

APPENDIX 1



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Gentlemen

13 JAN 89

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND 36 AND SCHEDULE 9  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
HOUSING AND PLANNING ACT 1972 SECTION 250(5)  
APPEALS BY MR R BROPHY (TRADING AS BROPHY PLANT) AND MR S COX (TRADING AS COX SKIPS).  
LAND AT OAKS FARM, EAST STREET, TURNERS HILL, WORTH.

1. I have been appointed, as you know, by the Secretary of State for the Environment to determine the above mentioned appeals. These are against an enforcement notice issued by the Mid-Sussex District Council and against a refusal of planning permission by that Council. I held an inquiry into the appeals on Tuesday 27, Wednesday 28 September and Tuesday 14 October, 1988. I inspected the site on Monday 13 October.

2. a. the date of the notice is 17 November 1987.

b. The breach of planning control alleged in the notice is a material change of use of land from agriculture to a mixed use for the purposes of agriculture, storage of vehicles plant and equipment and the carrying of repairs and maintenance thereto.

c. The requirements of the notice are to discontinue the use.

d. The period for compliance with the notice is 6 months.

e. The appeal was made on grounds 88(2) (a), (e) and (h) of the 1971 Act as amended.

3. The development for which permission was refused is the continuation of the use of the site for the storage, maintenance and repair of 3 skip lorries together with storage of occasional empty skips (Messrs Cox Skips) and the storage, maintenance and repair of plant owned and leased by Messrs Brophy Plant. The reasons for refusal are:

i. Access to the land is unsatisfactory by reason of inadequate visibility.

ii. The uses being carried on on the land are detrimental to the amenities of neighbouring residential properties by reason of noise, disturbance and vehicular activity.

iii. The uses being carried on on the land are contrary to the countryside employment and mobility policies of the council in that such uses have a detrimental impact on the residential amenities and access to the land is unsatisfactory.

## THE APPEAL SITES AND THEIR SURROUNDINGS

4. The appeal site, Burleigh Oaks Farm, lies in rolling countryside about 900 m to the north-east of the centre of the village of Turners Hill. Vehicular access is from a point on the north side of East Street, the B2110 East Grinsted/Handcross road. This access is about 600 m east of the village centre, which is formed by a cross roads with the B2028 Lingfield/Haywards Heath Road. About 0.75 km to the east of the access is the depot of a large waste disposal operator, Drinkwater Sabey.

5. The access is a metalled lane or track in your clients' ownership, some 600 m in length up to their yard. It is wide enough for one vehicle but a number of passing places have been constructed. The lane also affords access to 2 dwellings, which were formerly attached to the farm. The nearest to the site, about 130 m south of the yard entrance on the east side, is Burleigh Oaks Farm occupied by Mr R B Mayne, who supports your clients. On the west side, about 100 m further south, is Burleigh Oaks Farmhouse. This is occupied by Mr R B Mills who is an objector. Mr Mills also owns a private paddock and stables on the opposite side of the lane.

6. The total area of the farm, including the access is some 9.7 ha. This is the area covered by the enforcement notice. It consist of an area of rough pasture and filled land to the north (the site of former slurry lagoons) up to the River Medway, and woodland to the east. At the centre of the site are derelict piggery buildings, alongside which is mobile home type structure used by Mr Brophy as an office. At the southern end of the site are the former farmyard and buildings where your clients carry out their activities. The buildings have a total area of about 1000 m<sup>2</sup> and the concreted open storage area some 1800 m<sup>2</sup>. On the storage area, which extends up to the woodlands to the east, are stationed vehicles and various items of plant and equipment. At the time of my inspection there was an unusually large number of skips stored as the result of the recent closure of local tipping facilities.

7. The yard area, together with the access road, is the subject of the section 36 appeal. It was agreed that if the deemed planning application of the section 88 appeal was granted it should be restricted to the area of the section 36 appeal. The enforcement notice plan includes in error a small part of the curtilage of Mr Mayne's dwelling, Burleigh Oaks Farm, which it was agreed should be deleted.

8. That part of the lane which runs from Burleigh Oaks Farmhouse and up to the yard is part of public footpath 62, which leads westwards to emerge in the village at North Street. Footpaths 60 and 61 running eastwards from the village also cross the lane.

## THE PLANNING HISTORY AND BACKGROUND

9. Burleigh Oaks Farm was purchased by Mr C C Harbidge in 1952 and he established a piggery. He obtained planning permission for a farmhouse, which he occupied (Burleigh Oaks Farm). In 1961 he moved into a second dwelling for which he had received permission (Burleigh Oaks Farmhouse). The previous house was taken over by his farm manager.

10. In 1965 Mr Harbidge appealed against the refusal of a third farm dwelling. Following a public inquiry the Inspector reported that the farm was about 21 acres overall, of which some 13 acres was woodland and the remainder rough pasture, with intensive livestock rearing in buildings to the east of the pasture. The stock consisted of some 800 pigs and 45 head

of cattle. Mr Harbidge was reported as saying that the food for the pigs was waste from food processing factories which he mixed himself. The appeal was dismissed.

11. In March 1978 Mr Harbidge sold up the farm equipment and livestock. The sale included some 450 pigs. Lagoons had been constructed to take the large amount of slurry created by the piggery and in October 1978 planning permission was granted for these to be filled with inert materials. At the end of 1979 Mr Harbidge sold the farm to your client, Mr Cox, who moved into the farm manager's house. In 1980 Mr Harbidge left the area and Burleigh Oaks Farmhouse was sold to Mr Mills, the present occupier. Your clients, who now own the site jointly, commenced operating their skip and plant hire businesses about this time.

12. The filling operation was continued by Mr Cox, who received further permissions in 1982 and 1984. The latter permission required the filling to cease by May 1987. It also included restrictions on operating hours and limited the storage of skips and other containers to approved areas. In 1983 Mr Cox obtained a licence to operate 3 vehicles from the site. In 1986 he sold the house Burleigh Oaks Farm to Mr Mayne.

13. In July 1987 your clients applied for permission to continue their businesses. In a covering letter their agent referred to a recent dispute with Mr Mills which had received some publicity in the local press, saying that Mr Cox and Mr Brophy wished to regularise the uses which had existed on the site for some years. The letter included an offer to remove the existing derelict piggeries from the site.

14. The County Surveyor, consulted on the application, stated that in view of the length of time the site had been operating with no problems he had no objections provided that there was no future expansion. The council's Environmental Health Officer stated that he had no record of complaints but considered that limitation to normal business hours would be appropriate. Worth Parish Council objected on policy and amenity grounds and there were 11 letters of objection from local residents. There were also 29 letters of support from local companies and individuals.

15. The application was recommended for conditional permission by the District Planning Officer. The conditions related to the limitation of the scale and area of the activities, the times of operation and the demolition of the derelict piggeries. The planning committee however decided to refuse it for the reasons set out in paragraph 3 above. This was followed by the enforcement notice.

16. In April 1988 Mr Cox applied to the South East Traffic Area to renew his operator's licence. Both Mr Mills and the council objected to the application and as a result a public inquiry was held under section 64 of the Highways Act. In an interim decision letter, dated 19 July 1988, the Inspector indicated however that he would grant a licence for the 3 existing skip vehicles, 2 of 16 tonnes and 1 of 7.5 tonnes subject to conditions on operating hours. Before doing so he sought a statement of intent from Mr Cox that each vehicle would not make more than one movement in and out per day, a total of 6 vehicles.

17. Evidence was given for your clients, and confirmed by the council, that the hedge on either side of the access had recently been trimmed and that the highway authority had confirmed that they had no objection to the development. It was also stated that works for the widening of the B2110 would commence in the summer of 1989. In connection with this a new access with a bell-mouth and improved visibility splays would be constructed. Your

clients will dedicate land for this purpose. The council stated that in the circumstances they would not be pursuing the access reasons for refusing the application and issuing the enforcement notice.

#### THE APPEAL ON GROUND (E)

18. The sole evidence called in support of ground (e) was that of Mr Harbidge. He stated on oath that, in addition to intensive livestock rearing, he had operated a waste food business and a haulage undertaking from the site. He had extensive contracts with major food manufacturers who delivered condemned food for processing. Only about a third was used for his own pigs. The remainder was sold on, some of it being exported. This activity generated a large amount of lorry traffic, including his own 16 ton lorries. This was apart from the frequent movement of cattle lorries. There was also tipping to bank up the river to prevent pollution from the slurry lagoons. He operated as C C Harbidge Limited, with his 2 sons and 3 employees. Copies of his operator's licences, covering the period from June 1971 to May 1981 were produced. These were for 5 or 6 vehicles up to 16 tons gross weight.

19. It was submitted that Mr Harbidge had operated a haulage business, carrying waste food around the country and to the docks for export. There was no difference between a lorry carrying food and a skip lorry. The intensity of use had in fact been higher in the past than at present.

20. For the council it was argued that the current uses were entirely different from those of Mr Harbidge. No evidence had been produced of any independent haulage use.

#### INSPECTOR'S CONCLUSIONS ON GROUND (E)

21. It is apparent that from at least 1971, and probably before, Mr Harbidge's business was generating significant heavy traffic from goods vehicles based at Burleigh Oaks Farm. This may well have been of such a scale and nature as to amount to a separate transport undertaking. I am not however satisfied from the evidence presented to me that it had reached that scale and nature before the beginning of 1964.

22. I place considerable weight on the report of the 1965 planning inquiry (produced by the council and referred to in paragraph 10 above) which was very close to the material date. At that inquiry the activities of the farm were examined in detail in relation to the need for an additional dwelling. Although there was reference to the livestock and the mixing of waste food from factories there was no mention of any transport vehicles being operated from the site by Mr Harbidge.

23. Mr Harbidge did not in fact say specifically in his evidence that his transport activities had commenced before the end of 1963, and after a period of some 25 years recollections unsupported by documentation may not be precise. At my request Mr Harbidge produced documents relating to commercial vehicles he had operated but none of these were dated earlier than 1964.

24. I consider that, even if the present uses were to be regarded as not materially different from the transport activities of Mr Harbidge, those activities have not been shown, on the balance of probability, to have commenced before the relevant date. In all the circumstance the appeal on

ground (e) must fail. I therefore have to consider ground (a) and the merits of the deemed planning application, along with the section 36 appeal.

#### THE PLANNING ISSUES

25. The section 36 appeal application is more specific in its wording than the deemed application which is in more general terms. I consider however that the central issues are the same in each case. These are first whether the continued use of the site would be materially damaging to (1) the objectives of development plan policies for the protection of the countryside and (2) to the residential amenities reasonably to be expected by the occupiers of nearby dwellings.

#### YOUR CLIENTS' CASE ON THE PLANNING MERITS

26. It was submitted that the site had been used since 1980 with no previous history of complaint. This was during a period when the permitted landfill operation was generating up to 60 lorry movements a day. The principal objector, Mr Mills had lived there throughout that time. Mr Harbidge had held an operator's licence for 5 heavy goods vehicles up to 16 tons in weight valid until the end of May 1981.

27. The District Planning Officer had presented a balanced report on the planning application. This took into account central and local government policy, the history of the site, traffic generation, amenity and the need for sites for such activities which were not catered for elsewhere, leading to a recommendation of conditional permission.

28. The flow of traffic generated by the appeal site is low. A count taken between 08.00 and 18.00 hours on Friday 16 September 1988 showed a total 2-way flow of 8 heavy goods vehicles and 46 cars and vans. Six of the HGVs came from or went in the Turners Hill direction.

29. An annual traffic survey taken by the children of Turners Hill CE School from 08.00 - 18.00 hours on Thursday 24 September 1987 showed that nearly 12,000 vehicles used the village cross roads. Of these 509 were heavy vehicles. In relation to this the traffic from the appeal site is negligible.

30. Expert evidence was given on noise generated by heavy vehicles using the access lane. The witness had used the  $L_{10}$  (18 hour) scale of Circular 10/73 "Planning and Noise" to assess the traffic noise situation. Measurements had been taken at Mr Mayne's dwelling, Burleigh Oaks Farm, both alongside the lane and in the house. These showed that both internal noise (33 dB(A)) and external noise (53 dB(A)) were well within the criteria of acceptability (40 dB(A) and 70 dB(A) respectively) set out in the circular. He concluded that the activity was not "detrimental to the amenities of neighbouring residential properties by reason of noise ..." as alleged in the reasons for refusal. He also expressed the opinion that noise from the yard activity would not be of a level to affect the dwellings.

31. Mr Mayne stated that neither he nor his family had suffered excessive noise from either the yard or the movement of lorries up and down the lane.

32. It was claimed that both businesses gave an important local service but they needed large yard areas and were not suitable for location on expensive

industrial sites. The council had suggested no suitable alternatives. The types of use were not covered by any development plan policy.

33. The companies have not concealed their activities and have advertised in the Yellow Pages and on the side of their vehicles. Mr Cox's skips have been used in Turners Hill by the school, public house and shops as well as by private residents. Mr Mills himself made use of the skip service when he built his stables. Mr Cox had co-operated with Mr Mills in support of the village fete. In respect of this Mr Mills had offered him advertising space in the fete programme.

34. As a result of the uncertainties caused by the enforcement action Mr Brophy's 2 full time employees of 5 years standing have recently found other employment. He has 2 JCBs, 4 dumpers, 10 compressors, 8 mixers and 8 pumps, a 3 ton lorry, 2 vans and a Landrover and services contractors within a 20 mile radius. Mr Cox is seeking to retain the use of the site for 3 skip lorries. The skips are normally moved between one customer and another. At the end of June, however, the local tip was closed to private operators at short notice, with a drastic reduction in business. As a result many skips are now stored on the site.

35. It was submitted that the impact of the use was not sufficient to justify refusal. The appeals should be allowed and conditional permission granted. The conditions proposed by the council, in the event of their being allowed, are acceptable. These include restriction to 3 skip lorries only; confinement of the use to the present yard and buildings, restrictions on operating hours, the fitting of sound reducing cuffs to the chains of the skip lorries and the maintenance of the existing sight lines at the access to the B2110. A further condition against the burning of rubbish on the site would also be acceptable.

#### THE COUNCIL'S CASE ON THE PLANNING MERITS

36. The council's planning witness stated that the planning committee did not accept the District Planning Officer's recommendation of approval for the planning application. The reasons for refusal were subsequently determined by the planning officer in consultation with the chairman and vice-chairman of the committee, having regard to the views of the committee members. The witness stated that he understood and sympathised with the committee decision.

37. The site is in an attractive location where it is important to have regard to the environmental and rural policies of the structure and local plans. The appearance of the site is visually damaging, particularly when viewed from public footpath 62. In the local plan the site is within an area of general restraint, where there is a general presumption against development which would extend the built-up areas of settlements. The local plan does allow for redundant rural buildings of merit to be used for storage or industry, with an upward limit of 150 m<sup>2</sup>. This does not cover the buildings on the appeal site.

38. The commercial traffic causes unacceptable noise nuisance and disturbance to the 2 dwellings alongside the access drive, which is on a gradient where it passes.

39. Cross-examined by counsel for your clients the witness stated that the matter first came to the council's attention in March 1987, following a letter from Mr Mills. He stated that the Environmental Health Officer had not been called since he had not objected at the application stage and had

not changed his views. Noise had been only part of one of the reasons for refusal. He conceded that the site was reasonably screened, but not completely hidden. The uses had tended to expand but visual intrusion was not in itself a reason for refusal. Conditions could be imposed and if complied with could contain the use and achieve the objective of protecting the amenities of the area. The council were not however satisfied that such conditions would be effective.

40. The witness accepted that he had not mentioned Circular 16/84 with its reference to the industrial use of disused farm buildings, although it had been referred to in the original report on the application. He agreed that employment was an important consideration.

41. The question of alternative sites had been discussed with your clients but nothing suitable had been proposed. In the circumstances a period of 12 months to comply with the enforcement notice, under ground (h) would be more reasonable.

42. Re-examined the witness said that he did not know if the Environmental Health Officer had visited the site, but he would have seen the application. He also stated that his evidence differed from a committee report in that its purpose was to support the council's decision.

43. It was submitted that the uses were not of the type expected in an area of attractive countryside. They were not more acceptable because they were hidden away. The operations were previously during the period when permitted landfill was taking place. Local residents were prepared to put up with it on these terms. The extra detriment would then have been marginal.

44. The site is in a sensitive location in relation to the village, both from the point of view of public footpaths and noise. Mr Mills was not the only objector and he is entitled to a reasonable degree of amenity. A number of the letters of objection had referred to noise from the site. The  $L_{10}$  (18 hour) noise criterion used for highway noise is not appropriate in this situation. It is the peaks of noise that are significant as the heavy vehicles pass down the lane.

45. Uses of this type are very difficult to control. Turner's Hill has its share of this sort of site. There are substantial reasons for dismissing both appeals. If however they are allowed appropriate conditions, as agreed with the appellants, should be imposed.

#### THE CASE FOR INTERESTED PERSONS

46. Mr R B Mills, in support of the council, stated that when he bought Burleigh Oaks Farmhouse in 1980 the access track, over which he had absolute right of way, was in good condition and adequate to serve the 2 dwellings and the farmyard. There was no evidence of any business or industrial activity. Mr Cox was running a small piggery. The skip lorry activity commenced in 1981, but this was in connection with the permitted filling operation. He assumed that it would cease and the land revert to agriculture in accordance with the planning permission. He did not object for that reason when the permission was renewed in 1982. R J Brophy Plant Hire appeared on the scene soon after the skips.

47. Early in 1987 he raised the question of the future of the site with Mr Cox, bearing in mind that the tipping permission was soon to expire. He told Mr Cox that the 2 businesses had caused him considerable nuisance over



the years and would consider objecting if there were any proposals to continue them. Following this relations with Mr Cox deteriorated. Access to his paddock opposite was obstructed for a time but this was cleared following a High Court Order.

48. The noise, vibration and fumes caused by the skip lorries and plant hire vehicles had lowered the residential quality of his home. The track is only about 9 feet wide where it passes the house, where it is on a gradient and a bend. The chains on the skip lorries are particularly noisy. The lack of maintenance of the track also results in clouds of dust in dry weather. Privacy is also affected since the road surface is above the level of the ground floor of the house. Two bedrooms and the kitchen/breakfast room are overlooked by people in the lorries, as are the gardens. In addition there is noise and nuisance from the site itself, including machinery noise and rubbish burning.

49. He had kept detailed records of the movements of vehicles to and from the site. These showed in the order of 12-16 skip lorry movements a day and up to 6 heavy vehicles generated by the plant hire business. Including vans and cars a total of up to about 60 movements could be generated.

50. He would not wish to see the resumption of intensive rearing. Use as pasture land would be appropriate. He considered that his past acquiescence had been to his disadvantage. Any permission would be the thin end of the wedge.

51. Mrs J Mackelden, a parish and district counsellor speaking on behalf of local residents, recognised the importance of waste disposal activity. She was concerned however at having 2 such firms, Drinkwater Sabey and Cox Skips, in proximity to the village. This resulted in unnecessary nuisance and noise from early morning and often late into the night, 7 days a week. The clanging chains of the skip lorries as they passed down the streets were particularly disturbing. She was concerned that if conditions were imposed they would not be observed.

52. A number of local residents in written submissions also referred to nuisance caused by traffic from the site passing through the village. There were also several references to noise from activities on the site being heard in the village.

#### **INSPECTOR'S CONCLUSIONS ON THE PLANNING MERITS**

53. I find the site to have little visual impact. The yard and former agricultural buildings are well screened, both by the lay of the land and adjoining woods and trees. The site is constrained by no special landscape policies and is generally well suited to the type of activity at present being carried out. I have considered the various policies of restraint on rural development, unconnected with agriculture, contained in the 1988 West Sussex Structure Plan and the 1985 East Grinstead and Worth Local Plan. I note that structure plan policy ENV 22 allows for the change of use of redundant buildings outside built up areas if there are no significant harmful environmental effects. There is no restriction on size, as contained in policy EG4/11 of the earlier local plan, which pre-dates the current climate of rural diversification.

54. In my opinion the uses accord in principle with government policy for the use of redundant agricultural buildings. This was recognised by the District Planning Officer in his report on the planning application.

55. I take particular account of Circular 16/84 which advises that disused agricultural buildings are often suitable for small scale industrial uses, which may give rise to no more traffic disturbance than their former use. I consider this to be particularly relevant, bearing in mind the traffic generated by the previous intensive rearing use. I also bear in mind the heavy traffic which used the access during the landfill operation. This was a temporary activity, but permission was renewed on 2 occasions, in 1982 and 1984, without objection from the highway authority or any other recorded objection.

56. I have considered the question of traffic from the site passing through Turners Hill. East Street and North Street are however both classified public highways and I do not regard the vehicles from the appeal site as a material addition to the present flow of heavy goods vehicles. Furthermore I do not find this to be a site specific objection, since, even if the businesses were sited significantly further away, a proportion their vehicles would probably still pass through the village en route to their destinations.

57. I have also noted the references to noise from the site being heard in the village. I accept that such noise may on occasion be audible but I have no evidence that it is of a level or frequency to be damaging to amenity. Restriction of operating hours would limit the times when this might occur.

58. The main problem, in land use terms, is clearly the proximity of the 2 dwellings formerly associated with the site. The occupier of the one having no objection and the owner of the other objecting strongly.

59. On the basis of the  $L_{10}$  (18 hour) standard for traffic noise in relation to dwellings the disturbance falls well within the recommended levels. Although these criteria are primarily designed for application in relation to public highways I find them a useful guide, in the absence of any contrary measured evidence.

60. I appreciate Mr Mill's position. It is understandable that he would prefer not to have heavy vehicles passing his house and I accept that there is a measure of disturbance. A house originally built in connection with a farm may, however, well have locational and environmental disadvantages if it is subsequently sold off and farm activities or superseding activities continue. Farm vehicles could affect privacy or raise dust no less than heavy commercial vehicles. I do not consider that amenity standards as high as might reasonably be anticipated in a purely residential location can necessarily be expected. In my opinion any loss of amenity is not so great as to call for refusal rather than containment of the activity by suitable conditions. I bear in mind also the restriction on skip movements to be imposed by the traffic licensing authority.

61. I take into account that Mr Mills accepted the situation for a number of years, during which time the traffic was heavier, including the tipping as well as the skip and plant hire businesses. It is apparent from his approach to Mr Cox that he was aware that these were separate activities, not covered by the landfill permission.

62. I have taken account of all the other matters raised, including the council's decisions on other sites in the area, but do not find that they outweigh the factors which lead me to the conclusion that having regard to all the material considerations there are no sound and clear-cut planning objections to the development.

63. I shall therefore allow your clients' appeals and grant planning permission, subject to conditions relating to the area and scale of the uses, the days and times of operation, the use of sound reducing cuffs on the skip lorry chains, the burning of materials on the site and the maintenance of the sight lines to the B2110.

64. Your clients made an offer to clear the derelict piggeries to the north of the yard. The council suggested that a condition to this end should also be imposed, as was included by the District Planning Officer in his original recommendation. I have considered this but it appears to me to be a matter not directly relating to the development before me. I shall not therefore impose such a condition.

65. Finally, since I intend to quash the notice the appeal on ground (h) does not fall to be considered.

#### FORMAL DECISIONS

66. For the above reasons and in exercise of the powers transferred to me I hereby:

A. Direct that the plan appended to the enforcement notice the subject of the section 88 appeals be corrected by the deletion of the area cross hatched black. Subject to this correction I allow the appeals, quash the enforcement notice and grant planning permission for the applications, deemed to have been made under Section 88 (B), to continue the use of land at Burleigh Oaks Farm, Turners Hill, West Sussex for the storage of vehicles plant and equipment and the carrying out of repairs and maintenance thereto, subject to the following conditions

1. The uses hereby permitted shall be confined to the area hatched black on the plan attached to this letter and shall not be carried out on any other part of the site without the prior permission of the local planning authority.

2. The site shall be used only for the storage, maintenance and repair of a maximum of 3 skip lorries and the storage of empty skips associated therewith, and the storage, maintenance and repair of plant and equipment unless otherwise agree by the local planning authority.

3. The uses hereby permitted shall not be carried out on Sundays or Bank Holidays or at any other time otherwise than between the hours of 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours on Saturdays, other than in an emergency.

4. The skips carried by the lorries based at the site shall not be used unless the chains associated with them are fitted with sound reducing cuffs.

5. No rubbish or waste materials shall be burned on the site.

6. The existing sight lines at the access to the B2110 shall be maintained.

B. Allow the section 36 appeal and grant planning permission for the continuation of the use of land at Burleigh Oaks Farm, Turners Hill, West Sussex for the storage, maintenance and repair of 3 skip lorries together with storage of occasional empty skips (Messrs Cox Skips) and the storage, maintenance and repair of plant owned and leased by Messrs Brophy Plant, in

accordance with the application (No TH/020/87) dated 12 July 1987 and the plans submitted therewith, subject to the following conditions:

1. The uses hereby permitted shall be confined to the area outlined in red on the application plan and shall not be carried out on any other part of the site without the prior permission of the local planning authority.

and conditions 2 - 6 as in A. above.

#### **RIGHTS OF APPEAL RELATING TO THE DECISION**

67. This letter is issued as the determination of the appeals before me. It does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation, other than section 23 of the Town and Country Planning Act 1971 and your attention is particularly drawn to the enclosed note concerning the requirements of the Chronically Sick and Disabled Persons Act 1970. Particulars of the rights of appeal to the High Court against the decision are enclosed for the benefit of those concerned.

68. Your attention is also drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission, has a statutory right of appeal to the Secretary of State if such consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

#### **THE APPLICATION FOR COSTS ON BEHALF OF YOUR CLIENTS**

69. It was submitted that both the issue of the enforcement notice and the conduct of the inquiry was unreasonable. The notice followed the refusal of an application for the continuation of uses that had been going on for 8 years, which had been recommended for permission. These circumstances did not call for immediate enforcement action without further investigation. Annex B of Circular 22/80 advises that the first step in considering enforcement action in respect of a small business is to discuss with the operator the possibility of a compromise. The council made no such approach.

70. No substantial evidence had been produced to justify either the original refusal or the issue of the notice. Circular 2/87 makes it plain that local opposition on its own is not a reasonable ground for refusal. There had been no evidence at all on noise. The council had acted as the result of the opposition of one local resident, Mr Mills. If there had been a general problem of noise many others would have complained. The council's planning witness had conceded that the development could be controlled by conditions, if complied with.

#### **THE COUNCIL' RESPONSE ON COSTS**

71. For the council it was submitted that the issue of the notice following the refusal was reasonable. The planning application had already been considered in the light of the agent's covering letter, the report of the planning officer, letters of objection and the knowledge of local members. The planning officer had recognised the issues were complex and had recommended permission on balance.

72. Following that consideration and refusal the council had all the information they required to justify the issue of an enforcement notice. They could, perhaps, have gone back to the appellants but it was not necessary. The advice of Annex B of Circular 22/80 would have been taken into account. This was not the case of a notice being issued out of the blue. It would have been odd if enforcement action had not been taken.

73. Evidence had been produced at the inquiry to substantiate the refusal, even if inroads had been made into it. There was also the evidence of Mr Mills and the letters of objection.

#### INSPECTOR'S CONCLUSIONS ON THE AWARD OF COSTS

74. In determining the application for your clients' costs I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on grounds of unreasonable behaviour. I have therefore considered the application in the light of Circular 2/87, the appeal papers, the evidence presented by the parties and all the other circumstances relevant to the appeal.

75. I consider that the costs claim must be examined first of all in relation to the reasonableness of the decision on the application which became the subject of the section 36 appeal. Whether or not it was reasonable to proceed to enforcement action must largely be dependent upon the merits of that prior decision.

76. As the council pointed out such uses as those of your clients can be difficult to control. This does not however provide grounds for refusal but rather suggests the need for appropriate conditions. The District Planning Officer presented what I consider to be a balanced report on the application, recommending conditional permission. The committee were clearly entitled not to accept his recommendation but their decision had to be based on sound planning reasons.

77. The first reason for refusal related to inadequate visibility at the access. This was not supported by the highway authority at the time and was not pursued at the inquiry.

78. The second reason referred to detriment to the amenities of neighbouring residential properties by reason of noise, disturbance and vehicular activity. The council produced no technical evidence on noise and the planning officer's evidence did not amplify this aspect, saying only that "unacceptable nuisance by way of traffic and noise" was caused to the 2 adjoining dwellings. There was no quantification in terms of noise or frequency.

79. The council mentioned no other form of disturbance although Mr Mills referred to dust and loss of privacy.

80. The third reason for refusal does no more than put the first two into a policy context, referring once again to the impact on residential amenity a unsatisfactory access.

81. In my opinion the council's reasons for refusal were not supported by substantial evidence. They had a recommendation of conditional permission before them, setting out the facts of the case in the context of both national and local policy considerations. They could have added to those conditions if they saw fit. It is important that such conditions should be

reasonable and relevant but concern that they might not be observed does not justify refusal instead. Enforcement action is available if there is any material breach.

82. Turning to the present enforcement notice it follows, from my observations on the council's decision on the planning application, that I do not consider that the issue of the enforcement notice was founded on reasonable planning grounds. Even if the notice had been well founded I consider, there having been no prior warning of enforcement action, that it was unreasonable of the council not to discuss the matter with your clients first, as recommended in Annex B of Circular 22/80. This is especially so bearing in mind the length of time they had been on the site without apparent problems.

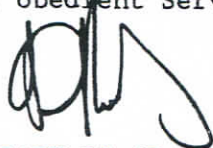
83. I appreciate the council's concern to take account of the objections of local residents but Circular 2/87 makes it clear that local opposition is not a reasonable ground for refusal unless based upon valid planning reasons supported by substantial evidence.

84. In all the circumstances I consider that the council acted unreasonably in refusing to grant planning permission and issuing an enforcement notice and that as a result your clients incurred the unnecessary expense of an inquiry.

#### FORMAL DECISION ON THE APPLICATION FOR COSTS

85. I enclose with this letter formal orders, which I have made in exercise of my powers under section 250(5) of the Local Government Act 1972 and sections 36 and 88 of and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971, as amended by the Local Government and Planning (Amendment) Act 1981 and the Housing and Planning Act 1986. You are now invited to submit to the Chief Executive of the Council, to whom copies of this letter and orders have been sent, details of the costs referred to with a view to reaching agreement on the amount. A copy of the guidance note on taxation procedure referred to in Circular 2/87 (paragraph 28) is also enclosed.

I am Gentlemen  
Your obedient Servant



A D RABY BSc(Econ) ARICS MRTPI  
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr Clive Newberry - of Counsel, instructed by Hextall Erskine & Co, Solicitors.

He called:

Mr C C Harbidge - Field House, Greenwood Farm, Mickfield, Suffolk - former owner of Burleigh Oak Farm

Mr R B Mayne - Burleigh Oaks Farm, Turners Hill.

Mr D N Oliphant BSc CEng FICE FIHT - Consulting Engineer.

Mr D F Sharps CENG MIMechE MBIM MIA - Managing Director, Sound Research Laboratories Ltd.

Mr T North BSc DipTP MRTPI - Director, Tim North Associates

FOR THE COUNCIL

Mr A Trevelyan Thomas - Of Counsel, instructed by the Solicitor to Mid-Sussex District Council.

He called:

Mr T J Barkley BA MRTPI - Principal Planning Officer, Mid-Sussex District Council.

INTERESTED PERSONS

Mr R B Mills - Burleigh Oaks Farmhouse, Turners Hill.

Mrs J Mackelden - District and Parish Councillor, The Old Manse, North Street, Turners Hill, West Sussex RH10 4NS

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Notice of the inquiry.
- Document 3 - Bundle of 19 letters from local residents supporting the council.
- Document 4 - Bundle of 58 letters from users of the appellants' services supporting the appellants.
- Document 5 - Letter from the occupier of Burleigh Oaks Farm supporting the appellants.
- Document 6 - Bundle of correspondence and documents from Mr R B Mills supporting the council.
- Document 7 - Circular letter from Mr R B Mills canvassing support for opposition to the development.
- Document 8 - Appendices to the proof of evidence of Mr Tim North.
- Document 9 - Schedule of vehicles owned by Mr C C Harbidge.
- Document 10 - Burleigh Oaks Farm sale catalogue, 23 March 1978.
- Document 11 - Letter from Tim North Associates, dated 14 July 1987, concerning development at Millwood Yard, Turners Hill.
- Document 12 - Committee Report on residential development at Millwood Yard.
- Document 13 - Extract from Surrey Structure Plan, proposed first alteration.
- Document 14 - Schedule of vehicle movements to and from the appeal site.
- Document 15 - Turners Hill CE School, annual traffic survey, September 1987.
- Document 16 - Bundle of Planning permissions relating to the infill of slurry lagoons at Burleigh Oaks Farm.
- Document 17 - Appeal decision relating to agricultural dwelling at Burleigh Oaks Farm, dated 11 January 1966.
- Document 18 - Report of SE Traffic Area Licensing Authority, dated 19 July 1988.
- Document 19 - Department of Transport Advice Note TA 20/84.
- Document 20 - Traffic Count at site access, 16 September 1988.
- Document 21 - Common sounds on the dB(A) scale.
- Document 22 - Letter from Drinkwater Sabey Limited, supporting the appellants.
- Document 23 - Letter from G W E Reed and Sons supporting the appellants.

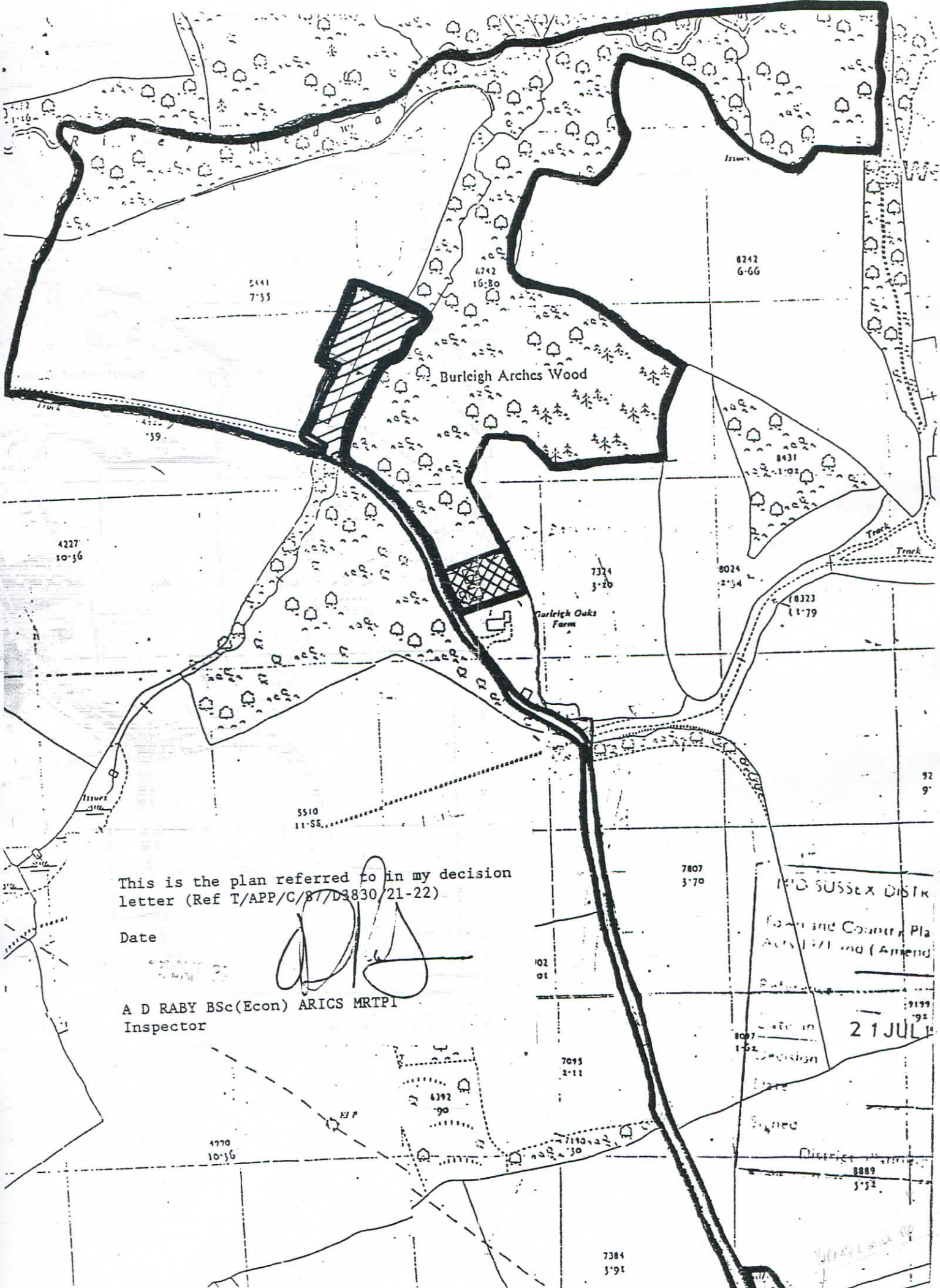


## PLANS

- Plan A - The enforcement notice plan (on file).
- Plan B - The application plan, section 36 appeal.
- Plan C - The site in relation to Turners Hill and local footpaths.
- Plan D - Proposed improvement to B2110.
- Plan E - Land in the ownership of Mr R B Mills.
- Plan F - The site in relation to the local highway network.e f

## PHOTOGRAPHS

- Photos 1-9 - The driveway leading to the appeal site.
- Photos 10-11 - Skip lorries on the driveway.
- Photos 12-16 - The open yard and main building on the appeal site.
- Photos 17-20 - Drinkwater Sabey's site, East Street, Turners Hill.
- Photos 21-29 - The access and the adjoining highway.
- Photo 30-4 - Vehicles and equipment in the driveway alongside Burleigh Oaks Farmhouse.



This is the plan referred to in my decision letter (Ref T/APP/C/87/D3830/21-22)

Date

A D RABY BSc(Econ) ARICS MRTPI  
Inspector

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Town and Country Planning  
Act 1971 and (Amend)

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