

HERTFORDSHIRE COUNTY COUNCIL

D.O.E. Refs. A/80/01164

BROXBOURNE BOROUGH COUNCIL

APP/5251/C/80/469

APP/5059/C/80/441

Appeal by C.G. Edward (Goff's Oak) Ltd. in respect of the following:-

- (1) The Enforcement Notice served by Hertfordshire County Council on 4th January 1980 relating to non-compliance with conditions of planning permissions granted on 30th June 1949 and 2nd January 1968.
- (2) The Enforcement Notice served by Broxbourne Borough Council on 21st January 1980 relating to an alleged breach of planning control, namely the making of a material change in use for the purpose of storing/keeping building materials, skips and scrap iron including motor vehicle bodies.
- (3) The decision of the Broxbourne Borough Council to refuse planning permission on 27th November 1979 for the continuation of use for the purpose of the preparation of soil for horticulture together with the landscaping of the site, Local Authority Reference 7/584-79.

The afore-mentioned relate to land at Church Lane, Wormley, hereinafter referred to as "the appeal site".

1st July 1980

Statement of County Planning Authority

Peter John Rodham Unthank will say:-

I joined the Planning Department of Hertfordshire County Council in 1974, and have worked in the Minerals Section of that Department for the past 2½ years. Much of the information I shall give in respect of the appeal site will therefore be that recorded by my predecessors and longer-serving members of the Minerals Section. As a Planning Assistant my responsibilities include the processing and implementation of minerals applications, the monitoring of production and subsequent restoration of mineral workings.

My Proof of Evidence will include a general introduction to the appeal site, its surroundings and planning history. I shall concentrate primarily on the mineral aspects of the County Council's Enforcement Notice, whilst later witnesses will deal with Broxbourne Borough Council's Enforcement Notice, the decision to refuse planning permission for the continued use of the appeal site for soil screening, and highway considerations.

1.0 The Site and its Surroundings

- 1.1 Set within the Metropolitan Green Belt, an area designated of Great Landscape Value and an Agricultural Priority Area, the appeal site occupies some 4.45 Ha (11 acres) of land adjoining the eastern boundary of Church Lane, and lies approximately ¾ mile from the junction with the A 1170 High Road, Wormley.

With reference to Plan Church Lane 1, it can be seen that the north west corner of the site is bounded by a minor road, Spring Walk, and running along the northern boundary is designated Footpath 49, beyond which and to the east of the site there is a stretch of open countryside. To the south of the site a small field separates the property known as Falcon Hall from the appeal site and on the far side of Church Lane there are a number of detached residential properties. Part of the small field adjacent to Falcon Hall was the subject of an application in 1954 for the refilling of a large depression of .28 Ha (.7 acres). This was probably an old, shallow gravel working which is now restored as pasture.

- 1.2 Except at the only entrance to the appeal site at its southern-most point, the site is generally well screened from Church Lane by the combination of inter-woven fencing, hedgerow and trees. The tree belts beyond the eastern and southern boundaries of the appeal site are protected by the Broxbourne Woods Tree Preservation Order No. 2 dated 1955.

Running diagonally across the appeal site from the mid position along the Church Lane boundary is the designated Footpath No. 44, which at present is impassable to the public. Church Lane itself is used as the main access to the appeal site.

- 1.3 The appeal site lies within a predominantly rural location and comprises an old sand and gravel pit of which the northern half has been filled in places to original levels with non-putrescible materials, but this has not been topsoiled. The area instead is now used for the storage of untreated and treated topsoil, manure and hardcore. Other parts of the pit have been tipped upon in rather a haphazard fashion and require the addition of further material before topsoiling takes place. No tipping has taken place in the base of the central area of the pit where the remains of the sand and gravel processing plant are located. This equipment consists of a covered screen which is used by the appellant in his capacity as landscape gardener, to process imported material prior to delivery to customers. At various points over the site there are in addition to the stock-piles of granular material, items of partly dismantled plant and vehicles and a number of skips. There are also three corrugated iron sheds on the site, which vary in size.

- 1.4 In recent years, as the mineral deposit has neared exhaustion in respect of sand and gravel, only hoggin has been found by the appellant and extracted from the periphery of the site, indicated as Areas 1 and 2 on the Plan Church Lane 1. Reference will later be made to the damage this activity is causing. It would appear that the paramount use of the appeal site is not that of a mineral working, but that the processing plant and storage

facilities are the ingredients of the appellant's landscape and gardening business.

1.5 Within the vicinity of the appeal site, certain areas of land have been the subject of planning applications to work sand and gravel. These sites are shown on Plan Church Lane 1 as Areas A, B and C. The history of each site is documented in Appendix 1. Site A was granted planning permission. Sites B and C were refused. For Site B following an appeal the Inspector appointed by the Ministry of Housing and Local Government considered that "the area was shown in the County Development Plan as of high landscape value, and residents rely on this to protect their properties from industrial incursion. Working would prolong the interference with amenities for a further period of years." For Site C an application for the winning and working of sand and gravel submitted by the former Hoddesdon Urban District Council was refused on 29th December 1970 on the following grounds:-

- 1 The area is of High Landscape Value and further working would seriously injure the amenities of the locality by their effect on the landscape.
- 2 The use of the local highway system would be excessive creating disturbance to the environment and affect road safety.
- 3 Insufficient evidence to show demand, and circumstances were not sufficient to overcome amenity objections to the proposal.

## 2.0 The Planning History of the Appeal Site

- 2.1 In September 1948, when application Reference E/280-48 was made to the former Hoddesdon Urban District Council for planning permission to extract sand and gravel from the appeal site, it was stated by the applicants, Broxbourne Sand & Ballast Pits Ltd. that the pit had already been working for 15 years, and that the intention was to return the land to agriculture on completion. A planning permission granted on 30th June 1949 imposed 12 conditions (the decision notice is attached in Appendix 2) which were not contested by the applicants. Conditions 5, 6, 8 and 10 formed the basis of the Enforcement Notice served by the Hertfordshire County Council.
- 2.2 It is understood that during 1964 the appeal site was acquired by the appellant, and since then the mineral excavated from the site has been sold as raised.
- 2.3 The use of the processing plant and site for the preparation of soil for horticulture was introduced after 1964. In 1967 the former Hoddesdon Urban

District Council took enforcement action to discontinue this use, but following an appeal the Minister of Housing & Local Government quashed the Enforcement Notice and gave planning permission for a limited period for the activity, subject to the condition that it cease by 30th June 1979. The Minister's letter is attached as Appendix 3.

- 2.4 In 1971 the appellant submitted an application for a Garden Centre and caretaker's bungalow Reference E/509-71 at the appeal site, which was refused by the former Hoddesdon Urban District Council. Another application for a Garden Centre and car park was later submitted in 1975, Reference 7/193-75, which was again refused by Broxbourne Borough Council on Green Belt amenity and highway grounds.
- 2.5 On 10th January 1977 the County Planning Officer wrote to the appellant reminding him of the requirements to restore the appeal site by 30th June 1979. In their letter of 5th April, the appellant's agents, John Kay & Co., indicated that the minerals contained within the appeal site would not be extracted by 1979. A subsequent letter dated 6th July 1977 from the agents stated that it might be necessary to seek an extension of time to complete extraction of minerals from the pit, but this letter emphasised that their client's wish was eventually to develop the site as a Garden Centre. The County Planning Officer sent a further letter to the appellant on 5th March 1979 reminding him once more of the obligation to complete restoration by the specified date. These letters are attached as Appendix 4.
- 2.6 Planning Application Reference 7/520-79 dated 24th May 1979 was finally submitted by the appellant for the continued use of the appeal site for the extraction of sand and gravel. A copy of the Committee Report concerning the determination of this application by the County Council is attached in Appendix 5. Over 19 representations were received from members of the public, many of whom had assumed that the pit would be closed permanently by the end of June 1979. After consideration of the proposal the Hertfordshire County Council's Planning Development Control & Urgency Sub-Committee at its meeting on 27th September 1979 resolved that the application be refused for the reasons stated on the decision notice dated 11th October 1979. This is attached in Appendix 6.
- 2.7 During June 1979 the Broxbourne Borough Council received an application from the appellant for the continuation of use of the appeal site for the preparation of soil for horticulture, Reference 7/584-79. This proposal was refused because it was contrary to Green Belt policies, because the proposed use would prolong the restoration of the working and because there would

be conflict with amenity and highway safety considerations.

3.0 Hertfordshire County Council's Enforcement Notice - Grounds of Appeal

3.1 The appellant has appealed against the Enforcement Notice served by the County Council on the following grounds:

1. That planning permission ought to have been granted for the continued excavation of sand and gravel and the preparation of soil at the site for the following reasons:

a) The works of excavation, which were the subject of a specific permission, have not been completed and should be allowed to do so and

b) Without prejudice to this, the preparation of soil for horticulture is a natural and reasonable use of the area, and should be permitted.

2. In view of the fact that the restoration required by the Enforcement Notice would involve the importation of material, earthworks and engineering operations, it could not reasonably be accomplished within the time specified.

3.2 The arguments against Ground 1 b) will be dealt with by a witness from the Borough Council.

3.3 In respect of Ground 1 a), it is the County Council's contention that the appeal site does not contain any workable material, and it therefore considers that the works of excavation have been concluded, and that restoration should be completed in accordance with the conditions attached to planning permission Reference E/280-48. The County Council's view was substantiated by the fact that the applicant did not produce evidence to confirm that the site contained a workable deposit, Reference 7/520-79. Whilst this application was being processed a site meeting was held on 18th August 1979 between the appellant's agent Mr. J.K. Frapwell of John Kay & Co., the County Minerals Officer and myself, with the purpose of establishing exactly where any mineral was contained within the appeal site.

3.4 The agent was, however, only able to identify one area in the south east corner of the site shown as Area 2 on Plan Church Lane 1, which he believed contained some 7,500 tonnes of material. This figure was to be confirmed in writing, but a letter to this effect was never received by the County Council. The County Minerals Officer pointed out to the agent that the deposit identified in fact provided the lateral support to the adjoining field, which was not under the appellant's control. The agent

was also reminded of a previous incident when the appellant had excavated material alongside Church Lane, thereby reducing the lateral support, and if it had not been for the prompt action by the County and Borough Councils, the road might have subsided. Also at the meeting the soil screening activity was discussed. The agent suggested that in fact a mobile screen could easily replace the fixed plant. He also indicated that another application for a Garden Centre would be forthcoming.

- 3.5 Ground 1 a) also suggests that sand and gravel extraction at the appeal site should be allowed to continue. The County Council has already demonstrated<sup>its view</sup> by refusing planning permission for 7/520-79 that such a proposal is unacceptable both in terms of satisfying Structure Plan policies and protecting the environment of those persons residing in the vicinity of the appeal site. It is of course an established principle that planning permissions will not automatically be renewed unless the proposal conforms with the aims and objectives of the Local Planning Authority.
- 3.6 Policies 24-27 inclusive of the approved County Structure Plan (extracts in Appendix 8) set down certain safeguards that have to be satisfied before planning permission is granted. It was on the basis of these policies not being satisfied that the County Planning Officer recommended to members that planning permission should be refused.
- 3.7 Policy 24 (i) requires that the need for material and the mineral content of the site be proven. Even if the appeal site were to contain the alleged 7,500 tonnes of material, this would not make any appreciable contribution to the supply of sand and gravel in Hertfordshire. The application however was not accompanied by borehole information. (Neither was a written statement giving details of proposed methods of working, restoration and lorry movements).
- 3.8 Policy 24 (ii) states that the proposal should otherwise be acceptable to the County Planning Authority after consultation with the District Planning Authority in terms of its effect on the character and appearance of the area and the amenities of residents in the area. The views expressed by Broxbourne Borough Council were reported orally to the September 1979 meeting of the County Development Control & Urgency Sub Committee which determined the application 7/520-79. These comments are summarised as follows:-

The excavation and restoration of the Church Lane gravel pit has not been achieved within the period of 30 years, and it would appear that no effort has been made to restore any part of the site which has become an eyesore totally out of character with the surrounding

area. It is considered that there has been adequate time to extract the small amount of gravel remaining and to proceed with the complete restoration of the pit to the level of the surrounding land.

The Borough Council considered that "the proposed continued extraction of sand and gravel from the Church Lane gravel pit is unacceptable because of the detrimental effect on the environment of the area, and the degree of nuisance and general disturbance which would result to the local residents. Furthermore, it is considered that there is no need to prolong the life of the pit, as it would appear that there is insufficient quantity of suitable materials remaining to be worked."

The Borough Council also requested that the County Council serve the necessary Enforcement Notices as soon as practicable, to ensure that the pit is restored, levelled and landscaped.

3.9 Following the statutory consultations carried out by the County Council for 7/520-79, the County Surveyor raised objection to the proposal because of the adverse effect heavy lorries would have on the structure of the local roads. With regard to the amenities of local residents, the 19 letters received from members of the public contained outright objection to the proposal. The issues raised are discussed in 2.2 of the Committee Report in Appendix 5.

3.10 Generally, the views expressed were that any extension to the life of the pit was unacceptable.

3.11 Policy 24 (iii) emphasises acceptable proposals for the rapid and effective restoration and after-use of mineral workings to be implemented with absolute priority. In the case of the appeal site, the approach by the appellant so far towards restoration does not suggest that even if sufficient sand and gravel existed, any further planning permission would precipitate a change in attitude towards the restoration of the site.

3.12 With regard to Policy 24 (iv), which requires a phased rate of working to be dependent upon restoration, it is accepted that the Church Lane site is a relatively small gravel pit and that in its initial stages of working, phased restoration may have presented difficulties. However, by 1964 when the appellant acquired the site, the land search no doubt revealed the requirements of the planning permission to restore the site, which was already substantially worked. It would therefore have been in the appellant's interest to programme the refilling of the site to ensure

complete restoration by June 1979 rather than defer this obligation, and then argue that there is insufficient time to restore.

3.13 Policy 24 (v) refers to the protection of the amenities of the area by minimising disturbance from noise, limiting traffic levels, avoiding health hazards and ensuring the site is reasonably screened and landscaped.

It is normal practice now to impose a noise condition and limit the hours of working on any mineral working where there are nearby residential properties. Where a Control of Pollution Act licence is in operation in respect of tipping, the hours of working can also be limited. Vehicular traffic generated from a site is kept to acceptable limits by ensuring that planning permission is only given where there is an adequate highway network or some other internal haul road arrangement is possible. Health hazards are minimised by the Control of Pollution Act 1974 in the stringent control of tipping operations. It has already been stated that the site is well screened for the summer months along Church Lane, but this is not the case on the other boundaries. The screening along the eastern boundary alongside Area 2 on Plan Church Lane 1, is deteriorating due to loss of trees.

3.14 Policy No. 27 refers to the appropriate after-use of mineral workings, and this suggests that in exceptional circumstances, a dry pit could accommodate uses which would otherwise be objectionable visually at normal ground level, and which in the Local Planning Authorities' view have to be located in the vicinity and yet cannot be located in a built up area. In response to this policy I would point out that the exceptional circumstances are very rare, and that normally the winning and working of minerals is regarded as purely a temporary use, after which land is restored to its original use.

3.15 Policy No. 18 which relates to agricultural priority areas, states in Sub-Section (iii) that mineral workings will in principle be accepted in an agricultural priority area provided that the Minerals Policies 24-27 have been satisfied, and subject to certain landscape and ecological constraints and to satisfactory reinstatement, normally to an agricultural use as near to the original quality as possible.

3.16 With regard to Ground 2 of appeal, although refilling has taken place at the appeal site, restoration is far from complete, but the County Council considers that the two year period for compliance is perfectly adequate for the works required of the appellant. At the outset it should be stressed that when purchasing the appeal site in 1964, the appellant would most

certainly be aware of what was required of him by 30th June 1979.

The appellant was nevertheless reminded in 1967 at the Public Inquiry held following his appeal against the former Hoddesdon Urban District Council's enforcement action to discontinue the use of the appeal site for the preparation of soil for horticulture, and he has subsequently been reminded by the County Planning Officer in 1977 and 1979.

- 3.17 Since 1964 tipping operations at the appeal site have not been continuous, and although parts of the site are refilled and levelled to original contours, they have not been topsoiled, but used instead to store stockpiles of topsoil and other landscape gardening supplies. Material has not been tipped within the main void of the site around the screen, presumably so as not to interfere with the soil screening process.
- 3.18 Ground 2 of appeal claims that difficulties would be encountered in importing material and carrying out earthworks and necessary engineering operations within the specified time.  
County Council fully
- 3.19 Whilst the / appreciates that there are fluctuations in the supply of suitable non-putrescible materials, and that there are gravel pits requiring the same sort of material as infill in the County, the appeal site is in the fortunate position of being closer to London than most pits, and thus more attractive to contractors with loads to dispose of.
- 3.20 In order to refill an old working quickly, a pit owner has the choice of either buying in the necessary material or advertising free tipping facilities. I have noticed that skip drivers have an uncanny ability to find the free or the cheaper pits available.
- 3.21 From time to time the Minerals Section of the County Council receives enquiries from contractors seeking tipping space with easy access from radial routes such as the A 10 and A 1. To avoid any adverse criticism the contractor is told about those sites most adaptable to his requirements.
- 3.22 I understand in fact that the appellant has recently been approached by a Hoddesdon industrialist, who wishes to dispose of a considerable amount of suitable filling material. Apparently though, the appellant is not prepared to accept this material unless he has some assurance from the Borough Council that he may receive planning consent to retain the soil screening facilities on the restored surface once filling is completed.
- 3.23 As a comparison to the appeal site I would point out that the area of land shown as A on the Plan Church Lane 1 was granted planning permission in 1955, was refilled and restored by 1970, albeit the site was smaller than appeal site by some 2.52 Ha (6.3 acres), but it shows what can be achieved

and demonstrates that after 1970 a certain amount of material could have been diverted to the appeal site.

- 3.24 In my estimation approximately 52,000 m<sup>3</sup> of fill material will be required to return the appeal site to original levels throughout, whereas the appellant stated in his application for a Control of Pollution Act licence in 1979 that there was a remaining capacity of 10,000 m<sup>3</sup> to fill. To refill the appeal site I consider that over a one year period 416 tonnes of builders' spoil would be required daily. This is equivalent to 21 lorry loads a day, that is 2 lorry loads per hour. If this period were extended to 2 years, then it follows that there would only be a need for 10 lorry loads per day, that is 1 lorry load per hour.
- 3.25 In addition to the existing stockpiles on site, adequate amounts of topsoil should no doubt be obtainable from the appellant's existing suppliers, and should therefore not be a problem.
- 3.26 The appellant also envisages that difficulties would be encountered in carrying out the necessary earthworks and engineering operations. In my experience tipping and restoration can be carried out in a satisfactory manner with the minimum of effort, provided that delivery drivers are instructed to tip their loads in a systematic way. The type of materials to be tipped at the appeal site do not require excessive compaction nor any interleaf, therefore during filling operations the appellant should only be required to use the rubber-tyred loading shovel he already has on site. When it comes to the stage of spreading and levelling topsoil, provided that the delivered loads of topsoil are sensibly located to minimise handling, the only equipment that will be necessary is a bulldozer. Once the site is levelled the topsoil, which must be free of any objects likely to interfere with later agricultural practices, should then be broken up using a disc harrow.

#### 4.0 Planning Issues

- 4.1 Within the Metropolitan Green Belt and particularly in an Area of Great Landscape Value, there is a presumption against any development that is not required for the purpose of agriculture, forestry or unless there is some other overriding reason. It is accepted however that under certain circumstances within any agricultural priority areas, it becomes necessary to work land for the production of essential minerals necessary to sustain the local and/or national economy. It is argued that such development is only of a temporary nature, and the land will eventually be restored to the original level and quality and the landscape reinstated. Even though the temporary period may be up to 20 years or more, frequently in Committee Reports to the County Council the point is stressed that a planning permission is given in good faith that

the operation is temporary and that restoration will quickly follow as the working face advances.

- 4.2 There is a presumption therefore that once permitted, a pit should be worked out at a reasonable rate and restored as quickly as possible.

It follows that planning permissions should be restricted in number to ensure that once started, production is not interrupted due to any relaxation of demand for the material.

- 4.3 When deciding where to locate industrial uses such as ready mixed concrete or tarmac plant, which rely on a steady supply of sand and gravel, it is good practice under the appropriate circumstances to locate this type of development within an existing mineral working with a guaranteed life expectancy. Usually however, this plant is subject either to a temporary planning permission, or is tied to the life of the pit.

- 4.4 This same principle was applied by the Minister of Housing & Local Government in his decision letter dated 2nd January 1968, Appendix 3, when he overruled his Inspector's conclusions and took the view that the preparation of soil for agriculture was a material change of use constituting development that required planning permission. The Minister however, accepted then that the scale of the soil screening activity at that time would not be harmful to local amenities, nor be likely to have a material effect on traffic conditions in Church Lane, but even so, the Minister only gave a temporary planning permission linked to the life of the working. The Minister therefore by this action confirmed that the permission for sand and gravel extraction should cease on 30th June 1979 simultaneously with the soil screening activity. It is my opinion that the Minister did not contemplate the soil screening activity at the appeal site expanding to the detriment of the restoration of the working. Since 1968 it has become apparent that a gradual transformation has occurred at the appeal site, with the emphasis going away from mineral working and moving towards the soil screening activity. I would draw attention to a recent appeal decision made by the Secretary of State for the Environment concerning a gravel pit at Cock Lane, Hoddesdon, which is about 1 mile to the north (DOE Reference AP/5251/C/78/4396, 7 and APP/5251/A/79/3626). On this site incinerator residuals were being imported as fill material. However, the site operators set up a mobile screen and separated from the residuals metal clinker and ash, which was then exported from the site and sold. In terms of restoration, out of every 10 lorries loaded with incinerator ash that entered the site for processing, only the equivalent of 1 load was deposited

in the old pit. Appeals against the Enforcement Notice and refusal of planning permission for this use were dismissed by the Secretary of State on 30th January 1980. (Decision letter attached as Appendix 8).

- 4.5 If the County Council is therefore to maintain credibility with local residents once they have been assured that a mineral working is only of a temporary nature, it is imperative that every effort be made to restore the land within the time-scale indicated at the submission of the application. If this is not done, it is difficult to reassure local people that other proposals should be permitted on the grounds of their "temporary nature". It is important that public confidence should not be lost.

#### 5.0 Conclusions

- 5.1 In September of this year the appeal site will have been a temporary mineral working for some 47 years. It is known that in 1964 when the site was acquired by the appellant, it only contained a small amount of sand and gravel that was considered inadequate for any major constructional use, but was valuable to the appellant's horticultural business at that time.
- 5.2 Since 1964 the small deposit has gradually been removed by the appellant until the stage has now been reached where there is absolutely no material left other than that which provides in places, the lateral support to adjoining property.
- 5.3 Should evidence be produced by the appellant to the contrary, it must be recognised that the proposal would still be incompatible with the County Structure Plan policies, and would conflict with the aims of the County Council and public interest. Therefore no justification exists for the continuation of use of the appeal site for the extraction of sand and gravel. so ground of appeal 1 a) cannot be substantiated and must fail.
- 5.4 Turning now to the second ground of appeal. I would take the opportunity to re-emphasise that the appellant has been well aware of what was required of him by 30th June of 1979, and therefore could have comfortably complied with the conditions of E/280-48 by that date, thereby rendering enforcement necessary. Nevertheless, the appellant suggests he cannot comply with the County Council's Enforcement Notice because suitable fill is unobtainable. From my experience this does not appear to be the case provided that a pit owner makes tipping a sufficiently attractive proposition to those contractors wishing to dispose of unwanted materials.

5.5 The tipping operations and earthworks necessary to restore the appeal site are not complicated, nor do they require any type of sophisticated equipment. Provided that sufficient supervision is maintained and the site properly managed, no particular difficulties should be encountered, and the site restored easily within two years. I cannot therefore accept that the two year period is not long enough, and I would argue that one year ought to be sufficient. On this premise therefore the second ground of appeal must also fail.

5.6 The appellant has since 1968 used the appeal site primarily if not exclusively in conjunction with his landscape gardening business. Contrary to the Minister of Housing & Local Government Inspector's view in 1968, the preparation of soil for horticulture is no longer allied to the site as a mineral working, and has in fact been a contributory factor in the unnecessary delay in the restoration of the appeal site, which is in the County Council's view at variance with proper planning principles and the Minister's decision in 1968.

5.7 It is therefore essential that the present use of the appeal site should cease and restoration be completed. I would therefore urge that the County Council's Enforcement Notice be upheld and the appeal dismissed.