



Planning Inspectorate

Department of the Environment

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COMPASS	
REF	21-6
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	HILL

529

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ESSEX
CM7 6AD

Council Reference
YF/LAB/B11/499
Your Reference
PH/J/A6576
Our Reference
T/APP/C/89/Z1510/000016-17/P6

Date

27 AUG 90

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
HOUSING AND PLANNING ACT 1986 LOCAL GOVERNMENT ACT 1972 SECTION 250 (5)
APPEAL AND APPLICATION FOR COSTS BY PERRY AND SARGENT LTD
LAND BETWEEN NOS 19 & 21 LYONS HALL ROAD, BRAINTREE, ESSEX.

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against two enforcement notices issued by the Braintree District Council concerning the above mentioned land. I held an inquiry into the appeal on 19 and 20 June 1990. At the inquiry an application for costs was made against the Council on behalf of your client and I deal with this separately below.

NOTICE A

2. a. The date of the notice is 31 October 1989.
- b. The breach of planning control alleged in the notice is the change of use by way of intensification of use for the storage of building materials.
- c. The requirements of the notice are : (1.) To cease using the land for the storage of building materials except on an area of land not to exceed 20 sq m. or a height of 1½ m. (2.) To remove the containers used for the storage of building materials from the site.
- d. The period for compliance with the notice is two months.
- e. The appeal was made on the grounds set out in S88(2) (b) (e) (g) and (h) of the 1971 Act as amended.

NOTICE B

3. a. The date of the notice is 31 October 1989.
- b. The breach of planning control alleged in the notice is the change of use for the storage of building materials.



c. The requirements of the notice are : (1.) To cease using the land for the storage of building materials. (2.) To remove all building materials from the site. (3.) To remove the containers used for the storage of building materials from the site. (4) To remove all materials used to harden the surface of the said land.

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

e. The appeal was made on the grounds set out in S88(2) (b) (e) (g) and (h) of the 1971 Act as amended.

4. All the evidence was taken on oath.

THE SITE AND SURROUNDINGS

5. The appeal site is located on the south-west side of Lyons Hall Road, between frontage residential development to the north-west and the south-east. It is a similarly sized plot to the adjacent bungalows and extends to the same depth, with open land at the rear. There is also residential development on the north-east side of Lyons Hall Road.

6. There are 4 large containers at the rear of the site which are used for the covered storage of building materials. The major part of the site is given over to the storage of building materials with a vehicular access through the centre, able to accommodate heavy goods vehicles. Storage on the site extends from the back of the footway and verge along both sides of the site and the materials stored are those likely to be found in the yard of a general builder. Some materials notably tiles are stored in racks above ground level, others are stored on pallets and on the ground which is surfaced with gravel. There is a diesel fuel tank on the site. The rear garden boundaries of the adjacent dwellings have fences between 4ft and 6ft in height along the appeal site boundary. The site is open to the road.

BACKGROUND

6. The appeal site is the last piece of land remaining from a plot acquired in 1934 by Perry and Sargent having a frontage of 252 feet to the highway. Five dwellings were built on the land by the builders Perry and Sargent during the 1930's, these being Nos 9-17 Lyons Hall Road. Following the construction of those houses, the appeal site and the site of what was later to be No 19 remained as an open double plot. In December 1948, permission was granted for a bungalow on the site of what is now No 19 but the permission was not implemented. The use of the land at that time was stated in the application to be as a builder's yard (Doc 10/5). A subsequent planning permission was granted on 2 February 1960 for a bungalow which was erected soon afterwards and is No 19 Lyons Hall Road. The use of the land as declared in the planning application at that time was as a builder's yard (Doc 10/6). In 1966 and 1969 planning permissions were granted for the erection of lock-up garages on the appeal site (Doc 10/9 & 10/10). The Council's register of applications describes the site as being a builder's yard.

7. An application for a bungalow on the appeal site received planning permission on 16 February 1982, but the proposal was never implemented. An application for an Established Use Certificate in respect of a builder's yard use of the appeal site was refused by the Council on 7 October 1988, on the grounds that inadequate information had been submitted (Doc 10/13). A letter from the Council of 12 January 1989, stated that the land now referred to as the appeal site, first appeared on the valuation lists for rating purposes on 21 December 1962, at a rateable value of £25.

THE CASE FOR THE APPELLANT - NOTICE A and B

THE APPEAL ON GROUNDS (B) AND (E)

8. In support of your client's case, various witnesses described their recollection of the appeal site from the 1930's to the present day.

9. Mr Gunn was born in 1930. He lived at No 52 Lyons Hall Road until 1944 and he had clear recollections of playing on the site as a child. He recalled the site with a shed in the bottom left hand side and another open sided shed which contained scaffolding and ladders. He said that the site was covered with bricks, tiles and second hand building materials and that there was a pond on the site. He also recalled Mr Tom Perry visiting the site which was in regular use as an operational builder's yard. He has noted its continued existence as a builders yard since 1944. In cross examination he could not recall whether the site extended to No 19, nor could he remember the bungalows being built, but he said that building materials are now being stored on the site of the old pond.

10. Mr Lee was born in 1937. His parents lived at No 9 Lyons Hall Road and he recalled as a child playing on the appeal site. He said that there was a pond on the appeal site and that the site was substantially covered with sheds, bricks, sand and similar materials. He lived at No 9 until 1958 and has continued to visit the bungalow until 1988 as it remained within family ownership. Apart from the disappearance of the pond and the construction of a bungalow on part of the yard, he said that there had been little change to the appearance of the site over the years that he had known it. In cross examination he said that he was unable to remember any details since 1963 except that the site has remained operational.

11. Mr Bearman has been familiar with the appeal site since the early 1950's. He did a paper round for 3 years and later worked at the post office/shop at the corner of Lyons Hall Road. He recalled the site and the pond together with heaps of sand, bricks tiles and sheds on the land. In 1959/1960 he worked for Tom Perry and the appeal site was the main base of the business operations. He recalled a shed used for the storage of timber and another for the storage of scaffold poles and ladders. In addition there was a cement and plaster shed. Some rubble was used to infill the pond and some to harden the access through the site. The appeal site has remained much the same as he remembered it then. In 1973 he began working again for Tom Perry as a van driver as he had done earlier and he has continued until the present time to work for Perry and Sargent Ltd. The site was used less during the period from 1980 to 1988 when the majority of materials were stored at Rayne Road, but an old timber shed, sleepers, corrugated iron, bricks, topsoil and hardcore still covered a large part of the site. Topsoil was piled up to 1.5m in height and hardcore up to 2.5m. In the last couple of years containers have been placed on the site. In cross examination, he accepted that there were more visits to the site now than in 1959/1960 and that the site is now smaller. In re-examination he said that the same type of materials are on the appeal site now as were there before No 19 Lyons Hall Road was built, except that sand is no longer stored and the level of storage activity has increased.

12. Mr Cleal lived at 7 Lyons Hall Road from 1957 to 1970 and he worked as a bricklayer for Perry and Sargent soon after moving in until 1965. He recalled sheds and stored materials on the site including a lime compound, trailers and cement-mixers. He also recalled the pond and its infilling with demolition materials. Bricks were delivered in bulk to the site and Mr Perry would take smaller quantities to individual contracts by trailer. When working for Perry and Sargent he would have visited the site every few days.

Apart from the infilling of the pond and the erection of No 19, there has been little change in the appearance of the site which he last saw in about July 1989. In cross-examination he said that the nature of the work undertaken by Perry and Sargent varied from alterations and bathrooms to extensions and new houses.

13. In a written statement Mr Poulton said that he moved to No 17 in 1961 and that he had been aware of the builder's yard on the site since the 1950's. He stated that he still sees the site regularly although he sold No 17 about 4 years ago. The appearance has remained substantially the same although materials are piled higher and more neatly than before. The site has been cleared of brambles and weeds and some materials are now stored in containers instead of sheds.

14. In a sworn affidavit, Mr Fleming said that he was employed by Perry and Sargent for 9 years in the early 1960's and since then he has worked for the firm on a sub-contract basis. Rubbish and surplus materials were sent to the appeal site. He recalled 2 sheds on the appeal site: one for storing wooden scaffolding poles and another for general storage. Other sheds were stored on the appeal site if not required on a particular contract site. Some sheds were repaired on site, bricks were cleaned and concrete lintels were cast and the site has been used for storage for as long as he can recall. A good deal of materials were removed from the site in about 1980 when the firm bought a site in Rayne Road, but some materials have remained there. The use of the site has increased in the last couple of years.

15. Mr McFadden, a former employee of the Urban District Council of Braintree and Bocking retired as head of Planning Control and Building Control for Braintree District Council in 1985. He recalled seeing a bungalow being built in the front right-hand corner of what appeared to be a builder's yard. He had no knowledge of the site before 1959. His recollection from the site history, from information from another officer of the council and from an elected representative, made it clear to him that the use of the appeal site and the site of No 19 Lyons Hall Road had been established as a builder's yard prior to 1948. He therefore considered in 1963/64 that the site had an established use as a builder's yard and that there was little to be done to control the use of the site for that purpose. He referred to correspondence which supported that view (Doc 7/1-7/4). He was not directly involved with the site in subsequent years although correspondence went out from the Council under his signature (Doc 7/11-7/16). He believed that the normal use of the site before the coming into force of the Town and Country Planning Act 1947 was as a builder's yard and that such use is therefore the lawful use of the site.

16. In cross examination Mr McFadden said that part of the site at the rear of No 19 had material stored on it, as did the appeal site when No 19 was being built. He said that there is more material there now than in the early 1960's and also noted that the building industry has changed over the years. He did not accept that a material change of use of the site had taken place.

17. Mr James Norman Perry is the son of Thomas George Perry who traded as a builder under the name of Perry and Sargent. In 1961 he began business on his own account working mainly for his father. In about 1970 he took over the business from his father and the ownership of the appeal site was transferred to Mr James Perry from his father in 1988. He said that No 17 Lyons Hall Road was built for his grandparents who lived there from the time it was built and his grandfather was able to look after the site. Mr Perry recalled the site from the early 1940's. There was an access track, a pond and a ditch along the south-east boundary. As a boy he used to wander round the yard, then a double plot, and he recalled materials and sheds on the site. He remembered

the ditch and pond being filled in over the years and said that all the bulky items were kept on the site which was used as a base for his father's business. No 19 Lyons Hall Road was built in 1961 reducing the size of the yard and as with any builder's yard its use varied over the years. Where possible deliveries were made directly to the site concerned. Re-usable materials and surplus materials have been stored on site, as have sheds when not required on contract sites. Over the years, methods of handling materials have changed. Bricks are no longer unloaded by hand, but delivered in bulk and unloaded with a fork lift truck. This has been more efficient and has led to an increased height of storage.

18. Most of the better materials on the site were moved to a site at Rayne Road in 1980, but the appeal site continued to be used as a store. In addition to the storage of building materials, brick rubble and topsoil have been stored and sometimes sold from the appeal site. In 1988 the Rayne Road site was compulsorily purchased by the Council. Many stored materials were sold and the remainder were removed to the appeal site. In April 1988 the appeal site was tidied up and a stone surface laid. All the heavy materials were transferred to the appeal site together with a fork-lift truck to lift the pallets. An old shed was demolished and 4 containers were placed on the land. Mr Perry regards the appeal site as an essential base for the company operations, although he may in due course seek a larger and better located site and ultimately seek to build a bungalow on the appeal site.

19. During cross examination, Mr Perry was not able to say whether the materials on site originally were to do with the bungalows being built there. He agreed that about half of the area of the appeal site would have been taken up with the pond and the ditch. During re-examination Mr Perry said that some minor work has been undertaken over the years in repairing sheds and in disposing of materials. The filling in of the ditch and pond was completed by the early 1960's. Currently there is a skip on the site and a fork-lift truck is there for part of the time.

THE CASE FOR THE COUNCIL - NOTICE A and B

THE APPEALS ON GROUNDS (B) & (E)

20. In support of the Council's case, reliance was placed on the evidence of Mr Goodwin and Mr Dowsett and documentary planning records which have been noted in paragraphs 6 and 7 above.

21. Mr Goodwin has lived continuously at No 21 Lyons Hall Road since June 1957. The appeal site was an empty plot overgrown by weeds with only a few items of rubbish and 2 old garden sheds, as confirmed by photographs taken in 1962/63 (photos 1-5). The site was virtually empty until about 1969 when some clearing-up was done and hardcore, spoil and building rubbish were placed on site. The amount of material on site varied and a photograph taken in 1988 (Photo 6) indicated the use then. From 1969-1988 the use of the land remained largely unchanged. In 1987 the site was cleared of rubbish. Stone was laid and 3 or 4 container units were placed on the site. Since then, the site has been used full time as a builder's yard with a fork lift truck on site for loading and unloading lorries on a daily basis. Before the Rayne Road site ceased to be available to Mr Perry, he made no use of the appeal site except for the rubbish dumping. The site has less material stored there now, following a clearing operation about one week before the inquiry.

22. In cross examination, Mr Goodwin accepted that there was activity on the site in 1957 namely the collecting of tiles and bringing back spoil. He did not regard the use then as that of a builder's yard with only about 2 or 3 visits each week. Building materials were moved onto the site when No 19 was

being built in 1962 and old materials were taken out and the pond was being filled in. After 1962 the activity was about the same, with only occasional visits by the contractor until about 1981. He accepted that the site was not unused but said that it was not used at all frequently. The use increased for a period in about 1981 when material was taken away, he believed, to the Rayne Road site. After 1981 hardcore and topsoil were placed in piles up to 8 feet high on the site. Mr Goodwin described these materials as builder's rubbish.

23. In re-examination, Mr Goodwin said that between 1957 and 1964, there would have been about a dozen piles of materials on the site up to about 4 ft in height. Since 1988 there is substantially more equipment with stacking of up to 3 pallets, about 10 ft high, adjacent to his windows. There are few weeds now. Visits are more regular and often in the early morning with a van and lorry. Prior to 1964 Mr Perry had only a van and small trailer. The visual impact of the site now has greatly increased and materials stacked near the front of the site can very easily be seen.

24. Mr Dowsett has lived at No 19 Lyons Hall Road since 1967. At that time he said that the appeal site was vacant except for a small pile of roofing tiles. The site was overgrown and the weeds were 6 or 7 ft tall. This remained the situation until 1969/70 when hardcore, spoil and building rubbish was stored on the site. At no time was more than one quarter of the site covered by such material. The site was completely cleared in 1986/87, shingle was laid and metal containers were moved in. The site rapidly became a busy builder's yard with work being carried out daily from 6.30 am and at weekends. Lorries attend continually and there is constant noise, dust and views of high stacks of materials. Heavy lorries park outside the yard in the highway and visitors to his house have difficulty in parking.

25. In cross examination Mr Dowsett said that he did not know what the weeds concealed on the site, nor was he aware of what was in the sheds in the late 60's early 70's. There may have been piles of bricks delivered and taken off site later.

CONCLUSIONS

NOTICE B

The appeal on ground (b)

26. On ground (b) your client has sought to claim that there has been no breach of planning control on the basis that the use enforced against, was subsisting on the appointed day (1 July 1948). There is minimal information to assist here, which is only to be expected after the passage of 42 years. There is no evidence that rates were charged on the site until 1962. The 5 dwellings that were built on land purchased in 1934 were likely to have been completed by 1937-38. The appeal site and what is now No 19 Lyons Hall Road together appeared to have been the builder's yard associated with the building of those 5 dwellings and as such its use until about 1938 would have been ancillary to the building operations and not as a builder's yard in its own right. On the balance of probabilities, it seems likely that some materials were left on site after 1938 and with the onset of war there would have been little activity there. Mr Perry said that building materials were scarce at that time, work was only carried out under licence and the restrictions continued until 1948 or 1950 when the trade quickened and new building began.

27. Bearing in mind the almost inert 10 or 12 year period between 1938 and 1948/50, there is no positive evidence to show that the site had become a builder's yard in its own right. I have reached the view that the use of the site was effectively in suspense pending the improved post war economic climate when there would be further development on the remainder of the site bought in 1934. Planning permission was granted in 1948 for a bungalow on the site of what is now No 19 Lyons Hall Road and was then part of the builder's yard. In that context there is support for the view that the ancillary use of the yard had effectively carried forward until at least 1948 when planning permission was granted. This would not have precluded any other minimal activity in the intervening period. When that planning permission was not implemented any argument that the appeal site and the adjacent site to the north-west were still ancillary to the building development would have been significantly weakened. This conclusion, that the appeal site on the appointed day was not a separately defined builder's yard is not contrary to the evidence given by witnesses who were young boys at the time. It rests on what was the probable planning position, which would not necessarily have been apparent from the state of the site then. For these reasons your client's appeal on ground (b) fails.

The appeal on ground (e)

28. On ground (e) your client has sought to show that the change of use to a builder's yard had occurred before the beginning of 1964. As one would expect, there is more evidence available than for the previous ground and it seems to me that it flows on from the findings of ground (b). I find support for this ground of appeal from the fact that rates have been charged against a builder's yard on the appeal site since 21 December 1962 (Doc 8). This roughly corresponds with the time the appeal site had been reduced to its present size, following the construction of No 19 Lyons Hall Road. Photographs 1-5, taken I understand in 1962 or 1963, indicate parts of the site at particular points in time. On four of the photographs, one or more timber huts are clearly visible, as are building materials or building debris. Evidence given at the inquiry by various witnesses indicated that the materials that have been there have in the past been partly covered by weeds. From this, I form the view that whilst the site was not particularly active during the 1950's and 1960's, it was nevertheless still in use as a builder's yard. Mr Goodwin is, as the adjacent land owner from 1957, best situated to recall detail over the years. He did not regard the use then as that of a building site, but he accepted that 2 or 3 visits a week were made to the site from about 1957-1962 after which and until 1981 he described the use as infrequent. From interpreting and comparing the evidence of all the witnesses, I am left with a clear impression that the site was being used as a builder's yard from before 1962/63 until the present day, although the level of activity has fluctuated considerably.

29. Letters from the Council and the pre-1974 Urban District Council of Braintree and Bocking expressing officer's opinions on the site also add weight to your client's case. A letter from the Council in 1963 stated that "the site has an established use for storage purposes" (Doc 7/1). A letter dated 10 January 1964 from the Council said that "this site has an established right of use for the open storage of building materials"(Doc 7/4). A letter dated 10 September 1979 states that the site "may have the benefit of an established use within the meaning of the Town and Country Planning Act 1971" (Doc 7/11). These letters were written during the time when the actual activities on the site were in question and I have to conclude that the use of the site at those times was at least for the open storage of building materials.

30. On the strong balance of probability, I find that the breach of planning control alleged in Notice B occurred before 1964 and your client's appeal on ground (e) therefore succeeds. In these circumstances, neither the appeals on grounds (g) and (h) nor the deemed application fall to be considered.

NOTICE A

The appeal on ground (b)

31. Having found that the appeal on Notice B failed under ground (b) there was no separate "planning unit" use of the site as a builder's yard on 1 July 1948. This particular ground was not developed by your client who claimed only that any intensification of use which has taken place over the last 50 years or so was within normal latitudes for such a site and did not constitute a material change. It cannot be argued that there has been no intensification of use since 1948 therefore this ground of appeal does not now fall to be considered.

The appeal on ground (e)

32. In relation to this ground your client reiterated his appeal under ground (b) and set out in the statement of facts that if there had been any intensification of use to such an degree that it involved a material change of use it is claimed that such material change took place before the beginning of 1964.

33. Having established that the pre 1964 use of the appeal site was for the storage of building materials it is necessary to establish whether, since 1 January 1964, there has been a material change of use of the site by way of intensification.

34. In further submissions in support of the appellant, it was stated that the use of the site had not changed in character over the years and that there can be intensification without change in the character of the use (Doc 14).

35. The Council's submissions were that on the evidence presented there has been a fundamental change in the use of the site amounting to a material change of use of the site. Even if there is some established use on the site it is not of the magnitude of the present use.

36. It seems to me that the use of the site has increased since the early 1960's, notwithstanding a lesser level of activity when your client was also using the Rayne Road Site from about 1980 to about 1988. The evidence on this is generally consistent and the concern of neighbours has been that the use has increased, especially since 1988. Although the name of the firm has changed from Perry and Sargent to Perry and Sargent Ltd, the land has remained in the ownership of the same family and more recently in the ownership Mr J N Perry, the principal shareholder in the Company. There has therefore been a continuity of ownership within the building trade and it is only to be expected that the level of use of the site would vary as would the type of work undertaken by the firm, be it extensions, bathroom conversions or new house construction.

37. The long standing use of the site as a builder's yard has led to the success of your client on ground (e) of Notice B. Over a period of time improved handling techniques and different forms of packaging have had their effect on the site. Pre-packed bricks are delivered on pallets and other materials such as pipes are delivered in bulk requiring mechanical handling

which is provided on the site by a fork-lift truck. Other materials, for example timber and scaffolding, are stacked on site in the traditional manner. There has been an updating or modernization in the way in which the site is being used together with, at the present time, a greater use of the site. As a matter of fact and degree I do not consider that the accepted more intensive use of the site in the last 3 years has created a material change of use of the land. The site is still the builder's yard of a small builder and there is no change in the definable character of the use. (There is an analogy between your client's use of the appeal site and the use of a restaurant where the kitchens have been modernized and the seating capacity has been increased. In this latter case the character of the activity has not changed and the business remains essentially the same.)

38. In the Royal Borough of Kensington and Chelsea v the Secretary of State for the Environment and Mia Carla Ltd QBD 23 July 1980, Lord Justice Donaldson made the following observation. He said that in planning terms intensification means a change to something different and not merely more, or a denser composition of the same thing. What has occurred on the appeal site is that there has been more of the same form of development and a denser composition of stored materials. There has been no change "to something different" and as a consequence, the appeal on ground (e) succeeds. In these circumstances, neither the appeals on grounds (g) and (h) nor the deemed application fall to be considered.

39. I have taken account of all the other matters set out in the representations and put forward at the inquiry in relation to these 2 notices, but they do not outweigh the considerations which have led to my decision.

FORMAL DECISION

NOTICE A

40. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and quash the notice.

NOTICE B

41. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and quash the notice.

RIGHT OF APPEAL AGAINST DECISION

42. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal to the High Court against the decision are enclosed for those concerned.

THE APPLICATION FOR COSTS

43. In support of the application for costs on behalf of your client you said that you appreciated that there has to be unreasonable conduct on behalf one party before an award of costs is made. You accepted that the local planning authority is not estopped from denying statements and that is a material consideration here. You referred to correspondence with the Council following the failure of the application for an Established Use Certificate (Doc 10/13) but you accepted that the application did not contain much evidence. Before issuing the enforcement notices, the Council should have thoroughly searched their records and considered the case put forward in your letters (Doc 12). No reasoned reply was forthcoming (Doc 13) nor did the presentation of the Council's case at the inquiry reflect their view at that

time, there being no mention of intensification until the issue of the enforcement notice. Notice B is unreasonable and lacking in substance and Notice A is unreasonable because it had not been drawn to your client's attention earlier. You added that the fact that the premises had been rated as a builder's yard had not been given due weight and in the absence of interested parties at the inquiry you asked whether the complaints from neighbours have been sufficient in the face of the correspondence referred to above.

44. In reply the Council said that the only basis for any claim should have been that the "McFadden" letters (Doc 7/1-7-4) should have been accepted, there being no other documents referring to the post 1964 situation. Those letters themselves are confusing relating to a shed on the site as well as open storage. The 1988 application for an EUC contained no supporting information at all and no response was forthcoming from the appellant to a letter from the Council seeking detailed information (Doc 11). The information presented at the inquiry could have been brought forward then. The Council relied on the neighbour's photographs and the intensification on the site which they regarded as an alteration to the basis of operations. It remained the Council's case that they had not acted unreasonably nor had they put the appellant to unreasonable expense.

45. In a counter response you said that information had been provided to the Council to enable them to reconsider their position, but they chose not to do so (Doc 12/1 & 12/2). The letter of response merely stated that enforcement action would be pursued (Doc 13).

CONCLUSIONS

46. In determining the application for 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 appeals, and that costs are awarded only on grounds of unreasonable behaviour. Accordingly, I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances in this appeal.

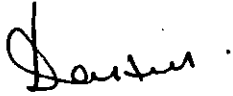
47. I accept that the McFadden letters support your case in respect of the ground (e) appeals which met with success at the inquiry but the main point of your letters of 7 November 1988 and 31 January 1989 relates to a ground (b) claim and a use pre 1 July 1948. This latter ground of appeal failed. In your letter of 31 January 1989, you said that the the issue of an enforcement notice "does seem to be the the best way of bringing the matter to a head if you (the Council) are unwilling to concede the arguments set out in our letter". Your letter of 31 January led to a meeting with the Council and some months later, to a reply from the Council stating that they would be taking enforcement action (Doc 13). The shortness of this letter does not necessarily belie any due considerations by the Council who had the benefit of your letters, the January meeting and the history in their own files to consider. They chose to issue the change of use notice and the intensification notice as a proper response to the activities on the site, in the light of their research and in an attempt to enforce against a use which sits unhappily alongside residential properties. This is very much a local issue and lack of other interested parties at the inquiry is not a relevant factor where the Council are seeking to represent those whom they serve.

48. In all the circumstances therefore I do not consider that the Council have acted unreasonably in issuing the notices.

FORMAL DECISION ON COSTS

49. For the above reasons and in exercise of the powers transferred to me, I hereby refuse your client's application for an award of costs.

I am Gentlemen
Your obedient Servant

A handwritten signature in cursive script, appearing to read 'D A Hill', followed by a period.

D A Hill BSc CEng MICE
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

Mr P J Hutton LLB

Young and Co, Solicitors

He called

Mr E J Gunn

46, Aetheric Road, Braintree.

Mr D C Lee

10, Sloe Hill, Halstead.

Mr T H Bearman

37, Arnhem Grove, Braintree.

Mr K A Cleal

"Beamley", Wethersfield Road,
Finchingfield.

Mr W C McFadden

54, Church Lane, Bocking,
Braintree.

Mr J N Perry

Principal Shareholder in Perry
and Sargent Ltd.
292 Bocking Church Street,
Braintree.

FOR THE PLANNING AUTHORITY

Mr D W G Whipps LLB

Solicitor and Partner in the firm
Holmes and Hill, Trinity Street,
Halstead, Essex.

He called

Mr W Goodwin

21, Lyons Hall Road, Bocking,
Braintree.

Mr J W Dowsett

19, Lyons Hall Road, Bocking,
Braintree.

Mr K Turner

Enforcement Officer, Braintree
District Council.

Mr J R Cowlin

Planning Officer -Development
Control Braintree District.

DOCUMENTS

- | | | |
|----------|----|--|
| Document | 1 | List of persons present at the inquiry. |
| " | 2 | Notification of Inquiry and circulation list. |
| " | 3 | Letter in support of the Council. |
| " | 4 | Application for Established Use Certificate of 11 Nov 1981
not apparently received by the Council. |
| " | 5 | Affidavit of Mr J D Fleming. |
| " | 6 | Statement of Mr D W Poulton, read out at the Inquiry. |
| " | 7 | Bundle of Correspondence referred to by Mr McFadden. |
| " | 8 | Letter from Braintree District Council concerning the Rating
of the premises. |
| " | 9 | Copy of Conveyance of land including the appeal site in 1934
and attached memorandum of subsequent part sales. |
| " | 10 | Statement of the planning history of the appeal site and
associated reference documents with index. |
| " | 11 | Letter from Braintree District Council 20 July 1988 seeking
further information in support of the Established Use
Application. |
| " | 12 | Correspondence from the appellant's agent to the Council
7 November 1988 and 31 January 1989. |
| " | 13 | Letter from the Council 2 June 1989. |
| " | 14 | Extract from the Planning Encyclopedia 6-105/108. |

PLANS

Plan	A	Enforcement Notice Plan A and B, scale 1/2500.
"	B	Elevational Section of a building once present on the appeal site.

PHOTOGRAPHS

Photo.	1 - 5	The Appeal site in 1962 or 1963.
"	6	The Appeal site in 1987 or 1988 before the appellant's move from Rayne Road.
"	7 - 9	The Appeal site in 1989.