The Planning Inspectorate

Appeal Decisions

Site visit made on 2 January 2018

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 January 2018

Appeal A: Appeal Ref: APP/V1505/C/16/3164894
Land west of Dimples, North Road, Crays Hill, Billericay, Essex CM11 2XD

- 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 Ryan Ludlow against an enforcement notice issued by Basildon District Council.
- The enforcement notice, reference V1505, was issued on 7 November 2016.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a wooden building and formation of hardstanding.
- The requirements of the notice are:
  1) Demolish the wooden building shown coloured blue on the plan attached to the notice.
  2) Break up all hardstandings and remove from the land all resultant debris and materials.
  3) Restore the land shown in cross hatching on the plan attached to the notice to its former condition by levelling it and replanting it with:
     (a) 10 in number of each of the following species of trees measuring between 10 to 12 centimetres in girth and 2 to 3 metres in height:
     Oak – Quercus robur
     Hornbeam – Carpinus betulus
     Wild cherry – Prunus avium
     Downy birch – Betula pubescens
     Whitebeam – Sorbusaria
     (b) 10 in number of each of the following species of understory trees measuring between 6 to 8 centimetres in girth and 6 to 8 centimetres in height:
     Hawthorn – Crataegus monogyna
     Holly - Liex aquifolium
     Hazel – Corylus avellana

     All trees to be planted two metres apart, they will be planted in the first available planting season after carrying out the works required by steps 1 and 2 above and within the stated compliance period. Any trees dying within a period of five years after the end of the stated compliance period shall be replaced like for like in the first available planting season and will be maintained thereafter.
  4) Restore the land not shown in cross hatching on the attached plan to its former condition by levelling and reseeding with grass seed.
- The period for compliance with the requirements is:
  1) Three months.
  2) Four months.
  3) Ten months.
  4) Ten months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice

is upheld with variations.

Appeal B: Appeal Ref: APP/V1505/C/16/3164897
Land west of Dimples, North Road, Crays Hill, Billericay, Essex CM11 2XD

- 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 Ryan Ludlow against an enforcement notice issued by Basildon District Council.
- The enforcement notice, numbered V1505, was issued on 7 November 2016.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised making of a material change in the use of the land for the keeping of horses and storage of plant, equipment and other materials.
- The requirements of the notice are:
  (i) Cease using the land for the keeping of horses and the storage of plant, equipment and other materials by removing the said items from the land.
  (ii) Restore the land shown in cross hatching on the plan attached to the notice to its former condition by levelling it and replanting it with:
    (a) 10 in number of each of the following species of trees measuring between 10 to 12 centimetres in girth and 2 to 3 metres in height:
    Oak – Quercus robur
    Hornbeam – Carpinus betulus
    Wild cherry – Prunus avium
    Downy birch – Betula pubescens
    Whitebeam – Sorbusaria
    (b) 10 in number of each of the following species of understory trees measuring between 6 to 8 centimetres in girth and 6 to 8 centimetres in height:
    Hawthorn – Crataegus monogyna
    Holly - Liex aquifolium
    Hazel – Corylus avellana

    All trees to be planted two metres apart, they will be planted in the first available planting season after carrying out the works required by steps 1 and 2 above and within the stated compliance period. Any trees dying within a period of five years after the end of the stated compliance period shall be replaced like for like in the first available planting season and will be maintained thereafter.
  (iii) Restore the land not shown in cross hatching on the plan attached to the notice to its former condition by levelling and reseeding with grass seed.
- The period for compliance with the requirements is:
  (i) Three months.
  (ii) Ten months.
  (iii) Ten months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Procedural Matters

1. The land that is the subject of the notice corresponds with the land owned by the Appellant since July 2013 as shown on the Land Registry plan for title number EX894170[1]. However, it was apparent from my visit that the land enclosed by a close boarded wooden fence, and which the Appellant confirmed was in his ownership, extended to the north of the registered land and incorporated what appears to have been a length of North Road. North Road

[1] Page 4 of Exhibit RL1 to the Appellant's statutory declaration

ended at the gates of the Appellant's property and a wide hard surfaced (but muddy) access track curved away from the gates and joined the track shown on the notice plan. I will determine these appeals on the basis of the land identified on the notice (the site) because to do otherwise would extend the scope of the notice and thus cause injustice to the Appellant.

2. The site had been fenced into a number of different areas including a close boarded fence separating the southern part of the site in which the stables are located from the open area in the north and post and rail fences creating small paddocks in the west of the site. There was hardstanding in the southern, stables area but the hard surface shown hatched black on the notice only remained on the track together with a small half-circle of gravelled area near the eastern boundary fence. I will take this into account in my determination of the appeals.

3. The Development Plan for the area includes the Basildon District Local Plan adopted in 1998. Other than saved policy BAS GB1 which confirms the boundary of the Green Belt there are no relevant polices for the control of development in the Green Belt. The emerging Local Plan confirms the extent of the Green Belt but does not have any relevant control of development policies. In the circumstances the appeals on ground (a) will be determined pursuant to national Green Belt policy contained in the National Planning Policy Framework.

Appeals A and B: The appeals on ground (b)

4. In an appeal on ground (b) the Appellant is saying that the matters alleged in the notice have not occurred as a matter of fact.

Appeal A – the wooden building

5. There is no dispute between the Council and the Appellant that prior to his purchase of the site in July 2013 that there was a field shelter on the land. The Land Registry plan shows a rectangular outline of a building in about the mid-point of the southern boundary. The previous owner of the land, Mr Hockley, has stated that 'since I have moved into the area some 30 years ago there has always been a field shelter on the land which remains on the land to this day'[2]; 'there was a stable on the land which was in poor condition'[3]; and both of these points are repeated in a further statutory declaration[4].

6. The Appellant confirms that he undertook repairs to the field shelter which included replacing the featherboarding/weatherboarding and replacing the tin roof with a felt roof[5] and that he also extended the field shelter on the easterly/flank return[6].

7. The Appellant has made two applications for retrospective planning permission which included retention of the stables[7] both of which were refused. In support of the second application the Appellant's then planning consultant said 'this application seeks to remedy the breaches of planning control. It includes the

[2] Statutory declaration dated 12 July 2013
[3] Letter dated 6 December 2016
[4] Dated 25 April 2017
[5] Paragraph 15 of the Appellant's statutory declaration dated 25 April 2017
[6] Paragraph 17 of the Appellant's statutory declaration dated 25 April 2017
[7] Ref 14/00782/Full and 15/00287/Full

following development - retention of extensions to stables'[8] and she comments that the increase in footprint was approximately 100%.

8. The building that I saw on my visit was an elongated U shape; it was constructed with black weather boarding and had a felt mono-pitched roof. It comprised one large stable on the western length; a small stable, tack room, kitchen and feed store parallel with the boundary; and a hay store on the eastern flank. The existing building is considerably larger and a different shape from that shown on the Land Registry plan.

9. It is unfortunate that there is no proper description or photographs of the field shelter before it was repaired and extended and that there are no details of its size. However, from the appearance of the building that I saw on my visit it is apparent that a substantial amount of building work rather than repair has taken place and whilst elements of the original field shelter may remain and a part of the current building may be on the footprint of that shelter there is no question in my mind that the building currently on the site is a new building which has been constructed as alleged in the notice as a matter of fact.

10. In reaching this finding I have taken into account s.55 of the 1990 Act which, among other things provides that development means the carrying out of building operations which includes rebuilding and that maintenance or improvement or other alterations of a building do not involve development so long as the works do not materially affect the external appearance of the building.

11. It is the Appellant's case that the field shelter was in a poor state of repair and that he repaired and extended it; however, from what I saw and the relatively new weather boarding I find that the works undertaken on the building affected its external appearance and that those works therefore amount to development.

12. The appeal on ground (b) in respect of the wooden building fails.

Appeal A – the hardstanding

13. The previous owner has stated that there was a hardstanding immediately in front of the field shelter and a track entrance to the hardstanding/field shelter which existed during his period of ownership and when he sold the land to the Appellant the hardstanding was a little uncared for[9]. There is no mention of the hardstanding or track in Mr Hockley's statutory declaration dated 12 July 2013 but he does refer to them in his letter dated 6 December 2016.

14. The Appellant says that the original hardstanding and track are coloured pink on a plan exhibited to his statutory declaration[10] and that he also extended the hardstanding over the areas coloured blue[11]. In addition he extended the width of the track and improved its surface before reducing the width after correspondence with Council Officers[12].

15. The hardstanding also featured in the two retrospective applications referred to above. The Appellant's then planning consultant says that, after his purchase,

[8] Paragraph 3.06 of Planning Statement incorporating design and access statement
[9] Paragraphs 9 and 11 of Mr Hockley's statutory declaration dated 25 April 2017
[10] Page 11 of the exhibit
[11] Paragraphs 21, 22 and 23 of the Appellant's statutory declaration
[12] Paragraph 26 of the Appellant's statutory declaration

the Appellant 'proceeded to clear the land of scrub and dead vegetation, it having been unmaintained for a number of years'. Mr Hockley concurs in that he says that the property was 'very overgrown with brambles and a few dead trees'[13]. The Appellant 'also constructed an internal access road and hardstandings …'[14]. The planning consultant also noted that the access track was 2.6m wide and that previously it had been wider with a large turning/parking area[15]. In addition she says that the hardened area in front of the stables remained unchanged[16], but she does not say from what.

16. At the time of my visit the track through the site was wide with kerb stones on one side and, although it had a hard surface, it was very muddy. The hardsurfaced area in front of the stables was similarly very muddy save for a paved area about 1m wide immediately adjacent to the building.

17. It is again unfortunate that there are no plans or photographs of the extent of the hardstanding and access track when the land was owned by Mr Hockley or when it was purchased by the Appellant. The Council has supplied a number of historical photographs dated 1995, 1996, 2002 and 2003 which show the field shelter located within a heavily treed and overgrown site with no indication of any hardstanding[17]. Photographs taken in October 2016 show what appears to be a newly laid hardsurface in front of the stables and along the track together with the paving slabs immediately adjacent to the stables[18].

18. I accept that there may have been some hardstanding and a track at some time in the past but from their appearance in the 2016 photographs it appears that these areas had been newly established. It is for the Appellant to prove his case but taking all the evidence into account I find as a matter of fact that the hardstanding has been formed as alleged in the notice.

19. The appeal on ground (b) in respect of the hardstanding fails.

Appeal B – the material change of use

20. It appears from the documents that the lawful use of the site is agricultural and whilst the grazing of horse is an agricultural use the keeping of horses is not. In respect of the second application for planning permission in 2015 the Appellant's then planning consultant said that the land was insufficient to graze the Appellant's two horses but it was adequate to turn them out and for the Appellant's children to ride them[19].

21. At the time of my visit there was virtually no grass visible and the paddocks were seas of mud; there were two Shetland ponies, a pony and a horse on the site. It was apparent that they could not graze on the site, even if there had been sufficient land on which to do so, but were fed from food in the feed store and hay. The ponies/horses were being kept on the land as a matter of fact as alleged in the notice.

22. In its statement the Council refers to the presence of various items stored on the site including a forklift truck, barrels, garage doors and shelving and there

[13] Letter dated 6 December 2016 and paragraph 11 of the statutory declaration dated 25 April 2017
[14] Paragraph 1.02 of the Planning Statement incorporating design and access statement
[15] Paragraphs 5.16 and 5.17 of the Planning Statement incorporating design and access statement
[16] Paragraph 5.18 of the Planning Statement incorporating design and access statement
[17] Appended to the Council's statement
[18] Appended to the Council's statement
[19] Paragraph 5.08 of the Planning Statement incorporating design and access statement

is a photograph of a pile of paving slabs. The Appellant accepted that a forklift in need of repair was on the site but said that it would be removed when it had been repaired. He claimed that the storage of any other equipment was temporary and in connection with his horticultural/ landscaping business. From the document submitted with the 2015 planning application it is apparent that at some time the site was being used for the storage of various items not necessarily used in connection with the keeping of horses or an agricultural use.

23. At the time of my visit there were a few pieces of garden furniture and a pile of paving and kerb stones on the site together with some other miscellaneous bits and pieces but I have to take into account the use of the land at the time the notice was issued and it appears from the evidence that a significant amount of miscellaneous storage was taking place on the site as a matter of fact.

24. The appeal on ground (b) in respect of both the material change in the use of the land for the keeping of horses and the storage of plant, equipment and other materials fails.

Appeal B: The appeal on ground (c)

25. In an appeal on ground (c) the Appellant is saying that the matters alleged in the notice do not constitute a breach of planning control.

26. The lawful use of the land is agricultural and I have found as a matter of fact that there has been a material change of use as alleged in the notice. A material change of use is development for the purposes of s.55 of the 1990 Act for which planning permission is required and whilst retrospective planning permission was sought in 2015 for use as paddocks the application was refused and no appeal was made.

27. The land has the benefit of a grant of planning permission for the construction of a polytunnel and change of use to facilitate the supply of plants for an offsite horticultural and landscaping business[20]. At the time of my visit there was no polytunnel on the site and there was no evidence on the site, or any evidence presented, that this planning permission has been implemented. In any event, this grant of planning permission is not a grant of planning permission for the matters alleged in the notice, that is, the change of use for the keeping of horses and the storage of plant, equipment and other materials.

28. There has been a change of use of land and planning permission is required for the change of use which has not been applied for in the terms of the notice or granted. The appeal on ground (c) fails.

Appeal A: the appeal on ground (d)

29. In an appeal on ground (d) the Appellant has to prove on the balance of probability that the matters alleged in the notice are immune from enforcement action which in this appeal means that the wooden building and the hardstanding were constructed and formed more than four years before the notice was issued, that is, before 7 November 2012.

30. Given my finding above that both the wooden building and the hardstanding were constructed and laid as new operations by the Appellant subsequent to

[20] Ref 16/01013/FULL

his purchase of the land in July 2013 the required period cannot be established and the appeal on ground (d) must fail.

Appeals A and B: The appeals on ground (a) and the deemed planning application

31. In appeals on ground (a) and in the deemed planning applications the Appellant is, in effect, seeking planning permission for the matters stated in the notice. In Appeal A the matters for consideration are the construction of a wooden building and the formation of hardstanding and in Appeal B they are the material change in the use of the land for the keeping of horses and the storage of plant, equipment and other materials.

Main issues

32. I consider the main issues in these appeals are:

    1) whether the various developments represent inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework); and

    2) if the developments are inappropriate (a) their effect on the character and appearance of the area and (b) whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments.

Inappropriate development

33. The Framework advises that inappropriate development in the Green Belt is by definition harmful to the Green Belt and should not be approved except in very special circumstances[21]. The construction of new buildings is inappropriate except in a number of specified exceptions which include the provision of appropriate facilities for outdoor recreation with the proviso that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it and the replacement of a building providing the new building is in the same use and not materially larger than the one it replaces[22].

34. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These forms of development include engineering operations[23].

The wooden building

35. The wooden building is a new building and the only information I have concerning the previous smaller building is that it was a field shelter and therefore it does not appear to have been a stable and in any event the existing wooden building is considerably larger than the original field shelter. One of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment and whilst in general terms and in certain circumstances an equestrian use could be a countryside one and a stable could

[21] Paragraph 87 of the Framework
[22] Paragraph 89 of the Framework
[23] Paragraph 90 of the Framework

be a facility for outdoor recreation, the wooden building on the site is a large one which encroaches into the countryside.

36. In addition, although there is no definition of openness in the Framework, in the Green Belt context, openness is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belts are their openness and their permanence and given the mass and volume of the wooden building I consider that it does not preserve the openness of the Green Belt. For these reasons the wooden building is inappropriate development in the Green Belt and I give this substantial weight.

The hardstanding

37. The formation of the hardstanding is an engineering operation because it has changed the physical nature of the land. The introduction of such large expanses of hardsurfacing in front of the wooden building and the access track is encroachment into the countryside and taking into account the extent of the development it results in a loss of openness which conflicts with the essential characteristic of the Green Belt. The hardstanding is inappropriate development and I give this substantial weight.

The change of use

38. A change of use of land is not a specified exception as set out in paragraphs 89 and 90 of the Framework and therefore the material change of use that is the subject of the notice in Appeal B is inappropriate development in the Green Belt which is by definition harmful to the Green Belt. I give this substantial weight.

Character and appearance

39. The appeal site is located at the western end of North Road which is an unmade former plotland road situated on the west side of Gardiners Lane North. It is a rectangular site with an area of approximately 2.14 hectares. The surrounding area is semi-rural comprising sporadic isolated dwellings and vacant, overgrown or wooded parcels of land. The appeal site is within the Green Belt and within a designated Plotlands site

40. The surrounding semi-rural area has some dwellings along the unmade North Road to the south of the site all of which are set in large plots. The land is open to the north. The developments within the appeal site are not visible from North Road because of the high close boarded fence around the site. However, the fact that development cannot be seen is not a justification for a grant of planning permission.

41. The wooden building is a large 'U' shaped building adjacent to the southern boundary of the site. It is a considerable structure both in height and footprint. Although its dark colour and rural appearance are in keeping with its countryside location because of its mass and volume it dominates that part of the site and it has an adverse effect on the character and appearance of its rural setting.

42. The extent and appearance of the hardstanding in front of the building is at odds with the rural character of the area as is the extent and width of the access track. The kerb stones along the side of the track are particularly obtrusive and out of keeping with the rural location. The hardstanding and

track are more akin to that seen in a suburban locality than a countryside one and have a harmful effect on the character and appearance of the area.

43. I accept that the keeping of horses is a use that could, in certain circumstances, be acceptable in the Green Belt. However, such a use would need to be subject to strict restrictions relating to such things as any built or engineered development required to support the use and the storage of items related to the use. Although the Appellant has said that any harm arising from the change of use could be mitigated by the imposition of appropriate conditions none have been suggested either by him or the Council[24]. Even if such restricting conditions were imposed, for the reasons given above about the current use of the land, the change of use of the land for the keeping of horses would have a detrimental effect on the character and appearance of the land.

44. Whilst there was no apparent storage of plant, equipment and other materials unrelated to the keeping of horses on the site save for a pile of paving stones and some other miscellaneous bits and pieces the storage of such items, particularly an unrestricted storage use, would have a harmful effect on the character and appearance of the area.

Other considerations

45. The Appellant has the benefit of a grant of planning permission for an area of land on the western and northern part of the site for the construction of a poly-tunnel and change of use of land to facilitate the supply of plants for an offsite horticultural and landscaping business[25]. This grant of planning permission does not appear to have yet been implemented but it is outside the matters under consideration in these appeals and it is not affected by these appeals.

46. The wooden building, the hardstanding and the change of use are for the benefit of the Appellant and his family and therefore attract little weight. With regard to the presumption of sustainable development, there are little, if any, economic benefits resulting from the developments; whilst there may be a social benefit this is limited to the Appellant and his family; and any environmental benefit is also limited given the clearance of the land, the formation of hardstanding and the Appellant's travel to the site by motor vehicle. I therefore do not consider that the various developments amount to sustainable development.

Conclusions

47. I have found that the developments are inappropriate development in the Green Belt, that there is a loss of openness to the Green Belt and harm to the character and appearance of the area. The Framework advises that substantial weight has to be given to any harm (which includes harm by reason of inappropriateness) to the Green Belt[26]. Therefore, on balance, I conclude that the other considerations in this case do not clearly outweigh the harm I have identified and that the very special circumstances necessary to justify the construction of a wooden building and the formation of hardstanding in Appeal A and the material change in the use of the land for the keeping of horses and the storage of plant, equipment and other materials in Appeal B do not exist.

[24] Paragraph 4.5.9 of the Appellant's grounds of appeal
[25] Ref 16/0103/Full
[26] Paragraph 88 of the Framework

48. The appeals on ground (a) fail and the deemed planning applications are refused.

Appeals A and B: the appeals on ground (f)

49. An appeal on ground (f) is on the basis that the requirements of the notice exceed what is necessary to remedy the breach. The purposes of the requirements are to remedy the breach by discontinuing any use of land and by restoring the land to its condition before the breach took place and may require the removal of any building or works[27]. The need to consider the appeals on ground (f) means that the Appellant has failed in all the other grounds of appeal.

50. From the evidence in these appeals it is apparent that at some time there was considerably more development, hardstanding and storage on the site than is the subject of the notices in Appeals A and B. Much of this unlawful development was removed without the necessity of enforcement action and the current notices seek the removal of development and cessation of uses that were apparent on the date the notice was issued.

Appeal A

51. I note that at the time of my visit much of the land shown cross hatched on the plan was very muddy and it may well be that, save for the access track, the hardstanding had already been removed. However, the requirements at 1) and 2) to demolish the wooden building and break up and remove all the hardstanding fulfil the statutory purpose of the requirements and are not excessive.

52. The statutory purpose is to restore the land and the additional requirement in step 3) relates to levelling the land and planting a specific number and variety of trees. There is no power to require the Appellant to undertake work which would result in an improvement to the previous condition of the land and to require such planting could represent an improvement to the previous condition and would be unduly onerous. The requirement to level the land and plant trees is excessive and I will vary the notice accordingly.

53. I note that the Appellant maintains that the land that is not cross-hatched on the plan has not been touched and remains laid to grass. However, part of the requirement in step 4) to restore the land is not excessive given the statutory purpose but the requirements to level the land and reseed with grass seed will be varied for the same reasons as stated above with regard to improvement so that the requirement is limited to restoring the land not shown in cross-hatching on the plan.

Appeal B

54. The requirement in step (i) fulfils the statutory purpose by requiring the uses to cease and materials that facilitate the uses to be removed and it is not therefore excessive.

55. It has been established by the Court that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not

[27] S.173 (4)and (5) of the 1990 Act

constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place[28]. The hardstanding and the track, together with any remaining hardstanding on the not cross-hatched land, facilitate the use of the land for the unauthorised uses and, subject to the same variations as referred to above relating to the levelling of the land, the planting of trees and the reseeding with grass steps (ii) and (iii) are not excessive.

Conclusions

56. In reaching my determination on the ground (f) appeals I note that once the requirements have been complied with, subject to the continuing obligations imposed by s.181 of the 1990 Act, there is nothing to prevent the Appellant exercising any permitted development rights on his land which may be applicable, implementing any grant of planning permission or applying for planning permission.

57. The appeals on ground (f) succeed.

Appeal A: Conclusions

58. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Appeal B: Conclusions

59. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Decisions

Appeal A: APP/V1505/C/16/3164894

60. It is directed that the enforcement notice be varied by:

a) In step 3) the deletion of the words 'by levelling …. maintained thereafter'; and

b) In step 4) the deletion of the words 'by levelling and reseeding with grass seed'.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s.177(5) of the 1990 Act as amended.

Appeal B: APP/V1505/C/16/3164897

61. It is directed that the enforcement notice be varied by:

a) In step (ii) the deletion of the words 'by levelling … maintained thereafter'; and

b) In step (iii) the deletion of the words 'by levelling and reseeding with grass seed'.

[28] *Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630

Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s.177(5) of the 1990 Act as amended.

Gloria McFarlane

Inspector