
Appeal Decision

Site visit made on 30 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2020

Appeal Ref: APP/Z3825/C/19/3227981

The land at, Jack Dunckleys Birchfield Nursery, Kidders Lane, Henfield, West Sussex BN5 9AB

- 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 Robert Dunckley against an enforcement notice issued by Horsham District Council.
 - The enforcement notice, numbered EN/18/0135, was issued on 18 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission a material change of use of the Land and structures thereon from a plant nursery to include the storage of domestic and commercial vehicles and other items not functionally related to the lawful use of the Land and an extension to the existing hard surfacing across the land beyond that reasonably required for its use as a plant nursery.
 - The requirements of the notice are
 - Permanently cease the use of the land for the purposes of any storage not related to a plant nursery.
 - Permanently remove from the land any item being stored within it, whether under cover or otherwise and whether a vehicle or other item, not functionally related to a plant nursery. Storage shall include building materials, shipping containers and the stationing of vehicles, caravans, campervans or any domestic or commercial wheeled item.
 - Permanently cease the use of any part of the land and its structures and buildings for uses not ancillary to a plant nursery including as offices for the valeting and for the purposes of furniture restoration.
 - Remove all forms of hard standing from the land which are shaded green on the attached plan.
 - Where hard standing is removed pursuant to paragraph 5.1.4 of this notice the land shall be reinstated to topsoil or other such medium which is capable of sustaining the growth of plants or a purpose functionally ancillary to that purpose.
 - The period for compliance with the requirements is six (6) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a], [c], [d], [e], [f] and [g] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. The appeal is dismissed, and the enforcement notice is upheld with corrections as set out below in the Formal Decision.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by Mr Robert Dunckley against Horsham District Council. This application is the subject of a separate Decision.

Procedural Matters

4. The appellants surname is given as 'Dunckley' and 'Dunkley' in the appeal submissions. I have used the spelling 'Dunckley' in my decision as this was used in the Statutory Declaration provided by Mr Robert Dunckley.

The Notice

5. The appellant queries whether the reference to the hardstanding in the notice is on the basis that it has facilitated the unlawful use, or it is unlawful in its own right. The Council confirms in its statement that it has regarded the hardstanding as operational development integral to the breach of planning control. There is nothing wrong with this approach because the requirements of the notice which flow from it do not prevent the appellant from doing something which he is entitled to do without planning permission.
6. For example, the requirement to under sub-paragraph 5.1.1 to permanently cease the use of land for the purposes of any storage not related to a plant nursery does not prevent the use of outdoor space in accordance with its lawful use. Furthermore, it is not necessary for the notice to set out all of the uses to which the land could be put without the need for planning permission.
7. There is an inconsistency between part 3 of the Notice which sets out the breach of planning control and part 5 which relates to the steps required by the notice. At sub-paragraph 5.1.3 there is a requirement to cease the use of any part of the land and its structures and buildings for uses not ancillary to a plant nursery including offices, for the valeting and for the purposes of furniture restoration. However, these specific uses do not fall within the definition of 'storage of domestic and commercial vehicles and other items not functionally related to the lawful use of the Land' which has been identified by the Council as part of the breach of planning control in this instance.
8. I asked the Council to comment on this inconsistency and suggested to them that the notice could be withdrawn. In response they have invited me to delete sub-paragraph 5.1.3 on the basis that 'this would mean the requirements of the notice stem directly from the breach alleged which is a material change in the use of the land to storage'. I sought the views of the appellant on this point.
9. In his reply the appellant has sought to undermine the legitimacy of the notice. In his view the notice does not reflect the delegated decision of the Council and he questions whether the officer suggesting changes to the notice has the authority to do so. He refers to case law in support of his arguments. He also considers that it would be wholly inappropriate to implement the Council's suggested amendments to the notice at this stage in the appeal when primary cases have already been made.
10. Taking the appellant's points regarding the legitimacy of the notice first. Case law, in the form of Beg & others v Luton BC [2017] EWHC 3435 (Admin), which post-dates the references to case law provided by the appellant makes it clear that an allegation that the person who had issued a planning enforcement

notice had not had the authority to do so was not an allegation of an error on the face of the notice. Therefore, any such error would not result in the notice being a nullity in the terms of an appeal under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, which applies to the notice itself only. To seek judicial review would be the appropriate means by which to challenge the notice on the basis that there has been an error in the process carried out by the Council in this instance.

11. With regard to the issue of whether the correction of the notice to remove subparagraph 5.1.3 would cause injustice to the appellant. On the basis that this would reduce the scope of the requirements and the appellant would be in no worse position than if there had been no appeal, I do not find that injustice would arise in this case.
12. The reasons which are set out in the notice state that it appears to the Council that the breach of planning control occurred within the last 4 years. However, as the breach relates to a change of use and does not relate to a change to a single dwelling house, the relevant period is 10 years. The appellant has interpreted the Council's reference to 4 years as an intention to under-enforce in terms of the change of use occurring between 4 and 10 years of the notice being served. However, the Council have not confirmed that this was their intent and their statement refers, incorrectly, to the notice specifying that the use occurred in the last 10 years.
13. I regard the reference to 4 years in the notice as an error but one which I can correct without injustice to the appellant. This is because the evidence has been submitted on the basis that the use has commenced within 4 years and there is no dispute between the parties regarding this fact thus the change to 10 years does not prejudice the appellant.
14. The appellant argues that the notice should be regarded a nullity because of the 'LPA is so confused about on whom it considers it has been served'. However, as I have indicated above, a nullity occurs when a notice is missing some vital element and so is defective on its face. The appellant has exercised his right of appeal under ground (e) which is the route available to him to attack the notice on the basis of service. If successful, this would result in the notice being quashed but it does not make the notice a nullity.
15. The appellant also refers to the potential for the notice to be amended to relate to the sale or display of motor vehicles. However, this is not part of the alleged breach of planning control, consequently I do not need to consider whether the notice should be amended to include it and the potential for such an alteration to cause injustice does not arise. It is for the Council to decide whether any other breaches of planning control have occurred on the site and to take formal action as they see appropriate.
16. The appellant considers that the notice could be amended so that the allegation relates to a mixed use of the site for storage and nursery (agricultural) use. However, on the basis of the evidence I am not convinced that such an amendment would continue to reflect the Council's assessment of the way in which the site is used, and it would fundamentally alter the terms of the notice. It follows that I was to correct the notice in this way it would result in injustice given the arguments which have been made by the Council.

Ground (e)

17. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required. Section 172 (2)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) requires that a copy of an enforcement notice be served (a) on the owner or occupier of the land to which it relates and (b) on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
18. The appellant says that the notice should have been served on all of the occupiers of the site including the two businesses of Mr Jack Dunckley carried on at the site. He is also critical of the way in which the Council served a PCN after the notice and the means by which the notice was served.
19. The Council refers to the notice being served in person on Mr Robert Dunckley, by post to the occupier of the site and by post to National Westminster Bank. In its view this meets the requirements of service under section 172(2) of the Act and also section 329 which relates to the way in which the service is carried out.
20. A PCN or a Requisition for Information should normally be issued prior to the service of a notice to discover who the relevant occupiers and persons with interests are. However, there is no requirement to do so and it is for the Council to decide who is materially affected, albeit that they risk an appeal on ground (e) if they exercise that discretion wrongly.
21. There is no dispute between the parties that Mr Robert Dunckley was served with the notice by hand at the site. The appellant argues that although Mr Jack Dunckley was present at the time, the notice was not served on him. I agree with the appellant on this point and in any event service on Mr Jack Dunckley by hand is not recorded on the Council's Certificate of Service.
22. The Council confirms that the notice was also served on Jack Dunckleys Birchfield Nursery by post and has provided a Certificate of Service to support this.
23. The Official copy of register of title which shows entries on the register of title on 31 August 2018 and was issued on 13 August 2019 names the proprietor of the premises as 'Robert Henry Dunkley'. However, this document is shown as issued several months after the notice was served. Thus, it does not contribute towards the Council's assessment of those who would be materially affected by the notice.
24. Similarly, the PCN which is dated 11 July 2019 was served after the notice and the Council could not have considered the response from the appellant before the notice was issued. The Council explains that the PCN was served to find out if further action was needed following representations by the appellant's agent. Armed with the outcome of the PCN and the Title the Council has reached the view that service of the notice has been carried out in accordance with requirements and has not withdrawn it.
25. The appellant says that he is unable to be a Managing Director and that the premises is effectively under the control of two leases. He has provided copies of two agreements which are both signed by him and Jack Dunckley. One agreement relates to a minimum period of 12 months and the other 60

months. Notwithstanding whether or not these agreements establish an interest in the land which necessitates the service of the notice on Jack Dunckley, this has been achieved via the posting of the notice to 'Jack Dunckley's Birchfield Nursery'.

26. The appellant has provided an annotated plan which identifies the occupiers of the site. These fall into two categories, occupation by Jack D Ltd and occupation by London Road Storage Occupiers. These are the companies which are identified in the licences between Jack Dunckley and Robert Dunckley.
27. A document has also been provided which is titled 'Contacts 2'. This lists 25 individuals and businesses in addition to Jack Dunckley and London Road Storage. The Council requested further details of the 25 'licensees' including copies of the licences. No further information regarding the relationship between the companies indicated as occupying the site i.e. Jack D Ltd and London Road Storage Occupiers and those otherwise listed on 'Contacts 2', was provided to the Council. On that basis the Council took the view that there were no other significant material interests which should have been served with the notice.
28. Notwithstanding the views of the appellant, I do not have any further evidence before me regarding the interests of those parties listed on Contacts 2 to contradict the conclusion reached by the Council. Thus, it has not been demonstrated that those listed would have been materially affected by the notice.
29. The Council was unable to exercise its discretion with regard to the interests of other parties who have become known through the PCN process because it had already served the notice by that time. However, it has transpired that there are no other parties beyond the bank, Mr Robert Dunckley who was served by hand and the occupier of Jack Dunckley's Birchfield Nursery who was served by post, who should have been served with the notice. Whilst the appellant argues that the notice was not received by post, the Certificate of Service is a legal document and can be relied upon to demonstrate it was sent. It follows that the notice was served correctly on the parties materially affected by it.
30. For the reasons set out above, the appeal on ground (e) fails.

Ground (c)

31. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
32. The appellant's case under ground (c) relates only to the hardstanding and does not address any change of use of the land. Initially the case included the hardstanding areas within polytunnels which the appellant says have been removed. However, he has clarified that the green shaded area shown on the plan which accompanies the enforcement notice (the green shaded area) relates to hardstanding which has always been in the open. The appellant argues that this hardstanding was carried out prior to the change of use and was permitted development and that the only works to it have been limited to low key filling of potholes.

33. The Council maintains that the pre-existing condition of the land was primarily growing areas comprising soil or other growing medium and that if operational development integral to the breach of planning control has taken place within the 10-year period prior to issue of the notice then it is not immune from enforcement action.
34. The appellant argues that under Part 6 of the Town and Country Planning (General Permitted Development) Orders 1995 and 2015 a hard surface provided as part of an agricultural use and works to a private way amount to 'permitted development'. He has also provided a Statutory Declaration which he has signed to the effect that the hardstanding areas which fall within the green shaded area had some form of hardstanding in February 2010 when he purchased the site and that the majority of plants were in containers and not planted into the ground.
35. Photographs of the site have been submitted by the appellant which show containers on a variety of surfaces. However, some are within buildings and there is no clarity about which parts of the shaded area are shown on the photographs. Photographs have also been provided by the Council which are dated 2010. These photographs also show that at least a proportion of the plants were containerised within the shaded area as described by the appellant. An aerial photograph submitted by the Council shows the site in 2012. However, none of the photographs provide definitive evidence of the presence or absence of hardstanding in the shaded area.
36. The Council has provided an aerial photograph of the site in 2018 and ground level shots taken in the same year. The aerial photo shows that the appearance of the site has changed significantly since 2012 but given the lack of clarity regarding the extent of hard surfacing at that time it is not possible to assess the degree of change to hardstanding from these photographs. It is clear from one of the ground level photographs that works are being undertaken but it shows a digger adjacent to the road which passes the site, therefore these works are not in the shaded area. The second ground level photo only relates to part of the shaded area and it is not clear what works are taking place.
37. The photographs showing the site in 2019 clearly show extensive areas where vehicles are stored in the open air. These relate to parts of the shaded area and were evident at the time of my site visit.
38. Where a notice is served alleging a material change of use and requiring that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
39. There is no evidence before me to contradict the appellant's case that the hard standings which have been installed amount to permitted development. The Council's case rides on the point within the history of the site when these works were completed and whether or not this predated the change of use. The Council say that the use of the site as a nursery ceased in early 2018. Therefore, any hard surfacing carried out before that date could have been legitimately carried out as part of the lawful use provided it accorded with the regulations relating to permitted development which is not disputed.

40. The Council argue that even if some of the shaded area was completed over 4 years ago it cannot be considered as maintenance of an existing hardstanding because the breach of planning control has commenced within the 10-year period prior to the issue of the notice. However, whilst the Council have correctly identified the 10-year period as relevant, it does not follow that any works in that 10-year period are unlawful. If they were carried out as permitted development in association with a lawful use during that time, they do not amount to works which are integral to and solely for the purposes of facilitating the unauthorised use.
41. I find that the photographs do not provide unambiguous proof that the hardstanding was provided after the use as a nursery ceased. Neither party can demonstrate clearly which parts of the shaded area were covered with a hardstanding and at what time. Nevertheless, the Statutory Declaration sets out that most of the shaded area has a hard-core base and that the way in which the nursery operated required such a facility for storage of heavy plants in containers. There is nothing in the Council's evidence to dispute this and on this basis the balance of probabilities lies in favour of the appellant with regard to the hardstanding.
42. From the evidence before me, I conclude that the extension to the existing hard surfacing does not constitute a breach of planning control. Therefore, I will use my powers to correct the notice to remove the reference to the hardstanding from the allegation. However, as there is no evidence before me to demonstrate that the change of use does not constitute a breach of planning control this part of the notice is unchanged.
43. On this basis and on the balance of probabilities the appeal on ground (c) fails in respect of those matters which, following the correction of the notice are stated as constituting the breach of planning control.
44. As a consequence of my correction of the notice to alter the allegation, it is necessary to amend the steps which are required in order to remove the steps set out in sub-paragraphs 5.1.4 and 5.1.5 as these relate to the hardstanding which I have determined is not a breach of planning control.

Ground (d)

45. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
46. In common with his arguments in relation to ground (c), the appellant refers only to the hardstanding in relation to his appeal under ground (d). As I have corrected the notice by removing reference to the hardstanding from it as a consequence of my reasoning under ground (c) it no longer forms part of the notice and it is not necessary for me to consider the arguments submitted in relation to the hardstanding under ground (d) from either party.
47. However, there is no evidence that the change of use is immune from enforcement action. Consequently, there is no basis to conclude otherwise than that the appeal on ground (d) fails in respect of those matters which, following

the correction of the notice, are matters against which enforcement action could be taken.

Ground (a) and the Deemed Planning Application (DPA)

48. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

49. On the basis that I have corrected the notice, as a result of my reasoning on ground (c), the hard standing no longer forms part of the allegation of a breach of planning control. Therefore, ground (a) and the DPA fall to be considered on the basis of the change of use of the land only. Consequently, the main issues are:
- Whether the site is an appropriate location for use of land and structures for the storage of domestic and commercial vehicles and other items
 - The effect of the change of use of land to include the storage of domestic and commercial vehicles and other items on the character and appearance of the surrounding area.

Location

50. Policy 2 of the Horsham District Planning Framework (excluding South Downs National Park) (2015) (the HDPF) seeks to maintain the District's unique rural character whilst ensuring that the needs of the community are met through, amongst other things focusing development in and around Horsham and bringing forward strategic development areas and supporting the local economy. Policy 10 of the HDPF deals specifically with rural economic development and establishes a range of criteria against which development in the countryside will be considered, including the proviso that any development must contribute to the wider rural economy. These policies are in accordance with the National Planning Policy Framework which protects the countryside and supports a prosperous rural economy and diversification of agricultural and other land-based rural businesses.
51. There is no dispute between the parties that the site is not within an area designated for development in the HDPF and that it is located in the countryside. Development in such areas is supported where it contributes to the wider rural economy.
52. The appellant argues that the change of use to storage is a diversification scheme by the nursery business. However, there is very limited evidence to demonstrate the contribution which the new use makes to the local economy in terms of employment or support for local services or to show that the use meets a specific, local need for storage space for vehicles and other items. The appellant says that several local businesses would be affected if the use of the site ceased but it is unclear to what extent these businesses are involved in the storage use. There is also no comparison between the employment levels associated with the storage use and the nursery use. However, given the low-key nature of a storage use in comparison with the more labour-intensive work arising from plant care, it is probable that the storage use would generate a lower staff requirement.

53. Notwithstanding the lack of evidence to suggest that the storage uses have a positive impact on the local economy, the Council also considers that the polytunnels are not appropriate for conversion to storage uses as a consequence of their design and the potential to provide a temperature-controlled environment. The appellant disagrees with this view. However, notwithstanding the suitability of the structures for the use, the failure to provide substantive evidence to demonstrate a positive contribution to the local economy outweighs any policy support arising from the re-use of the polytunnels.
54. I conclude that the site is not an appropriate location for use of land and structures for the storage of domestic and commercial vehicles and other items. The development is therefore contrary to Policies 2 and 10 of the HDPF.

Character and appearance

55. The site occupies a prominent position on the side of the A281 a busy local distributor road running through the district. The wider area is characterised by an open landscape of fields delineated by inconspicuous fences and mature trees. Where development has taken place, it is generally close to the road, sporadic in nature and of an appearance which is clearly associated with the prevailing agricultural use of the area.
56. Adjacent to the A281 the site boundary shown on the plan which accompanies the notice is set behind a grass verge which defines the road edge. The boundary itself is marked by mature trees and hedging some of which includes an embankment. The relative heights are such that the site sits significantly above the level of the road.
57. In order to facilitate a new access off the A281, there is currently a gap in the boundary planting on this side of the site. The appellant refers to an appeal decision in relation to two planning conditions which were attached to the consent for these works (Appeal Reference: APP/Z3825/W/19/3226051). The facts of that case are only relevant to the current appeal in terms of the effect that changes to that boundary would have on the visibility of the site.
58. As it stands the gap in the frontage which facilitates the access is of sufficient width to allow views into the site. It follows that any vehicle parked in the open including on the green shaded area would be visible from beyond the site boundaries. Whilst the parking of some vehicles would have been part and parcel of the nursery use, the accommodation of large numbers of vehicles including caravans and camper vans, as shown on the photographs provided by the Council, result in the site appearing as an alien feature in the wider rural landscape.
59. Some stored items are within the polytunnels which are an original feature of the site and one which is compatible with the agricultural buildings which characterise the area. Thus, they do not alter the impact on the character and appearance of the site and its surroundings. However, this does not outweigh the harm which I have found in respect of the vehicles stored in the open.
60. There is a lack of clarity regarding the final appearance of the remaining part of the boundary to the A281. However, even if this were to be completely enclosed, given the change in site levels I am not convinced that taller

vehicles, caravans and camper vans would not be fully screened. Furthermore, the outside storage area would continue to be visible when the access is in use.

61. The appellant draws a comparison between ancillary horticultural storage and other storage and suggests that horticultural storage may be more visually intrusive than other storage, especially if that storage were limited in height by planning condition. However ancillary horticultural storage would be a typical feature of a nursery and consistent with a rural landscape to a significantly greater extent than storage of vehicles and other items. In this context I do not consider that a condition to control the height of the storage would overcome the harmful impact it would have on the surrounding area.
62. The appellant also suggests that landscaping of the site would reduce any visual impact. But he has not submitted any proposals for landscaping, thus there is no evidence before me to demonstrate that this proposal would overcome the harmful visual impact associated with the use.
63. The appellant notes that planning permission was granted for what he describes as a substantial new building in 2012 (Council Reference: DC/11/1250). There is no evidence before me to suggest it was implemented or that it is extant. He also advises that a smaller development has since been resisted by the Council (Council Reference: DC/14/2007). Thus, neither of these developments represent a viable fall-back position against which the current appearance of the site and its contribution to the wider rural landscape could be judged.
64. I conclude that the change of use of land to include the storage of domestic and commercial vehicles and other items has a harmful effect on the character and appearance of the surrounding area. The development is therefore contrary to Policies 25, 26 and 33 of the HDPF. These policies jointly seek to ensure that development proposals protect, conserve and enhance the landscape character of the district, are of a scale appropriate to their countryside character and location and of an appearance which relates sympathetically with the landscape.

Other matters

65. The appellant also refers to the probability of the storage uses relocating to some other less appropriate site. However, there is no further information regarding this likelihood. Consequently, it attracts very limited weight in favour of the appellant's arguments and does not outweigh the harm that I have found with respect to the main issues.

Conclusion in respect of ground (a) and the DPA

66. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

67. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

68. I have corrected the notice to remove the steps set out in sub-paragraph 5.1.3. in response to the suggestion by the Council and sub-paragraphs 5.1.4. and 5.1.5 as a consequence of my correction to the notice to remove reference to the hardstanding to reflect my reasoning under ground (c). As it stands the notice retains two steps which relate to the cessation of use of the land for storage and removal of stored vehicles and other items.
69. In relation to the remaining steps the appellant considers that the notice could be amended to refine the extent of external storage to be removed. However, he has not provided any evidence to show that a lesser area of outside storage would overcome the harm which I have identified in respect of the impact on the character and appearance of the area. On this basis, it has not been demonstrated that there is a viable alternative to full compliance with the remaining requirements of the notice or that these requirements exceed what is necessary.
70. For the reasons set out, above the appeal under ground (f) fails.

Ground (g)

71. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of six calendar months is too short because it does not allow sufficient time for site users to make other arrangements to relocate vehicles and other items stored on the site.
72. Whilst the appellant refers to difficulties experienced by site users in finding storage space before their use of the site, there is no evidence to substantiate this. Furthermore, there is no information before me to demonstrate that storage space is in short supply in the area or that it would take an extended time to remove vehicles or other items from the site.
73. Taking all of these matters into consideration I find that the 6-month period afforded by the notice does not fall short of what is reasonable. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

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

Sarah Dyer

Inspector

FORMAL DECISION

75. It is directed that the enforcement notice is corrected by:

Deletion of the words:

"and an extension to the existing hard surfacing across the land beyond that reasonably required for its use as a plant nursery" in Section 3 of the notice;

and deletion of the following sub-paragraphs:

"5.1.3 Permanently cease the use of any part of the land and its structures and buildings for uses not ancillary to a plant nursery including as offices for the valeting and for the purposes of furniture restoration"; and

"5.1.4 Remove all forms of hard standing from the land which are shaded green on the attached plan"; and

"5.1.5 Where hard standing is removed pursuant to paragraph 5.1.4 of this notice the land shall be reinstated to topsoil or other such medium which is capable of sustaining the growth of plants or a purpose functionally ancillary to that purpose" from Section 5 of the notice

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