]

The appellant claims that the period for compliance is too short. The Council would accept an extension to six months and it seems to me that such a period would be appropriate in this case. I shall therefore vary the requirements to this effect. Accordingly the appeal on ground [g] succeeds.

### PEAL B

The site embraces building A, and a broadly rectangular area of hardstanding that lies to east of the building. Low earth mounds define the hardstanding. A bus ramp is located immediately to the east of the building. The site is occupied by Mr Hudson who has been operating his business, "Norman Coaches", for over forty years.

### ANNING HISTORY

An application for the parking of coaches and use of the building for storage of plant and equipment was refused in 1999.

### PEAL ON GROUND [a] & THE DEEMED APLPLICATION

Mr Hudson runs a coach hire business. He was formally based at Rowlands Castle and Havant. He holds operators' licences for eight vehicles at any one time and five vehicles are in operation on the road. The coaches are used locally for school bus runs. After the school run, one bus provides a free shopping bus for Sainsburys in Chichester that is operated five and a half days a week. Mr Hudson regularly undertakes work for several local charitable organisations, for example the Red Cross in Emsworth, Age Concern, Emsworth and for the Hampshire County Council Social Services Department.

Concerning the first issue, I saw that there were three cars parked to the west of the building, and eight coaches, including one double decker, and one minibus to the east. There was also a breakdown truck, a small trailer and two container bodies used for storage. More coaches would be parked at night. Building A is used for the storage of spare parts and incorporates a workbench. Two small vehicles were parked within. An area of concrete hardstanding lies forward of the building and the remainder of the yard to the east is made of uneven hardcore. Bunds, about 2-3 m high and well vegetated mark the eastern and northern boundaries of the use.

5. The vehicles and other storage items can be clearly seen from the site access, notwithstanding partial screening by the three buildings. They are not vehicles normally associated with the countryside and contribute to a general clutter around building A. The extent of the outside storage of large vehicles and equipment and other items looks untidy and unsightly. The use detracts from the openness and the rural character of countryside. A security light on the front of the building will contribute to light pollution in the countryside after dark.

6. The general principles set out in PPG7 and the structure plan concerns the reuse of rural buildings. The major part of the business, the parking of coaches and associated vehicles, other storage and the maintenance of the coaches is located in the open. It seems to me that the use of the building for storage of tools, minor repairs etc is a minor part of the use. The



use has expanded well beyond the capacity of the building and I conclude that it is clearly contrary to strategic policy C8.

37. Turning to the second issue, the roof height of the building restricts its use for maintenance work on the coaches. Mr Hudson does all his own repairs outside, including engine work. I consider that noise from vehicle movements within the site, such as the manoeuvring of coaches up and down the external ramp and the routine maintenance work in the open would be audible in Cemetery Lane. Although, there have been no complaints from residents concerning the outdoor maintenance, in my opinion, the servicing of large vehicles outside is an inappropriate activity in this countryside location.
38. The coaches are used seven days a week and sometimes return around 22-2300 hours after a day trip. The use generates additional large vehicle movements in Cemetery Lane and would result in potential conflict with other users such as walkers, cyclists and horse riders. Mourners at the cemetery could be disturbed, notwithstanding Mr Hudson's efforts to minimise the impact. My conclusion is that the use is contrary to criteria 6 and 7 of local policy RE14.
39. With regard to highway safety considerations, the inquiry was told that the use generates about twenty movements a day in total, including staff trips. There may be occasional other movements concerning the less regular contracts. Some of the coaches are 50 seater and about 11m in length. The vehicles, of necessity, encroach into the opposite carriageway when turning left and right into Foxbury Lane, and when entering Cemetery Lane from the north.
40. I acknowledge that the coach drivers are experienced and are positioned higher up in the vehicle. To some extent they can see over the junction hedgerows at their existing height. Nevertheless, not all the coach movements' exit to the north and the left turn out from Foxbury Lane is particularly hazardous. Forward visibility in Foxbury Lane is poor and other drivers, particularly those from north, travelling at greater speed, may not see a coach emerging or straying across the carriageway. There have been accidents in the vicinity of the junction and its use by large, slow moving vehicles would contribute to the potential danger to highway safety conditions contrary to local policy TR6.

### Conclusions

41. I appreciate that national and strategic policies encourage the creation of small firms. Mr Hudson's business is long lived and provides employment for four full time and two part time staff. The company meets a local need for a means of transport in its rural hinterland and relies upon the availability of these simple premises with low overheads. Mr Hudson's rates are said to be very competitive and the business provides transport for disabled and elderly people and others that do not have access to a private car. The use contributes to sustainable transport objectives. Nevertheless, these factors must be balanced against the generation of additional vehicle movements in the countryside contrary to government and strategic guidelines and the adverse environmental effects identified.
42. The main thrust of national, strategic and local policies is the protection and restraint over new development in the countryside. The site lies well outside a settlement and the Parish Council stressed the importance of maintaining the openness of the countryside between the South Downs and the sea. In my opinion a small bus depot is clearly inappropriate in this countryside location. The use does not minimise the use of energy expended in transport and consequently runs counter to policies G5 and C1.



43. Policy E5 of the structure plan gives a minor exception to restraint policies for local firms that conveniently cannot find accommodation in existing floorspace. This is carried forward into the 1998 Review as policy E4. Mr Hudson said that he had found the premises as he knew Mr Page, an earlier occupier of the site. He said that he had not looked for alternative premises in the last two years. Mr Tutton also said he had not looked. The Council's Economic Development Unit had not been contacted and the Council says that surplus business accommodation exists in the area. Such accommodation may be more expensive and I understand that the business operates at the cheaper end of the market. Nevertheless no accounts were presented to inquiry and the business may be able to absorb some additional costs. The evidence does not show that there has been a comprehensive search for new premises. Although I appreciate the value of the services Mr Hudson provides, I am not persuaded that the circumstances set out in policy E5 have been met to permit exceptionally this development in the countryside.

44. I have had regard to the conditions put forward for my consideration by the Council. The appellant said he would resist an evening time limit of 1800 hours and exclusion on Sunday operations as this would be too restrictive bearing in mind the nature of the operations. 2100 hours would be acceptable for evening closure and the lighting condition would be accepted if linked to extended hours of operation. The appellant would not accept condition 6, restricting all maintenance to within the building, but would agree to the landscaping conditions. I raised the question as to whether a personal permission would be appropriate in view of the particular circumstances of this business. The appellant said that he would only accept such a condition reluctantly as Mr Hudson is considering his post retirement situation. The appellant and Mr Hudson's resistance to several of the proposed conditions, which I would consider to be both necessary and reasonable to protect the character of the countryside, confirms my view that the use is inappropriate in this location. The appeal on ground [a] therefore fails and planning permission will not be granted on the deemed application.

#### APPEAL ON GROUND [g]

45. The appellant argues that three months is an unreasonable period for compliance. Six months would be more appropriate. The Council concedes that six months would be appropriate in this case and I concur with that view. I shall vary the notice accordingly. The appeal on ground [g] succeeds.

#### APPEAL C

46. The site embraces the majority of the former Army Camp but excludes the three buildings and the north east portion of the site.

#### APPEAL ON GROUND [d]

47. The appellant claims that persons associated with the site bear testimony to its use for storage and distribution of reusable materials for over a decade. Mr Howard said that when he purchased the site in 1984, the remainder of site was of very poor quality. There had been storage of items around the site including land to the west of the three buildings. All kinds of machinery and other items have been stored from time to time. Often the storage was by the occupants of the three buildings who casually extended their operations beyond the buildings making use of the vacant land.

*uncontrollable access over whole site*



48. The Council concedes that the site has a history of low key storage, but it was only some time in the mid to late 1990's that the storage became material and an enforcement notice was served. Regarding the first issue, the site is not currently used for open storage. There are low, overgrown mounds of inert material situated towards the western boundary of the site. I was shown other items largely overgrown, such as asbestos roof tiles, south of building C, one manhole cover and the remains of two caravan chassis, also overgrown, one to the south, one to the west.
49. I find that Mr Page left the site seven years ago. He stored civil engineering equipment on the site but everything was removed in 1993. He also used the site as a transfer station, by taking waste to the site on Sundays before transferring waste to other tips when open. Mr Howard said that he stored wooden logs on the site for six months in 1999. He accepted that the submitted photographs taken in 1999 show the full extent of the storage and that he had only seen the site fuller than that when Mr Page had the site.
50. A planning application submitted by the appellant in 1991, ref WE/28/91, refers to the existing use of site as partly contractors yard, partly roadways and partly rough land. An accompanying letter dated 4 May 1991 states "that the application site is for the most part not put to any beneficial use and is unsightly". The site of this application included all land involved in the notice except land to the south of building C. The application and accompanying plan showed that storage of demolition materials would be moved from an area along the western site boundary to a rectangular area to the east and south east of building C.
51. Photographic evidence submitted by the Council over a number of years shows little evidence of a storage use. Two photographs taken in 1993 show two small piles of gravel, one between buildings B and C and one south of building C. A low mound is just visible near the western site boundary. The remainder of the site is overgrown and apparently unused. A few vehicles were parked east of building C. An air photograph dated July 1991 shows the majority of the site under grass. It shows a disturbed area of land near the western boundary, which is impossible to identify. There appears to be some heaps at the south east corner of the internal roadway. Another air photograph taken in October 1997 shows most of the site under grass. A few items are indicated near building C that could be cars or trailers. An apparent mound at the south east junction of the roadway could be stored material. The area to the west of the site appears to be largely overgrown.
52. In 1996 the Council investigated the storage use of the site. The Council's Planning Enforcement officer saw some storage on 7 and 9 May 1996 and most items were related to the usage of three buildings. Most of the site was empty and under grass except for a low overgrown mound on the western boundary of site and a pile of pallets, stored at the south east junction of roadway. This is supported by Mr Howard response in the PCN dated 8 July 1996. He states that no storage was taking place but makes the point that there is some external storage on the old established original roadway leading to the buildings.
53. The Council's Enforcement officer visited the site again in April 1999 and said that extensive storage was taking place on the land including numerous timber and metal casting boxes on the west, east and south east areas of the site. Large metal tanks were stored to the south east of the access track and a number of timber "A" frames to the west of the track. Timber logs, picnic tables and a motor vehicle were also present on the site. Photographs confirm this statement and Mr Howard's response to the PCN dated May 1999. He said that there were four areas of land being used for storage; two areas of crates and boxes were



- stored by Mr Malloy, a small area for "A" frames stored by the appellant and a car and trailer unspecified.
54. An application for a Certificate of Lawfulness for storage and distribution of builders' waste was refused in 1999 by West Sussex County Council on grounds of insufficient evidence. The majority of the statutory declarations placed before me were prepared for this purpose and were before the County Council. None of the witnesses gave evidence to the inquiry and their statements could not be tested under cross-examination.
55. The submitted statutory declarations, dated August and November 1998, are from Mr P R Tombs of Westbourne; Mr M J Camp, Hayling Island; M S J Powell of Rowlands Castle, Mr P Terry of Hayling Island, Mr G Howard of Portsmouth and Mr J Mobey of Southbourne. They testify to the use of the land for storage and distribution of reusable materials for over a decade. They refer to the eastern part of the site but this area is not specified. Moreover, the land east of the three buildings is excluded from the notice. Mr G Howard specifically refers to his occupation of the north eastern corner of the site for storage and distribution of builders waste material.
56. Mr Camp, Terry and Mr Powell state that their connections were with Mr Page's occupation of the site that ended in 1993. Mr R A Allard's statement solely refers to building C. Mr K J Henderson of Emsworth refers to one visit in spring 1991 and Mr Powell last visited the site in 1994. Mr G Howard declares he had no direct association with the site between 1993 and 1997.
57. In my view no new compelling evidence has been put before me that would lead me to a different view to the County Council. There are no submitted receipts, contracts or invoices for the transport or storage or the sale of materials. There is no mention of the use in the PCN of July 1996. I am not satisfied from the evidence that the whole area has been used continuously for the external storage of items or material from the relevant date. The photographs only show waste stored in certain small areas of the site on a specific date. The Council's planning history show other lawful uses of the site or parts of the site.
58. Mr Tutton told the inquiry that the places within the site for storage varied and that the storage piles moved around the site. This view was confirmed by Mrs Witts who travels past the site almost daily. She that storage on the site has been intermittent. Logs have been stored periodically and only in last 5-6 years have large items of equipment been stored. Mr Todd said that there were different things at different times, such as wooden pallets, tanks and crates.
59. The evidence indicates to me that there has been no continuous use of the site for storage with the possible exception of a mound of material at the south east junction of roadway. The major part of the site was open and overgrown for the relevant period. The onus is on the appellant to provide evidence to support his claims but the statutory declarations submitted are inconclusive and the majority are vague and imprecise. Much of the evidence related to land outside the site area. If indeed Mr Page was operating a contractors' yard on the site, this would be a "sui generis" use and materially different from the storage use alleged in the notice. In any event it ended in 1993.
60. In my view, any storage use has been of an insignificant nature for much of the ten year period and consequently can be regarded as "de minimis". On the balance of probability, I am not satisfied that storage use had commenced at the relevant date and continued for over ten years as the predominant use of land. The appeal on ground [d] fails.



## APPEAL ON GROUND [a] & THE DEEMED APPLICATION

61. Mr Tutton said in evidence that the site cannot be realistically returned to agriculture, and as it is despoiled land, it would be a good place for open storage. The appellant is only seeking to retain timber storage on the site and not general storage. Furthermore, the notice does not relate to the storage of hardcore or topsoil.
62. Virtually the whole of the site is visible from the access gate and would be more visible in winter months along the length of the Cemetery Lane frontage. The site is relatively large, some 1.8 ha., and is flat and featureless apart from the internal access tracks. Storage items placed indiscriminately around the site would appear as an eyesore and an incongruous feature in this rural setting. In my view any open storage use would be inappropriate and would significantly detract from the site's openness to the detriment of the rural character of the locality. If permission were to be granted for just those storage items specified in the notice, this would be difficult to monitor and enforce. A condition restricting a change of use within Class B8 of the Use Classes Order could be regarded as unreasonable. No business justification has been advanced for the use and in my view a storage use of the site would be clearly contrary to countryside restraint policies, G3 and C1.
63. With reference to the second issue, a storage use would attract large and heavy vehicles to Cemetery Lane. This could result in a potential conflict with walkers and horse riders. The manoeuvring of such vehicles within the site with associated tipping activity would cause noise, dust and disturbance to the detriment of the rural character of the locality and the amenities of nearby residents. The use would not minimise the need for vehicle movements. It would be contrary to strategic policies G3 and C1, and local policies RE1 and RE2.
64. Turning to highway safety considerations, an open storage use, even restricted to timber, metal casting boxes, metal tanks etc, could give rise to a significant increase in vehicle movements and could well attract heavy goods vehicles. This would generate additional traffic movements in the countryside contrary to government guidance in PPG13 and along unsuitable rural roads. It would intensify the number of vehicle movements at the unsatisfactory Foxbury Lane junction to the detriment of highway safety conditions. The use would be contrary to policy TR6.
65. Although Mr Tutton claims that the use is sustainable as it involves the recycling of materials, I have noted that both the appellant and Mr Malloy in their response to the PCN in May 1999 declare that many items stored had no useful purpose. Even if stored timber, patio tables, metal tanks etc specified in the notice were to be recycled, it is my view that this is insufficient justification to override the identified planning problems.
66. I have taken account of the conditions suggested by the Council. I acknowledge that a restriction on delivery times, the control of lighting within the site and a scheme for landscaping would help to mitigate the harm. Nevertheless, the proposed conditions would not satisfactorily overcome the adverse environmental impacts resulting from an open storage use. The site lies outside the built up area and the use would be contrary to policies G3 and C1. Hence the ground [a] appeal fails and planning permission will not be granted on the deemed application.

## OTHER MATTERS

67. I have considered all other matters raised in the representations including references to the agricultural contractors in Cemetery Lane, the widening of the access gate, grit being



## APPEAL DECISION

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dumped in Cemetery Lane, the petition collected by Mr Malloy, Mr Hudson's' coach operator licence, the new access to Foxbury Lane to serve a housing development and previous appeal decisions but none are of sufficient weight to override those considerations that have led me to my conclusion.

### FORMAL DECISION

68. For the reasons given above and in exercise of the powers transferred to me, I determine these appeals as follows;

#### **Appeal A. Ref:**

I direct the notice be varied as follows:

Paragraph 5: Delete requirement [v].

Paragraph 6: The Time for compliance.

Delete the words "Three Months" and substitute the words "Six months".

Subject thereto, I uphold the notice as so varied. I refuse to grant planning permission on the deemed application.

#### **Appeal B. Ref:**

Paragraph 6: The Time for Compliance;

Delete the words "Three Months" and substitute the words "Six Months".

Subject thereto, I uphold the notice as so varied. I refuse to grant planning permission on the deemed application.

#### **Appeal C. Ref:**

I uphold the notice. I refuse to grant planning permission on the deemed application.

### RIGHTS OF APPEAL

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



Maureen C Taylor