

KETTERING BOROUGH COUNCIL

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN & COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991)

EN.01.0430

ENFORCEMENT NOTICE

ISSUED BY: KETTERING BOROUGH COUNCIL of Municipal Offices, Bowling Green Road, Kettering in the County of Northampton

1. THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there have been breaches of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the Development Plan and to other material planning considerations.

2. THE LAND AFFECTED

Land situated at Bowd Field, Desborough Road, Stoke Albany, in the County of Northamptonshire, as is shown for the purposes of identification only on the attached plan and edged in red.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without the benefit of planning permission, change of use of agricultural land to a mixed use for agriculture and the keeping of horses, together with the erection of a building in the approximate position shown in green, and the siting of sheds on the land as part of the unauthorised change of use.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the breach of planning control has occurred within the last ten years. The use of the land for the keeping of horses together with the erection of a building and the siting of sheds on the land is visually intrusive, incongruous and inappropriate to the character and appearance of the countryside and the Special Landscape Area. It is also considered that this location is unsuitable for the keeping of horses for reasons of safety and security because of the distance from residential properties. As such, the development is contrary to central Government advice (Planning Policy Guidance Note 7: 'The Countryside: Environmental Quality and Economic and Social Development, para1.4 and Annex F, para. F1) and the aims and objectives of the following policies of the Local Plan for Kettering Borough and the Northamptonshire County Structure Plan (the Development Plan):

Local Plan for Kettering Borough

Policy 7 (Environment: Protection of the Open Countryside) states that planning permission for development within the open countryside will not be granted except where otherwise provided for in the plan.

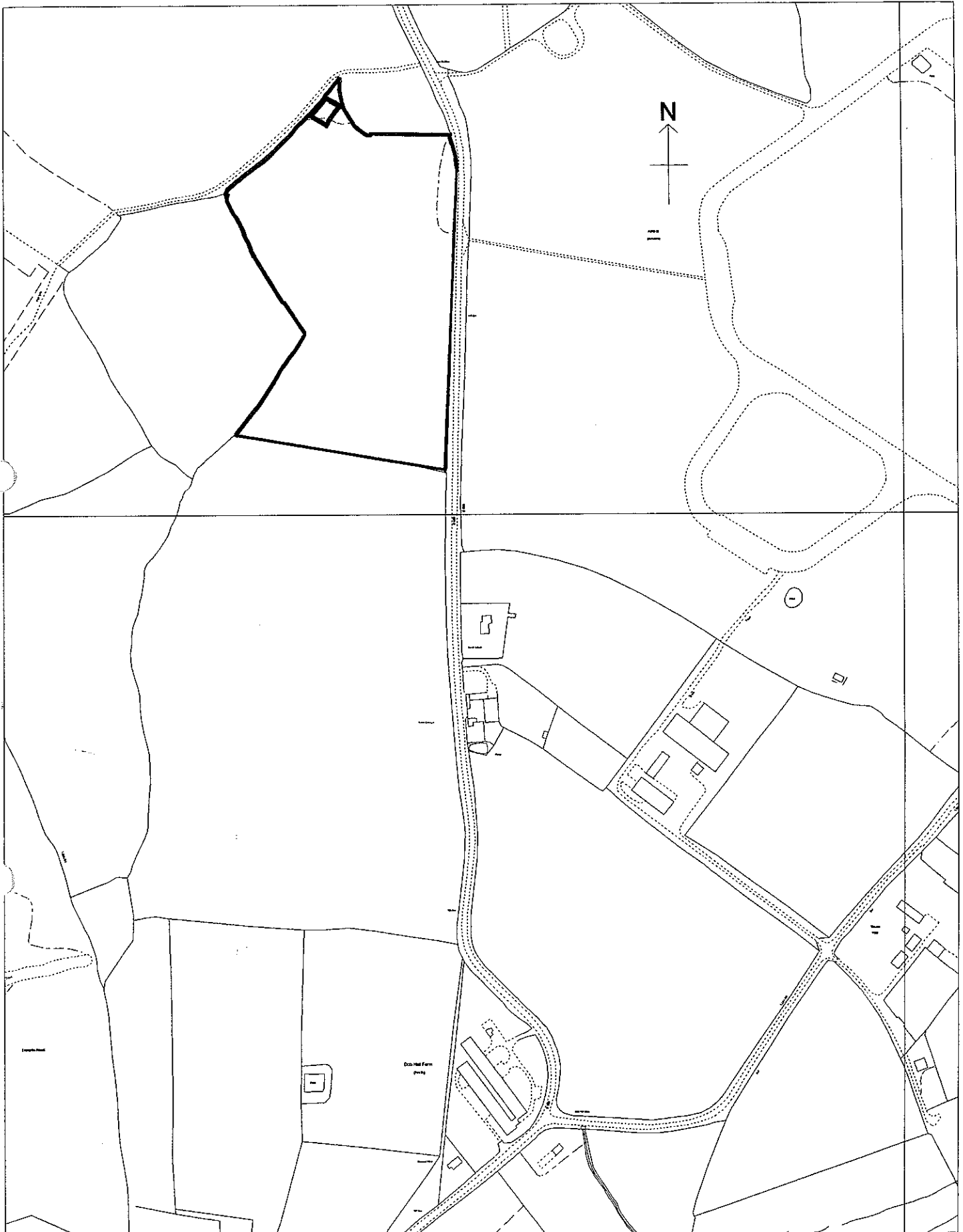
ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this Notice but any appeal must be received, or posted in time to be received, by the Secretary of State before 16 April 2002. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. Read it carefully. You may use the enclosed appeal forms. One is for you to send to the Secretary of State if you decide to appeal. The other is for you to keep as a duplicate for your own records. You should also send the Secretary of State the spare copy of this Enforcement Notice which is enclosed.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 16 April 2002 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the Notice. Failure to comply with an Enforcement Notice which has taken effect can result in prosecution and/or remedial action by the Council.



Title

Bowd Field

EN/01/0430

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LA078344

Date: 07:12:01

Scale: 1:5000

Drawn by: T Shields

Policy 9 (Environment: Special Landscape Areas) presumes against development which would have an adverse impact on the character and amenity of the Special Landscape Areas of the Borough.

Policy 30 (Environment: New Development) states that proposals for development, including changes of use, will be granted planning permission where the character of the development is appropriate in terms of type and scale, and there is no adverse impact on the character or amenity of the area or the countryside.

Northamptonshire County Structure Plan

Policy AR1 (Special Landscape Areas) states that priority will be given to the protection of the character and quality of special landscape areas, while taking account of the extent to which development proposals may bring wider economic and social benefits.

Policy GS5 (Design) states that proposals for development shall have regard to the visual appearance of the area; the need to encourage mixed-use development and the relationships of different land-use with each other; the need for measures for planning out crime; and the need for conservation of energy, resources and the natural environment, and for developments and designs which give priority to means of transport other than the private car.

5. WHAT YOU ARE REQUIRED TO DO

The steps required to remedy the breach of planning control are:

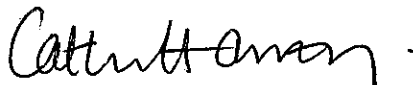
- (1) Remove from the land the building and its supporting concrete base situated at the northern end of the field, and permanently remove all sheds and all other equipment brought onto the land in connection with the unauthorised use.
Time for compliance: 3 months from the date this Notice takes effect.
- (2) Cease the use of the land for the keeping of horses.
Time for compliance: 3 months from the date this Notice takes effect

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 16 April 2002 unless an appeal is made against it beforehand.

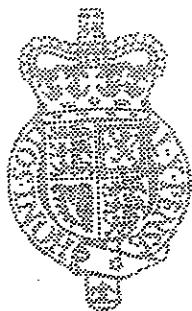
DATED: 13 March 2002

Signed



Head of Development Services

Kettering Borough Council
Municipal Offices
Bowling Green Road
KETTERING
Northants NN15 7QX



Appeal Decision

Site visit made on 30 September 2002

by **Felix Bourne BA(Hons) Solicitor Legal Associate RTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
409 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date:

11 OCT 2002

Appeal Ref: APP/L2820/C/02/1088460 Bowd Field, Desborough Road, Stoke Albany

- 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 R Fox against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is EN/01/0430.
- The notice was issued on 13 March 2002.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of agricultural land to a mixed use for agriculture and the keeping of horses, together with the erection of a building in the approximate position shown green on the enforcement notice, and the siting of sheds on the land as part of the unauthorised change of use.
- The requirements of the notice are to (1) remove from the land the building and its supporting concrete base situated at the northern end of the field, and permanently remove all sheds and all other equipment brought onto the land in connection with the unauthorised use, and (2) cease the use of the land for the keeping of horses.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act.

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

Appeal Ref: APP/L2820/A/02/1090481 Bowd Field, Desborough Road, Stoke Albany

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr R Fox against the decision of Kettering Borough Council.
- The application (Ref. KE/01/0769), dated 26 September 2001, was refused by notice dated 13 November 2001.
- The development proposed is mixed use equestrian/ agricultural.

Summary of Decision: The appeal is dismissed and planning permission is refused.

PROCEDURAL MATTERS

1. I undertook an accompanied site inspection on 30 September 2002.
2. As the appeal against the refusal of planning permission raises the same material considerations as the ground (a) appeal, and the application deemed to have been made by virtue of section 177(5) of the 1990 Act as amended, I shall consider those appeals together. However, it is appropriate to consider first the grounds of appeal against the enforcement notice which raise "legal issues", in this case grounds (b) and (c).

3. In enforcement appeals on these grounds the burden of proof is on the appellant. However, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability".

THE GROUND (b) APPEAL

4. This ground of appeal is relevant where the appellant seeks to argue that the breach of planning control alleged by the enforcement notice has not occurred as a matter of fact. The breach of planning control alleged by the Notice is a change of use of agricultural land to a mixed use for agriculture and the keeping of horses, together with the erection of a building and the siting of sheds. However, the supporting statement lodged with the appeal makes it clear that the appeal on this ground relates only to the alleged change of use.
5. In that statement the appellant argues that the land is not being used for the keeping of horses and that the use of the land is agricultural but with ancillary use for the grazing of one to two horses. However it is clear, from planning applications submitted, that the appellant wished to introduce a mixed use along the lines alleged by the enforcement notice. Indeed in a petition gathered in support of the planning application subject of appeal the appellant is described as a "local retired businessman" who is seeking support for development which will allow him to "provide shelter for his horses and livestock". Moreover, horses seem to have been brought to the site some time prior to the introduction of the sheep.
6. From the inspections undertaken by the Council, it is also clear that more than one or two horses were being kept on site. In particular the appellant does not dispute the conversation that he had with a Council officer on 12 July 2001. Having seen the notes from that site visit and conversation it is evident that there were four horses on site at that time, though the appellant also expressed an intention to put in sheep as well.
7. In a letter of 11 July 2002, responding to the Council's statement, the appellant suggests that the Council state, at paragraph 6.2 of their statement, that all of the unauthorised works related to "keeping horses". However, this is not what they say, nor indeed is it what the enforcement notice alleges. What the Council do say is that "all of these unauthorised works very closely correlated with those proposed in the withdrawn application for keeping horses KE/01/0090".
8. Similarly, whilst paragraph 6.5 of the Council's statement refers to one horse being in foal, as does the Council's letter to the appellant of 12 July 2001, it does not refer to the breeding of horses. There is reference to the use of the appeal site being an extension of the appellant's existing activity of breeding race horses, at paragraph 5.3 of the Council's statement. However, this is not in any event one of the matters specified by the enforcement notice.
9. Whilst I have noted the letters from the Veterinary Surgeon and from Ashley Grange Stud I do not believe that they provide evidence that the appeal site is not being used for the keeping of horses.
10. From the evidence available to me I believe that, as a matter of fact and degree, and on the balance of probabilities, the change of use alleged by the enforcement notice has occurred and that the ground (b) appeal should accordingly fail.

THE GROUND (c) APPEAL

11. Ground (c) arises where an appellant seeks to argue that the matters referred to in the enforcement notice do not constitute a breach of planning control. In this case the ground (c) appeal is based on the contention that both the previous and the current use of the land is agricultural.
12. However, there is clear evidence, not least from the conversation of 12 July 2001 between the appellant and a Council officer, that the horses were being brought feed, though it was stated that they would also graze in summer. In addition the note of a site visit undertaken by a Council officer on 29 November 2001 refers to seeing a man with a bucket feeding horses from it. Thus it is clear that the horses were not simply being turned out on the land with a view to feeding them from the land. In *Sykes v Secretary of State for the Environment* (1981) 42 P & CR 19 Donaldson LJ indicated that:

"There was no difficulty in most cases in recognising whether the land was being used for grazing or for the keeping of non-agricultural horses. It was only if it was being used for the purpose of grazing that no planning permission was required".
13. I accept that both the sheep and horses will graze the land. However, it is clear that the horses at least are also supplied with food from elsewhere, and indeed, at the time of my site inspection, there was a feeding manger within the building.
14. On the basis of the evidence before me it would therefore appear that, as a matter of fact and degree, the current use of the land is not merely agricultural but comprises the mixed use alleged by the enforcement notice. This represents a material change of use for which no planning permission has been granted.
15. I am reinforced in that view by the evidence as to the type of horses being kept on the land, which supports the impression that the horses are in any event not being kept for agricultural production. Indeed a note from the Parish Council received by the Council on 29 October 2001 refers to the "valuable racehorses that are to be kept on this field", whilst the letter of 2 February 2001, from Philip Evans, submitting one of the two recent planning applications for the site, also refers to racehorses.
16. Accordingly the ground (c) appeal must also fail. I therefore come to the ground (a) appeal and the appeal against the refusal of planning permission.

THE GROUND (a) APPEAL, DEEMED APPLICATION, AND SECTION 78 APPEAL

Main Issues

17. From my inspection of the site and its surroundings, and from the written representations made, I consider the main issues in determining whether planning permission should be granted in relation to either appeal to be, first, the effect of the development on the character and appearance of the area and, second, the suitability of the site for the intended use.

Planning Policy

18. Section 54A of the Town and Country Planning Act 1990 as amended requires that where the development plan contains policies relevant to the development proposal, I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The development plan for the area includes the Northamptonshire County

Structure Plan 1996-2016, adopted in March 2001, and the Local Plan for Kettering Borough, adopted in January 1995. However, in September 2001 the County Council issued a statement under section 47 of the 1990 Act, and Schedule 4, paragraph 35C of the Planning and Compensation Act 1991, which determined that the Local Plan was not in general conformity with the Structure Plan.

19. I have also been referred to the following Planning Policy Guidance, namely PPG1: General Policy and Principles; PPG4: Industrial and Commercial Development and Small Firms; PPG7: The Countryside: Environmental Quality and Economic and Social Development; and PPG9: Nature Conservation.
20. My attention has also been drawn to the Government White Paper of 2000 on the future of the countryside, to a 1993 document, A Nature Conservation Strategy for Northamptonshire, and to the recent Borough Council publication, Rural Life – Issues Paper 7, which I understand has been produced as part of the consultation process under the Review of the Local Plan covering the period to 2016.

Inspector's Reasoning

21. The appeal site is a field of approximately 6.2 hectares located in open countryside, to the west of Desborough Road and well divorced from the nearest settlement. A public footpath runs close to the north-western boundary of the site. Part of the field is within the Welland Valley Special Landscape Area, identified on the Proposals Map to the Local Plan. This is approximately the northern half to two-thirds. The building subject of the enforcement notice is within, and that indicated in the section 78 appeal is proposed to be in, the northern corner of the site.
22. Looking at the first main issue, Structure Plan GS5 states, amongst other things, that in order to promote high quality design and sustainable development, all proposals will have regard to a number of considerations, including the visual appearance of the development in the context of the defining characteristics of the local area.
23. Policy AR1 is concerned with the establishment of Special Landscape Areas, and indicate that Local Plans will set development control criteria which will seek to protect, conserve and enhance such areas. The policy goes on to say that the criteria will reflect the special character and quality of each area which will be defined by:
 - A. Scenic quality
 - B. Sense of place including the local character and setting of buildings and settlements;
 - C. Unspoilt rural landscapes free from urban intrusion, with a sense of remoteness;
 - D. Landscapes particularly representative of a type, having a fragile condition or scarcity value, or with ancient landscape characteristics.
24. Structure Plan Policy AR2 seeks to conserve and enhance the landscape character of the whole county.
25. Local Plan Policy 7 indicates that planning permission for development within the open countryside will not be granted except where otherwise provided for in this plan, while Policy 9 provides that proposals for development which would have an adverse impact on the visual character and amenity of the Special Landscape Areas will not be granted planning permission.

26. Local Plan Policy 30 is concerned with the effect of new development on the environment and states that proposals for development will be granted planning permission where, amongst other things:

- i) the character of the development is appropriate in terms of type, scale, layout, density, energy conservation and crime prevention measures;
- ii) there is adequate provision for vehicular access and parking arrangements;
- iii) there is no adverse impact on the highway network, including the traffic impacts on the local community;
- iv) there is no adverse impact on the character of the area and/or the amenities of existing or proposed nearby properties, and incorporates landscape proposals;
- v) there is no adverse impact on agriculture and the countryside. (Those criteria numbered iv and v above appear as v and viii in the Policy)

27. The appellant has undertaken significant planting on the site, particularly towards the road frontage, has restored an overgrown pond, and has laid border hedges so as to provide a haven for dormice. These works have clearly been welcomed by many and, from the report prepared by the Farming and Wildlife Group (FWAG), others are proposed. To some extent the FWAG report depends on information from the appellant, and this perhaps was inevitable. However, I have no reason to doubt that sympathetic management of the land is capable of improving, amongst other things, the habitat for some wildlife species.
28. Nevertheless such works, or steps to improve the condition of the land, should not, in my view, be seen as a justification for inappropriate development. It is suggested that the primary use would remain the grazing of land. However, the mixed use has, in fact, resulted in a significant change in the character of the site. Whilst the designation of the site as a Special Landscape Area may not carry the same weight as a national designation, the area is one of attractive countryside which the development plan policies rightly aim to protect.
29. There is reference to a crew yard having existed in the position of the appeal building. However, I am told that this became derelict and eventually fell down. On the other hand recent developments associated with the current use of the land have included the creation of an improved access, the hardsurfacing of a track running parallel with the road, and then turning almost 90 degrees so as to continue down to the appeal building, the appeal building itself, an adjacent shed, fencing, and paraphernalia including a mobile stable. In addition some bunding has taken place, in particular close to the building, though this is not referred to in the enforcement notice, altering the natural topography of the site, whilst the "restored" pond has been fenced off, such fencing including barbed wire.
30. It is true that both the building, its immediate surroundings, and the pond are some distance away from the road. However, they are close to the line of a public footpath which, the Council indicate, is in regular daily use and which links, in particular, the nearby areas of ancient woodland and the traditional pattern of agricultural land form between the site and Brampton Ash and Stoke Albany.
31. In my view these developments adversely affect the otherwise largely unspoilt character and appearance of the countryside. This brings them into conflict with Policy 9 of the Local Plan, and with criteria (iv) and (viii) of Local Plan Policy 30, as well as running counter to the objectives of Structure Plan policies GS5, AR1 and AR2.

32. For the sake of clarity I should mention that my conclusions on this issue are the same, and for the same reasons, whether considering the development subject of the enforcement notice or the slightly different proposals contained in the planning application.
33. Turning to the second main issue, the Council are also concerned that the site is too remote for the safe keeping of horses, the nearest dwelling being Bowd Lodge, some 350 metres away from the site entrance. I note that the appellant gives his address as being Wilbarston.
34. I agree with the Council that the appellant's wish to increase the safety of his horses is understandable. However, I also tend to concur that this isolated location does not seem particularly suitable, especially in the light of recent attacks against horses. Whilst I am not certain that, on its own, this concern would have led me to refuse planning permission, it does reinforce me in my views with regard to the first main issue and my planning conclusions in respect thereof. It is also worth noting that, although I have reached my conclusions solely on the basis of the appeals before me, it does seem possible that, in order to provide sufficient security, the keeping of horses could result in further security measures, including lighting and even, in the future, pressure for living accommodation on the site.

Conclusions in relation to the ground (a) appeal

35. For the reasons given above and having regard to all other matters raised, I conclude that the development is/would be harmful to the character and appearance of the area and would conflict with development plan policy. I therefore conclude that the ground (a) and Section 78 appeals should be dismissed.

THE GROUND (f) APPEAL

36. The statement submitted with the appeal in support of this ground referred to a lack of consultation, but did not explain how this might have affected the steps required by the Notice. The ground of appeal is somewhat expanded in the appellant's response to the Council's statement but only so as to introduce arguments on planning merits that I have not considered in relation to the ground (a) and section 78 appeals. From my own consideration of the steps required it seems to me that they do not exceed what is necessary to remedy a breach of planning control and the ground (f) appeal must accordingly fail.

THE GROUND (g) APPEAL

37. In support of this ground the appellant argues that the land is not being used for the keeping of horses. That is a matter that I have considered in relation to other grounds of appeal. The appellant also submits that six to twelve months is a reasonable period for the building and concrete base to be removed. However, the appellant does not provide any evidence as to why I would find it difficult to achieve this within the period specified by the Notice and it seems to me that a three month period should be more than adequate to undertake the work required by the enforcement notice.

OVERALL CONCLUSIONS

38. For the reasons given above and having regard to all other matters raised, including planning decisions, policies, and authorities to which I have not specifically referred, I consider