

Yr Arolygwyr Cynllunio

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The Planning Inspectorate

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Your ref/Eich cyf:
LP/CJ/201141

Our ref/Ein cyf:
APP/A/94/507721
C/94/507354
C/94/507355

Date: **20 OCT 1995**

Gentlemen

**TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND
SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
LAND AND BUILDINGS AT NANT OER FARM, HARDWICK, ABERGAVENNY**

1. As you know, I have been appointed by the Secretary of State for Wales to determine the appeals against 2 enforcement notices issued by Monmouth Borough Council and a refusal of planning permission by the same Council. I have considered the written representations made by you and by the Council, and also those of interested persons. I made an accompanied visit to the site on 2 October 1995.

The enforcement notices and section 174 appeals.

Notice P40/40/200 (WO ref: C/94/507354)

2. a. The notice is dated 26 May 1994.
- b. The breach of planning control alleged in the notice is, without planning permission:
 1. the making of a material change in the use of the land from use for agricultural purposes to use for the retail sale of goods;
 2. the siting of portakabins in connection with a cafe and retail uses;
 3. the siting of a wooden building.
- c. The requirements of the notice are to cease the use of the land for the retail sale of goods; remove all

portakabins, caravans, box vans and temporary buildings from the land in connection with the retail and cafe use; and remove the wooden building from the land.

- d. The period for compliance with the requirements is 3 calendar months.

3. The appeal was made on grounds (a), (c), (f) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say, that in respect of any breach which may be constituted by the matters stated in the notice, planning permission ought to be granted (ground a); that those matters do not constitute a breach of planning control (ground c); that the steps required by the notice are excessive to remedy any breach of control or injury to amenity (ground f); and that the period for compliance specified in the notice falls short of what should reasonably be allowed (ground g).

Notice P40/40/199 (WO ref: C/94/507355)

- 4.
 - a. The notice is dated 26 May 1994.
 - b. The breach of planning control alleged in the notice is, without planning permission:
 - 1. the formation of a parking area;
 - 2. the erection of lighting columns;
 - 3. the formation of hard standing areas.
 - c. The requirements of the notice are to:
 - 1. remove the hardcore and chippings forming the parking area from the land; replace the hardcore with soil; and seed the area with grass seed.
 - 2. remove the lighting columns;
 - 3. break up and remove from the land all concrete, tarmac and other hard surfaces.
 - d. The period for compliance with the requirements is 3 calendar months.

5. The appeal was made on grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say, that in respect of any breach which may be constituted by the matters stated in the notice, planning permission ought to be granted (ground a); that the steps required by the notice are excessive to remedy any breach of control or injury to amenity (ground f); and that the period for compliance specified in the notice falls short of what should reasonably be allowed (ground g).

Section 78 appeal (Welsh Office ref: A/94/507721).

6. The development for which planning permission was refused on 7 September 1994 under LPA notice A37314 is described as the retention of nursery & stock production, retail sales and farm kitchen/cafe at Nantoer Nurseries and I have treated the application as made under section 73A of the Act. In a letter of 6 May 1994 from yourselves to the Council it was explained this description included the rearing of piglets, growing of farm crops and vegetables, propagation of nursery stock and retail sale of fruit, vegetables, farm produce, logs, animal fodder, pet food and ancillary products (such as prepacked coal and butane gas cylinders).

Site and surroundings.

7. The site comprises just over 1ha of triangular shaped land located on the east side of the A4042 road, some 200m from the major road junction of the A465/A40/A4042 just to the south of the town of Abergavenny. The site is bounded to the north by a field extending up to the major road junction, to the south-east by a tree lined track beyond which is farmland adjacent to a railway and the A40 trunk road, and on the opposite side of the A4042 road to the west and north-west are the main Nant Oer Farm holding and an access road linked to a large poultry factory. South of the site is open countryside leading towards the village of Llanellen.

8. At the time of my visit the wide, sloping, northern end of the site which contains a HV electricity pylon was being used for growing potatoes and rearing 8 young pigs. The adjacent area to the south was in use for storage of a substantial amount of timber stacked about 5m high, some of which was being sawn and split into firewood logs and stacked in a large open storage building of recent construction. Next to that store was a portakabin used as an office and living accommodation by the appellant and 2 containers used as workshop/stores. In the middle of the site was a large car parking/access area, with portakabins, box bodies and other structures to the east being used for food and freezer storage, a cafe and a kitchen. To the south of the parking area was a compound for the display of garden plants and an area fringed by a polytunnel, 6 box bodies displaying animal feed and other goods, together with a wooden shop building and plant display area. The main sales from the shop appeared to be various food products, animal feed and plants. The remaining portion of the site was vacant, apart from a few parked staff vehicles.

Planning history and policy background.

9. It appears the retail use of the site began in mid-1990 as an ancillary activity to agriculture, but subsequent works and use of the site gave rise to the issue of enforcement notices by the Council in March 1991 alleging a material change of use from

agriculture to retail sales and unauthorised operations involving the construction of a building, parking area and security fence. An appeal against the notices was determined in February 1992 [WO ref: P33/1453] when they were quashed and a 2 year temporary consent granted for the use and operations to expire on 31 March 1994.

10. It is important to note the Inspector did not consider permanent consent should be granted for the type of retail use of the site being undertaken at that time. His reason for granting temporary consent was to give the appellant a chance to establish a 'farm shop' ancillary to Nant Oer Farm which could be carried on without the need for planning permission, along the lines indicated in paragraph B2 of PPG 7.

11. The evidence shows that following the appeal decision various changes took place at the site. The steel framed building and a polytunnel were removed and various containers and temporary structures were brought in and used to sell goods from. For a time caravans were also sold from the site. The business plan of the appellant submitted to the 1992 inquiry envisaged the proportion of home produce sold from the site would increase from 20% in 1991 (40% in peak season) to 50 - 60% (90% in peak season) in 1993. However, following the issue of the current enforcement notices your letter to the Council of 24 June 1994 indicated that by that time home grown produce accounted for between 50 - 80% of turnover, depending on the season, with an estimated average of 60%. Following a site meeting with the Council this was revised in a letter of 25 August 1994. Although this letter showed the piglets and most of the vegetables were farm produced, about 40% of plants and most of the fuel and fodder were imported.

12. On the matter of relevant policies affecting the development, the parties have drawn attention to various extracts from national advice in PPG1, PPG 4, PPG 6, PPG 7 and PPG 18 concerning retail development and the treatment of small businesses. With regard to the development plan for the area, the approved 1990 Gwent Structure Plan and the emerging deposit 1992 Structure Plan have no retail policies of direct relevance, although policies SH2(A) and SH3(A) of the approved plan which are perpetuated in the proposed Structure Plan seek to promote the vitality and viability of existing town centres such as in Abergavenny. Policy C10(A) of the approved Structure Plan seeks to conserve and protect the character of Special Landscape Areas. Policy C5 of the proposed replacement plan requires development to harmonise with the Special Landscape Area and preferably enhance its landscape.

13. The adopted 1990 Abergavenny Local Plan strongly resists retail development outside the central shopping area (policy S3). The emerging Monmouth Borough Local Plan was placed on deposit in September 1993 and is at a post-inquiry stage. Policy S9 supports the provision of retail outlets in neighbourhood centres and villages. Policy S10 permits garden centres in the countryside subject to various criteria, but the explanatory text distinguishes between nurseries and the more intensive commercial

garden centres which it states should be confined to built-up areas. The proposed policy precludes development which would unacceptably harm a Special Landscape Area and its criteria seek to restrict the type and design of structures to be erected and range of goods to be sold. Objections have been raised to this policy through the Local Plan process. The appeal site is included within a Special Landscape Area and policy C3 of the deposit Local Plan requires acceptable development within it to be of a high standard of design.

Section 174 appeal on ground (c).

14. Your case is that there has been no breach constituting a material change of use because the land is used mainly to grow and sell your client's farm produce, so the retail use is ancillary to agriculture. The Council contend significant amounts of imported produce and goods are sold and point out part of the site is used as a cafe.

15. In considering this matter, I have taken account of case law, including *Williams v MHLG* (1967) and *Bromley LBC v Hoeltzsch* (1977). The written evidence about the amounts of imported goods and produce sold from the site around the time of the alleged breach shows clearly they are well above a 'de minimis' level and as a matter of fact and degree so significant that the use cannot possibly be regarded as ancillary to the agricultural unit. My visit confirmed this situation when I noted many goods and products were imported, such as much of the feed packs, many garden plants, fuel and timber, and jams and ice cream. In addition, I do not regard the cafe/kitchen as ancillary to the agricultural use of the holding and since the piglets reared on the site are slaughtered and packed elsewhere before sale I regard those intermediate processes prior to sale as breaking the 'ancillary' link. It is my conclusion planning permission is required for retention of the existing retail use of the site and, accordingly, the ground (c) appeal fails.

Section 174 appeals on ground (a) and section 78 appeal.

16. I consider the main issues arising from this aspect of the appeals are whether the retention of the retail use and operational development would, first, be contrary to the provisions of the existing and emerging development plan and second, cause demonstrable harm to the character and appearance of the countryside within the Special Landscape Area.

17. In relation to development plan policies, I have taken account of the advice in paragraphs 25 - 28 and 32 of PPG 1. The fact that objections have been lodged to policy S10 of the deposit Monmouth Borough Local Plan reduces the weight to be attached to its provisions and in the case of the Abergavenny Local Plan I am aware the appeal site falls outside its area and policy S3 can only apply to retail development within the plan boundary.

18. I consider that the town centre retail policies in both Structure and Local Plans which have been quoted have little direct relevance to the appeals, although the impact of the development on the vitality and viability of Abergavenny town centre must be accepted as a material consideration, as indicated in paragraphs 31 and 33 of PPG 6. However, you have pointed to the advice in paragraph 37 of PPG 6 and I agree that in this case there is no evidence to show your client's development would, in itself, undermine the town centre.

19. Even so, I believe the site is not an appropriate location for retail development and it seems to me there has been some misconception that providing it sells so-called 'home made' products, even though they are imported, this somehow validates its location in the countryside rather than in a settlement. It is the general thrust of national policy to concentrate retail development in settlements or areas designated for growth in development plans and not in the countryside, which is an objective echoed in policy S9 of the deposit Monmouth Local Plan. Also, as far as possible, retail development should be sited where it minimises car use and I noted on my visit that all customers seemed to arrive by car. These points are emphasised in paragraph 1.10 of PPG 7, paragraph 38 of PPG 6, and paragraphs 152 and 160 of the 1995 consultation draft PPG in Wales.

20. In addition, although the existing retail activities of this site may be considered by some to be low key, if permanent permission were granted it would be liable to expand or intensify considerably which I do not believe could be satisfactorily controlled by conditions and I am conscious the site covers quite a large area. I have noted that since its inception some 5 years ago there has been considerable variety in the scale, intensity and types of goods sold from the site and you say the farm "diversification is now more tenuous than it was" and is "purely a function of the business opportunities that the appellant has identified and seized upon". Further expansion could affect the free flow of traffic on the trunk road in the manner identified in the previous appeal decision letter (paragraph 18) and allowing retention of the existing use might also be seen as a precedent for applications for other sporadic shopping enterprises in the countryside, detrimental to its character and which cumulatively might impact on existing town centres.

21. Turning to the second issue, the site is within a Special Landscape Area and I believe the retention of the existing development would be harmful to the character and appearance of the local landscape, due to its scale, intensity of use and untidy layout and plethora of unsightly buildings, portakabins, box bodies and materials. I do not accept your view that the site is part of the urban fringe of Abergavenny but see it as being within, albeit on the edge, of open countryside which dominates the overall scene south of the A465/A40 trunk roads. On leaving the major road junction and travelling south the tree lined embankments of the A4042 road open out into a countryside vista which is marred by the appeal development which is only partially screened by the roadside hedge. Approaching from the

south, there is some screening by trees and hedging, but certain of the structures and the timber stack are intrusive. Some improvements could be made by additional landscaping, but this would take several years to mature and would not hide the site when passing by, especially in winter or when the site is lit up. You contend the appearance and function of the site has a strong relationship to the town, but this situation has arisen largely as a result of the unauthorised development so a comparison involving its former agricultural state would seem more appropriate.

22. As a consequence of the foregoing conclusions on the visual impact of the development, it is clear it does little to either conserve, protect, harmonise or enhance the landscape. Consequently, I find its use and associated operational development conflict with the underlying landscape objectives of policies C10(A) and C5 of the approved and emerging Structure Plan and policy C3 of the deposit Local Plan. For similar reasons I do not find the development complies with item 1 or criteria b) or c) of policy S10 of the deposit 1993 Local Plan, although I would regard the site as far more than just a 'garden centre' in terms of its overall composition of uses and range of goods.

23. I have noted your remarks about the future of the site if planning permission is not granted and you say the previous Inspector indicated it would not be desirable to operate it with the main farm. In fact, he only felt it would be inappropriate for use by stock, which does not preclude other agricultural use of an arable nature or possibly for forestry and given the small size of the main holding, I feel the site could be utilised to contribute to its overall viability. In any event, the acceptance of an argument that a site might become derelict or unsightly if permission were not to be granted could encourage owners to neglect their land.

24. I appreciate the development offers employment to local and disadvantaged people and I would not have wished to undermine this benefit, if the site's location was more acceptable. Employment could still continue to some extent if it were decided to reduce the activities to an 'ancillary' level or re-locate and I have not been shown these possibilities can be ruled out entirely. In all the circumstances, I do not regard the employment factor as overriding and I have taken some account of potential hardship under the ground (g) enforcement appeal.

25. It is my conclusion the development would undermine policies for the appropriate design and location of retail development and the safeguarding of the Special Landscape Area and be harmful to the character and appearance of the countryside landscape. Accordingly, the appeal on ground (a) fails and planning permission will not be granted for the development.

Section 174 appeals on ground (f).

26. With regard to notice P40/40/200 alleging a change of use, I agree with your contention that the requirement to cease all retail activity is unreasonable as it purports to remove your client's rights to do something which he is entitled to do without planning permission and would be contrary to the 'Mansi' principle. Accordingly, I shall vary the notice to require the cessation of the sale of products other than those grown or produced ancillary to the agricultural use of Nant Oer Farm.

27. I believe the structures and building used to sustain the existing retail use and cited in the same notice cannot be regarded as being designed or reasonably necessary for the purposes of agriculture and require planning permission. I consider they are an eyesore and should be removed in the interests of amenity. Accordingly, the ground (f) appeal fails in that respect.

28. In relation to the operations notice P40/40/199, I consider the lighting columns and hard standings are not needed for agricultural purposes and should be removed in the interests of visual amenity. In the case of the parking area it is next to the access and provides a turning area to enable vehicles to enter and leave in safety. It is a facility which could be used in connection with permitted agricultural purposes, including any 'ancillary' farm shop use, and visually it is constructed in 'scalpings' which has a less intrusive texture than a tarmac or other hard surface. These factors lead me to conclude the requirement to remove it is unduly onerous. Accordingly, the notice will be varied and the ground (f) appeal succeeds to the extent I have indicated.

Section 174 appeals on ground (g).

29. I appreciate the history of this development and the terms under which the previous appeal was allowed did provide some advance indication of the uncertain nature of the enterprise and also the opportunity to reduce its scale. Even so, it is not just the appellant who would suffer, but the staff and customers of this small business who might experience considerable hardship if trading were to cease too quickly. Also, it may be your client will decide to re-locate the business and require time to find an alternative site. The business is not apparently causing serious public disquiet and, in all the circumstances, I consider the period for compliance with both notices should be extended to 12 months and the ground (g) appeals succeed to that extent.

Other matters.

30. Having regard to my recommended variation under ground (f), I consider I should make it clear that I have assumed from the information given to me that the appeal site still forms part of the Nantoer Farm agricultural holding. In these circumstances if

it is decided to revert to an ancillary farm shop use then the sales could be derived from that whole unit, but if the appeal site becomes a separate unit in its own right then, in my view, sales would be limited to such as are ancillary to its own agricultural use.

31. I have taken account of other aspects of the history of the site in addition to those matters specifically mentioned above and also of the statements made at the previous appeal about the appellant's intentions if approval was granted. In addition, I have had regard to the local support for the development and all other matters raised in the representations, but find nothing to outweigh the considerations which have led to my conclusions on the main issues.

FORMAL DECISION

32. For the above reasons, and in exercise of the powers transferred to me:

(1) Section 174 appeal on Notice P40/40/200.

I hereby direct that the enforcement notice be varied as follows:-

- (a) by deletion of the wording in item 1 of Schedule 4 and substituting therefor the words 'Cease the use of the land for the retail sale of goods other than those grown or produced ancillary to the agricultural use of Nant Oer Farm.'
- (b) by deletion of "three calendar months" (being the time for compliance) contained in the operative part of the notice and substituting therefor the words '12 months.'

Subject thereto, I hereby dismiss the appeal, direct that the notice be upheld and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

(2) Section 174 appeal on Notice P40/40/199.

I hereby direct that the enforcement notice be varied as follows:-

- (a) by deletion of item 1 (1.1, 1.2, 1.3) from Schedule 4.
- (b) by deletion of "three calendar months" (being the time for compliance) contained in the operative part of the notice and substituting therefor the words '12 months'.

Subject thereto, I dismiss the appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

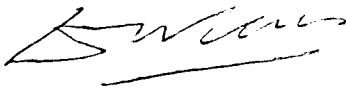
(3) Section 78 appeal on application A37314.

I hereby dismiss the appeal and refuse to grant planning permission for the retention of nursery & stock production, retail sales and farm kitchen/cafe at Nantoer Nurseries, Hardwick.

RIGHT OF APPEAL AGAINST THE DECISIONS

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

Yours faithfully

A handwritten signature in dark ink, appearing to read 'D N Wilks', with a long horizontal flourish extending to the right.

D N WILKS BSc(Hons) DipEM MRTPI MIMgt FRSA
Inspector