



Appeal Decisions

Hearing held on 28 July 2009

Site visit made on 28 July 2009

by **J D Waldron** MCD BArch Architect

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
26 August 2009

Appeal Ref: APP/L2820/C/08/2091907

Birchfield, Rushton Road, Desborough NN14 2QN.

- 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 L Thomas against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2007/00197(1).
- The notice (Notice 1) was issued on 7 November 2008.
- The breach of planning control as alleged in the notice is **Without planning permission the change of use of the land from agricultural use to a mixed use for agriculture, domestic storage (in stable building), the stationing of a mobile home for human habitation, and the carrying out of works as part of the unauthorised change of use, namely creation of an access drive and the laying of hardstandings, the approximate position and extent of which is shown by yellow colouring on the attached plan, the laying of services and installation of a storage tank for liquefied petroleum gas.**
- The requirements of the notice are:
 - (1) **Cease the use of the mobile home for the purposes of human habitation**
Time for compliance: 1 week from the date this Notice takes effect.
 - (2) **Cease the use of the stables building for purposes of domestic storage**
Time for compliance: 1 month from the date this Notice takes effect.
 - (3) **Permanently remove from the land the mobile home, the gas storage tank and associated pipework and all personal items brought onto the land in connection with the unauthorised use**
Time for compliance: 1 month from the date this Notice takes effect.
 - (4) **Upon completion of Step (3) set out above, take up and permanently remove from the land all hardcore and other such materials deposited on the land forming the hardstanding**
Time for compliance: 2 months from the date this Notice takes effect.
 - (5) **Upon completion of Step (4) set out above, restore the land to the condition that existed before the breach of planning control described in the notice took place**
Time for compliance: 3 months from the date this Notice takes effect.
 - (6) **Upon completion of Step (5) set out above, grade the land with topsoil and sow bare earth areas with grass seed**
Time for compliance: 4 months from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal Ref: APP/L2820/C/08/2091976

Birchfield, Rushton Road, Desborough NN14 2QN.

- 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 L Thomas against an enforcement notice issued by Kettering

Borough Council.

- The Council's reference is ENFO/2007/00197(2).
 - The notice (Notice 2) was issued on 7 November 2008.
 - The breach of planning control as alleged in the notice is **Without planning permission the carrying out of engineering operations in, on or under the land, comprising: the raising of land levels by the importation of soils: the excavation and bunding of soils: formation of a lake: laying of hard surfacing the approximate position and extent of which works is shown, for identification only, by yellow colouring on the attached plan and the construction of a retaining wall in the approximate position shown by blue line on the attached plan.**
 - The requirements of the notice are:
 - (1) **Remove from the land the retaining wall and foundations thereof**
Time for compliance: 1 month from the date this Notice takes effect.
 - (2) **Take up and permanently remove from the land all hardcore and other such materials deposited on the land forming the areas of hard standing**
Time for compliance: 3 months from the date this Notice takes effect.
 - (3) **Deconstruct all bunds and mounds and infill all excavations forming the lake and restore the landform (including the water course to the eastern boundary of the field) to the condition that existed before the breach of planning control described in the notice took place**
Time for compliance: 3 months from the date this Notice takes effect.
 - (4) **Remove all imported material from the site, and restore the landform (including the highway verge) to the condition that existed before the breach of planning control described in the notice took place**
Time for compliance: 3 months from the date this Notice takes effect.
 - (5) **Upon completion of Steps (1), (2) and (3) set out above, grade the land with topsoil and sow bare earth areas with grass seed**
Time for compliance: 4 months from the date this Notice takes effect.
 - (6) **Plant along the line marked in green on the plan attached hereto, a hedge comprising 60% hawthorn, 25% blackthorn, 5% hazel, 5% holly and 5% Bird cherry/Dog rose/Rowan/Wild privet, in a double staggered row at a planting density of 8 plants per linear metre**
Time for compliance: 4 months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal Ref: APP/L2820/C/08/2091983

Land to the east of Birchfield, Rushton Road, Desborough NN14 2QN.

- 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 L Thomas against an enforcement notice issued by Kettering Borough Council.
 - The Council's reference is ENFO/2007/00197(3).
 - The notice (Notice 3) was issued on 7 November 2008.
 - The breach of planning control as alleged in the notice is **Without planning permission the carrying out of engineering operations on the land comprising the raising of the land levels by the importation of soils; the approximate position and extent of which is shown by yellow colouring on the attached plan.**
 - The requirements of the notice are:
 - (1) **Remove all imported material from the site, and restore the landform (including the water course to the western boundary of the field and the highway verge) to the condition that existed before the breach of planning control described in the notice took place**
Time for compliance: 3 months from the date this Notice takes effect.
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(2) Upon completion of Step (1) set out above, grade the land with topsoil and sow bare earth areas with grass seed

Time for compliance: 4 months from the date this Notice takes effect.

(3) Plant along the line marked in green on the plan attached hereto, a hedge comprising 60% hawthorn, 25% blackthorn, 5% hazel, 5% holly and 5% Bird cherry/Dog rose/Rowan/Wild privet, in a double staggered row at a planting density of 8 plants per linear metre

Time for compliance: 4 months from the date this Notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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NOTICE 1

1. The appeal relates only to the uses taking place when the notice was issued.
2. The access drive and hardstandings appear to be of similar construction. They run together seamlessly (together with the hard surfacing in Notice 2 which is between the access drive in Notice 1 and the carriageway of Rushton Road). For consistency, they should be described in similar terms, namely as the laying of an access drive and hard surfacing. Likewise Step (4) should refer to the removal of all the hardcore and materials used in the laying of the access drive and hard surfacing. As Step (4) deals with similar work to Step (2) of Notice 2, the period for compliance should be the same in each case, namely 3 months, the longer of the two periods. The notice can be corrected without injustice to either party and within the powers available to me. The appeal is determined accordingly.

Appeal on ground (c)

The domestic storage use

3. The appellant points out that the domestic storage use taking place in the stable building is only part of the use of the building; it is negligible and has not constituted a material part of the mixed change of use of the land in planning terms. The Council considers that any level of domestic storage use is material on a site where agriculture is the only authorised use.
4. The domestic storage use appears to be related to the use of the land for the stationing of the mobile home for human habitation. On the information before me, I am not persuaded that the domestic storage use was de-minimis in planning terms when the notice was issued and not a material part of the unauthorised mixed use of the land. The appellant has not discharged the onus of proof which rests with him. The appeal fails on ground (c).
5. [NB: The stable building is subject of a time-limited planning permission with condition that it be removed at the end of the period.]

Appeal on ground (f)

Step (6)

6. The appellant considers that Step (6) excessive because the relevant land has been in arable cultivation in the past and thus in winter has had the appearance of bare earth; it does not need to be graded with topsoil, or grassed, to retain its visual integration into the landscape and, as such, this requirement is excessive. The Council points out

that the land has been grassland in the recent past, and would have had a covering of topsoil.

7. The requirements have been made explicitly to **"remedy the breach of planning control"**, namely under section 173(4)(a) of the Act, to restore the land to its former state. In this context a submission under ground (f) is that, as a matter of fact, the requirement exceeds what is necessary to remedy the breach.
8. The appellant has not appealed against Step (5) which requires explicitly that the land be restored to the condition that existed before the breach of planning control described in the notice took place. The land in its former state, as farmland, would have had a covering of topsoil. The requirement to grade the land with topsoil does not exceed, as a matter of fact, what is necessary to remedy the breach of planning control. The land was in arable cultivation when the aerial photograph was taken in 1999. However it was grassland when the aerial photograph was taken in 2004, and there is no evidence that it has been in arable cultivation since. The requirement to sow bare earth areas with grass seed does not exceed, as a matter of fact, what is necessary to restore the land to its former state and so remedy the breach of planning control. The appeal fails on ground (f).

Appeal on ground (g)

Step (1)

9. The appellant had an arguable case that, given his personal circumstances when the notice was issued, 6 months would have been a reasonable period for making arrangements for the cessation of the use of the mobile home for the purposes of human habitation; in particular the residential property that he owns elsewhere was not available at short notice.
10. However no part of the appeal against Notice 1 could result in the retention of the mobile home. No appeal has been made on ground (a), that planning permission should be granted for the siting of the mobile home for the purposes of human habitation, and no appeal has been made on ground (f), that the requirements are excessive. The appellant was professionally represented and when the required fee had not been paid by the specified date, namely 6 February 2009, the deemed application for planning permission lapsed. Thereafter the enforcement notice was inevitably going to be upheld in respect of the mobile home. It follows that the appellant cannot rely on the argument that he has made no arrangements to cease the use of the mobile home for the purposes of human habitation because he had reasonable prospect of success on appeal.
11. This Appeal Decision is being issued more than 6 months after 6 February 2009. The appellant has had this period to make arrangements for the inevitable cessation of the use of the mobile home for the purposes of human habitation. In the unusual circumstances of this case, the period for compliance of one week does not fall short of what should reasonably be allowed. The appeal fails on ground (g).

Step (3)

12. The appellant's case is linked to that under Step 1. The period for compliance would allow about 3 weeks for the removal of the mobile home and related items following the cessation of the use of the mobile home for the purposes of human habitation. The period specified is not unreasonable given that the appellant has known since 6 February 2009 that they would inevitably need to be removed. The appeal fails on ground (g).

Step (4)

13. Given my conclusions in respect of Steps (1) and (3), I am not persuaded that the period for compliance of 3 months falls short of what should reasonably be allowed for the removal of all the hardcore and materials used in the laying of the access drive and hard surfacing. The period for compliance of 3 months should allow reasonable time for this work to be organised, and for the hardcore and materials to be lifted and carted off site following the completion of Step (3). The appeal fails on ground (g).

Steps (5) and (6)

14. The works required are closely related to similar works in Notice 2 and in Notice 3. They are likely to be done together. I agree with the appellant that overall a significant amount of earthmoving is required. The land is predominantly clay and thus difficult to work. A reasonable period for compliance with Step (5) would be 6 months and with Step (6) would be 7 months. The appeal succeeds on ground (g) accordingly.

NOTICE 2

15. As referred to previously, the hard surfacing referred to in the allegation is between the access drive referred to in Notice 1 and the carriageway of Rushton Road. There is no doubt about what is enforced against. Notice 2 will be corrected accordingly which can be done without injustice to either party and within the powers available to me.
16. The requirements have been made explicitly to remedy the breach of planning control (under section 173(4)(a) of the Act). However, in its Statement of Case the Council refers to Step (6), concerning the hedge, as seeking to remedy injury to amenity caused by the breach (under section 173(4)(b)). The notice needs to be corrected accordingly, which I consider can be done without injustice to either party and within the powers available to me.
17. On site I pointed out that the "green line" referred to in Step (6) extended across the original access, as well as the new access. Step (6) would prevent access from Rushton Road. It was agreed that the notice can be corrected by the deletion of the relevant part of the green line without injustice to either party and within the powers available to me.
18. Steps (3) and (4) overlap. To avoid any possible confusion, they should be combined. This can be done without injustice to either party and within the powers available to me. The appeal is determined accordingly.

Appeal on ground (b)

Importation of soils

19. The appellant's case is that the area coloured in yellow on the enforcement notice plan contains no imported soils/material, the changed levels having resulted from the redistribution of soils, in particular soils from the excavation of the lake. The Council considers that the level of the land has been altered so significantly that it appears to have included some imported material.
20. On 26 October 2005 Northamptonshire County Council issued a Temporary Stop Notice in respect of unauthorised tipping operations. The appellant's case is that all tipped materials were removed in August 2007, albeit this is not corroborated by documentary evidence. The refusal of planning permission, dated August 2008 (KET/2008/0483) refers to it remaining unclear as to whether all the tipped materials have been removed.
21. I have compared the photographs showing the former landform with the situation on site now in respect of the land coloured in yellow in Notices 2 and 3. I have also looked

at the survey plan showing contours which had been submitted as part of a planning application. There is uncertainty about the exact depth of water in the lake. Nevertheless, after careful assessment of the cut-and-fill, I find no reason to doubt the evidence of the appellant that there are no imported soils/materials on the land when Notices 2 and 3 are considered together. However some soils from the area covered by Notice 2 appear to have been imported into the area covered by Notice 3. In particular, although most of the bunding on the east side of the lake is in the area covered by Notice 2, part is in the area covered by Notice 3. (I refer to this again later in the appeal against Notice 3.) The appeal succeeds on ground (b) insofar as reference to the importation of soils will be deleted from the allegation and the removal of imported material deleted from Step (3) (old Step (4)).

Appeal on ground (c)

The wall

22. The appellant considers the retaining wall to be permitted development under Schedule 2 Part 2 Class A. He considers that it forms part of an area of enclosure, including the post and rail fence and hedge line to the west and north, and also demarks the hardstanding to the south. The Council considers that it does not serve any purpose of enclosure, and thus cannot benefit from this tolerance.
23. In order to satisfy the requirements of Class A, the wall must have some function of enclosure. The Courts have held that a means of enclosure must provide some way of closing an area so that it became enclosed. It need not be a perfect surrounding, and is a matter of fact and degree whether any gaps in the structure took it outside the essential character of enclosure.
24. The wall is straight and much less than one metre high. It separates grassland to the north from hardstanding to the south which are at about the same level. It does not act as a retaining wall except insofar as it separates different ground coverings. It extends to the east up to the access drive, the level of which is about the same as that of the grassland. There is, in effect, no enclosure to the east. On the basis of fact and degree I am not persuaded that the wall serves a purpose of enclosure within the meaning of Class A. It follows that the erection of the wall does not fall within the permitted development tolerances. The appellant has failed to discharge the onus of proof which rests with him. The erection of the wall constitutes a breach of planning control. The appeal fails on ground (c).
25. [NB: The wall, together with the hard surfacing enforced against, and the works enforced against under Notice 1, form part and parcel of the unauthorised change of use enforced against under Notice 1. The wall could have been required to be removed under Notice 1 irrespective of whether its erection was permitted development.]

Appeal on ground (f)

Step (4) (Old Step (5))

26. For the reasons given previously the requirement to grade the land with topsoil and sow bare soil areas with grass seed does not, as a matter of fact, exceed what is necessary to remedy the breach of planning control. The appeal fails on ground (f) in this regard.

Step (5) (Old Step (6))

27. As referred to previously, the requirement has been made to remedy the injury to amenity caused by the breach, under section 173(4)(b). The Council refers to the requirement to plant the hedge as not exactly replicating the pre-existing situation, but nevertheless remedying some of the injury to amenity caused by the breach.

28. Where the land along the line marked in green has been disturbed by the previous Steps, the hedge proposed would be a reasonable provision given the mixed indigenous vegetation that appears to have existed along the highway verge in the past.
29. On this basis I am not persuaded that this Step exceeds what is necessary to remedy the injury to amenity caused by the breach of planning control. The appeal succeeds on ground (f) insofar as the requirement will be restricted to where the land along the line marked in green has been disturbed.

Appeal on ground (g)

Step (2)

30. For the reasons given on the appeal on ground (g) against Step (4) of Notice 1, I am not persuaded that the period for compliance of 3 months falls short of what should reasonably be allowed. The appeal fails on ground (g).

Steps (3) and (4) (Old Steps (3), (4) and (5))

31. For the reasons given on the appeal on ground (g) against Steps (5) and (6) of Notice 1, a reasonable period for compliance with Step (3) would be 6 months and with Step (4) would be 7 months. The appeal succeeds on ground (g) accordingly.

Step (5) (Old Step (6))

32. The Council accepts that the hedge planting would best be done in the next planting season following the completion of Step (4). The appeal succeeds on ground (g) accordingly.

NOTICE 3

33. The requirements have been made explicitly to remedy the breach of planning control (under section 173(4)(a) of the Act). However, in its Statement of Case the Council refers to Step (3), concerning the hedge, as seeking to remedy injury to amenity caused by the breach (under section 173(4)(b)). The notice needs to be corrected accordingly, which I consider can be done without injustice to either party and within the powers available to me.

Appeal on ground (b)

34. The appellant's case is that no soils have been imported. However, as indicated previously, as a matter of fact, some soils appear to have been imported on to the land in Notice 3 from the land in Notice 2. The appeal fails on ground (b).

Appeal on ground (f)

Step (2)

35. For the reasons given previously the requirement to grade the land with topsoil does not, as a matter of fact, exceed what is necessary to remedy the breach of planning control. The appeal fails on ground (f) in this regard.
36. The land appears to have been in arable cultivation in the 1999 and 2004 aerial photographs. It remains generally in arable cultivation. The requirement to sow bare soil areas of the former farmland with grass seed, but not bare soil areas of the highway verge, exceeds what is necessary to remedy the breach of planning control. The appeal succeeds on ground (f) in this regard.

Step 3

37. As referred to previously, the requirement has been made to remedy the injury to amenity caused by the breach, under section 173(4)(b). The Council refers to the requirement to plant the hedge as not exactly replicating the pre-existing situation, but nevertheless remedying some of the injury to amenity caused by the breach.
38. Where the land along the line marked in green has been disturbed by the previous Steps, the hedge proposed would be a reasonable provision given the mixed indigenous vegetation that appears to have existed along the highway verge in the past.
39. On this basis I am not persuaded that Step (3) exceeds what is necessary to remedy the injury to amenity caused by the breach of planning control. The appeal succeeds on ground (f) insofar as the requirement will be restricted to where the land along the line marked in green has been disturbed.

Appeal on ground (g)

Steps (1) and (2)

40. For the reasons given on the appeal on ground (g) against Steps (5) and (6) of Notice 1, a reasonable period for compliance with Step (1) would be 6 months and with Step (2) would be 7 months. The appeal succeeds on ground (g) accordingly.

Step (3)

41. The Council accepts that the hedge planting would best be done in the next planting season following the completion of Step (2). The appeal succeeds on ground (g) accordingly.

FORMAL DECISION

NOTICE 1

42. I determine the appeal as follows:

- direct that the notice be corrected at paragraph 3 by the deletion of the text under the heading and the substitution therefor:

Without planning permission the change of use of the land from agricultural use to a mixed use for agriculture, domestic storage (in stable building), the stationing of a mobile home for human habitation, and the carrying out of works as part of the unauthorised change of use, namely laying of an access drive and hard surfacing, the approximate position and extent of which is shown by yellow colouring on the attached plan, the laying of services and installation of a storage tank for liquefied petroleum gas.
- direct that the notice be corrected and varied at paragraph 5 by the deletion of the text under the heading and the substitution therefor:

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

 - (1) **Cease the use of the mobile home for the purposes of human habitation**
Time for compliance: 1 week from the date this Notice takes effect.
 - (2) **Cease the use of the stables building for purposes of domestic storage**
Time for compliance: 1 month from the date this Notice takes effect.
 - (3) **Permanently remove from the land the mobile home, the gas storage tank and associated pipework and all personal items brought onto the land in connection with the unauthorised use**
Time for compliance: 1 month from the date this Notice takes effect.
 - (4) **Upon completion of Step (3) set out above, take up and permanently remove from the land all the hardcore and materials used in the laying of the access**

drive and hard surfacing

Time for compliance: 3 months from the date this Notice takes effect.

- (5) Upon completion of Step (4) set out above, restore the land to the condition that existed before the breach of planning control described in the notice took place

Time for compliance: 6 months from the date this Notice takes effect.

- (6) Upon completion of Step (5) set out above, grade the land with topsoil and sow bare earth areas with grass seed

Time for compliance: 7 months from the date this Notice takes effect.

- Subject thereto I dismiss the appeal and uphold the enforcement notice as corrected and varied.

NOTICE 2

43. I determine the appeal as follows:

- direct that the notice be corrected at paragraph 3 by the deletion of the text under the heading and the substitution therefor:

Without planning permission the carrying out of engineering operations in, on or under the land, comprising: the raising of land levels by the excavation and bunding of soils: formation of a lake: laying of hard surfacing between the access drive included in Notice 1 and the carriageway of Rushton Road: the approximate position and extent of which work is shown for identification only, by yellow colouring on the attached plan, and the construction of a retaining wall in the approximate position shown by blue line on the attached plan.

- direct that the notice be corrected by the deletion from the line marked in green on the plan attached to the notice the part of the line that crosses the original access drive.
- direct that the notice be corrected and varied at paragraph 5 by the deletion of the text and the substitution therefor:

The steps required to remedy the breach of planning control in respect of Steps (1) to (4) and to remedy the injury to amenity caused by the breach in respect of Step (5) are:

- (1) Remove from the land the retaining wall and foundations thereof
Time for compliance: 1 month from the date this Notice takes effect.
- (2) Take up and permanently remove from the land all the hardcore and materials used in the laying of the hard surfacing
Time for compliance: 3 months from the date this Notice takes effect.
- (3) Deconstruct all bunds and mounds and infill all excavations forming the lake and together with the soils returned from the land in Notice 3 restore the landform (including the water course to the eastern boundary of the field) to the condition that existed before the breach of planning control described in the notice took place
Time for compliance: 6 months from the date this Notice takes effect.
- (4) Upon completion of Steps (1), (2) and (3) set out above, grade the land with topsoil and sow bare earth areas with grass seed
Time for compliance: 7 months from the date this Notice takes effect.
- (5) Where the land along the line marked in green on the plan attached hereto has been disturbed by the above Steps, plant a hedge comprising 60% hawthorn, 25% blackthorn, 5% hazel, 5% holly and 5% bird cherry/Dog rose/Rowan/Wild privet, in a double staggered row at a planting density of 8 plants per linear metre
Time for compliance: by the end of the next planting season following the completion of Step 4 above.

- Subject thereto I dismiss the appeal and uphold the enforcement notice as corrected and varied.

NOTICE 3

44. I determine the appeal as follows:

- direct that the notice be corrected at paragraph 3 by the deletion of the text and the substitution therefor:

Without planning permission the carrying out of engineering operations on the land comprising the raising of the land levels by the importation of soils from the land in Notice 2; the approximate position and extent of which is shown by yellow colouring on the attached plan.

- direct that the notice be corrected and varied at paragraph 5 by the deletion of the text and the substitution therefor:

The steps required to remedy the breach of planning control in respect of Steps (1) and (2) and to remedy the injury to amenity caused by the breach in respect of Step (3) are:

- (1) **Return the imported soils to the land in Notice 2 and restore the landform (including the water course to the western boundary of the field and the highway verge) to the condition that existed before the breach of planning control described in the notice took place**

Time for compliance: 6 months from the date this Notice takes effect.

- (2) **Upon completion of Step (1) set out above, grade the land with topsoil, and sow bare earth areas on the highway verge with grass seed**

Time for compliance: 7 months from the date this Notice takes effect.

- (3) **Where the land along the line marked in green on the plan attached hereto has been disturbed by the above Steps, plant a hedge comprising 60% hawthorn, 25% blackthorn, 5% hazel, 5% holly and 5% Bird cherry/Dog rose/Rowan/Wild privet, in a double staggered row at a planting density of 8 plants per linear metre**

Time for compliance: by the end of the next planting season following the completion of Step (2) above.

- Subject thereto I dismiss the appeal and uphold the enforcement notice as corrected and varied.

J D Waldron

Inspector