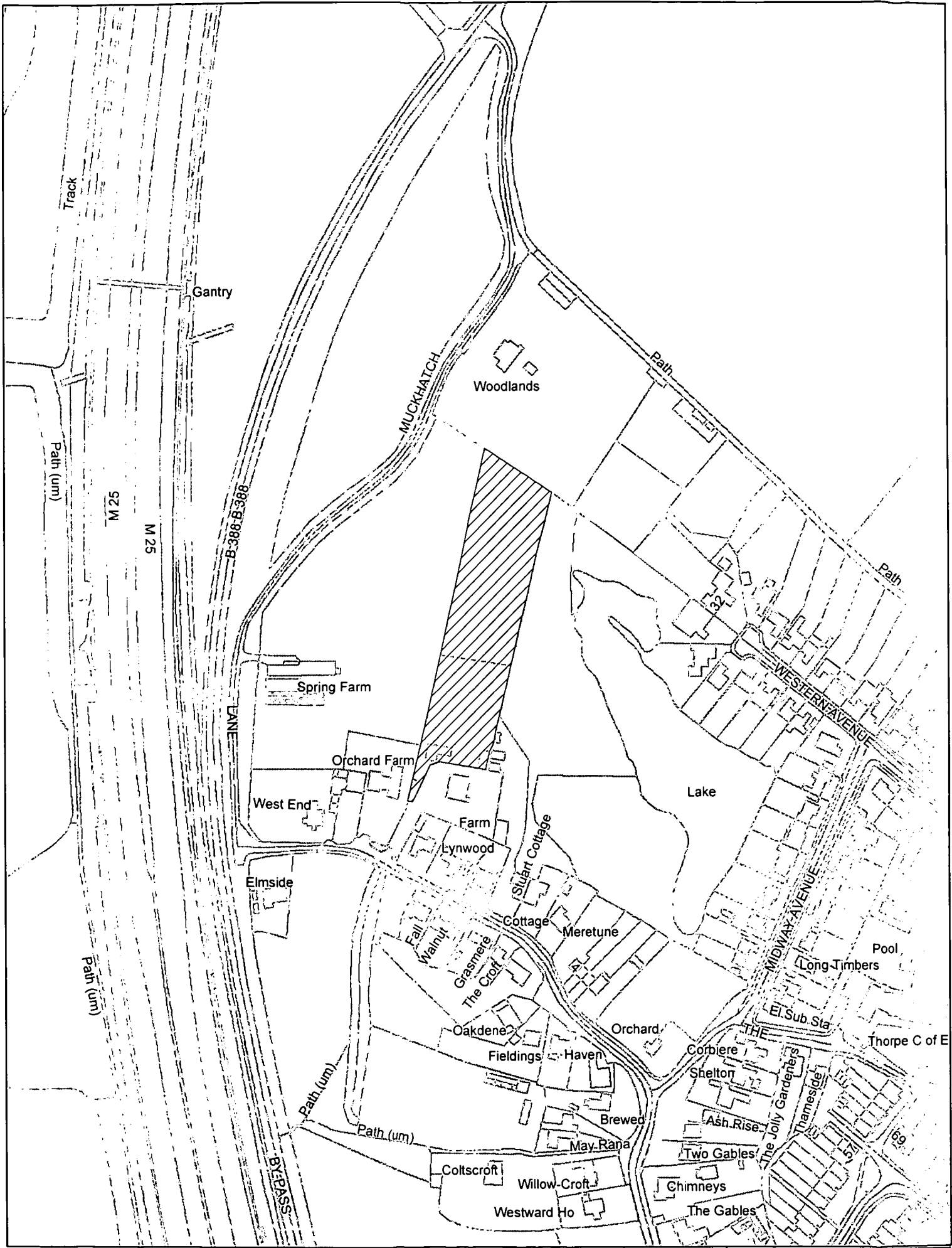


PLANNING COMMITTEE

18TH AUGUST 2004

URGENT ITEM



RU.03/1275
 SCALE: 1:2,500
 DATE: 12/08/04

ADDRESS:
 R/O BLOSSOM FARM
 ROSEMARY LANE
 THORPE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Runnymede Borough Council 100006086

RU.03/1275 Date reg: 6.11.03

Ward THORPE

LOCATION: R/O BLOSSOM FARM, ROSEMARY LANE, THORPE
PROPOSAL: CERTIFICATE OF EXISTING LAWFULNESS FOR REFURBISHMENT
AND REPAIR TO EXISTING STORAGE BUILDING, BOUNDARY
WALL AND FRONT GATE

TYPE: CERTIFICATE OF EXISTING LAWFULNESS

APPLICANT: Mr. W. Wharf

Local Plan: Policies - None.

The Chairman is of the opinion that this item should be considered as a matter of urgency as the application has taken several months to process but all the necessary material has now been assembled on which a determination can be made. In addition, an undertaking was given to the Local Government Ombudsman that the item would be considered during August

1. Site

- 1.1 This site lies on the northern side of Rosemary Lane, Thorpe, immediately to the rear of the residential properties Blossom Farm and Orchard Cottage. The long narrow site (160 metres long by 38 metres in width) extends northwards to another residential property, Woodlands, which is accessed off Muckhatch Lane. This site covers approximately 0.5 hectare. It is located in the Green Belt.
- 1.2 The site shares a single track access off Rosemary Lane with Blossom Farm. There are large gates at the south-western corner of the site. There is a single storey building in the south-western corner of the site with a hard surfaced yard to the north and east of the building.
- 1.3 This building is divided into four rooms. There is a general storage area including a workbench. The range of equipment stored inside includes tools, shovels, forks, wheelbarrow, grass cutter, mower, rotivator and ladders. A car is also garaged within the building but sometimes is parked outside the building. There is a messroom. There is one stable which is used to store bales of straw. The second stable is used as a storage area for stocks of wire mesh fencing, incubators, animal feed and troughs.
- 1.4 Beyond the yard the site is generally laid to grass and is divided into fenced compounds for up to 60 chickens, ducks, goats and geese. There is an old caravan and small timber chicken shed within these compounds. There is also a vegetable patch along the western side boundary.
- 1.5 Within the yard area there are two further chicken sheds and a recently constructed wooden building along the eastern side boundary. Along the northern elevation of the single storey building there are three greenhouses for propagating vegetables.

1.6 A gated vehicular access has been created off Muckhatch Lane and some hard surfacing has been laid at the vehicular entrance with the 'dog leg' extending some 30 metres from the north-western corner of the site. A second pair of gates leads into the main part of the site. However, the access onto Muckhatch Lane and this 'dog leg' area is not within the applicant's ownership and is outside the application site.

2. Planning History

2.1 In the 1950's the site formed part of a much larger agricultural holding covering at least 2.4 hectares.

2.2 The bungalow now known as Blossom Farm was granted planning permission (EGH.52/1849) in 1954.

2.3 There have been various applications for residential development on surrounding plots including this site over the years. These include the erection of 32 dwellings (65/10570) in 1965 and 6 bungalows (69/12797) in 1969. Both were refused permission and the 1965 application was also dismissed on appeal. There were two further appeal dismissals for residential development in 1968.

2.4 In 1972 permission (EGH.72/15501) was granted for the erection of two garages for storing cars and farm machinery. Three buildings to the rear of the bungalow 'Blossom Farm' were shown to be present. It was proposed that these three buildings would be demolished and two identical garages erected. This permission does not appear to have been implemented.

2.5 In 1974 retrospective permission (RU.74/0199) was refused for the temporary storage of cars on Blossom Farm. An Enforcement Notice was served. The subsequent enforcement appeal was dismissed in 1977 and the Enforcement Notice upheld.

2.6 In 1976 planning permission (RU.76/0687) was granted for a loft conversion incorporating dormer windows in the bungalow.

2.7 The bungalow and the adjoining open land and building then became separated and the land physically subdivided into two plots. The southern plot is occupied by the bungalow known as Blossom Farm and the northern plot is this application site.

2.8 It is understood that the applicant acquired the open land to the north of the bungalow in September 2000, which at that time was overgrown and the building in a near derelict condition.

2.9 In December 2000 a complaint was received that the site was being used for tipping. Such matters are normally dealt with by the County Planning Authority and the complaint was therefore referred to the County Council, who investigated but found no evidence of waste disposal. The County Council's Enforcement Officer did, however, note the possible storage of some building materials at the site and referred the matter back to the Borough Council in January 2001.

- 2.10 At that time further complaints were received that the site was being used for commercial purposes in connection with the owner's land clearance and maintenance business ('Groundwork 95'). Such complaints included allegations, together with photographic and other information, that commercial vehicles and cars were regularly visiting the site and that plant, equipment, together with associated building and waste materials, were being stored on the land. In addition it was stated that works to the existing building were being undertaken.
- 2.11 The complaints were followed up and investigated by this Council's Officers. This included the service of a Planning Contravention Notice (PCN) on the owner in May 2001, together with discussions and correspondence with the owner regarding the intentions for the site. The PCN was made in respect of the following 'suspected breach of planning control' :-
- "Unauthorised use of land for a depot involving the unauthorised storage of materials and/or plant involving the movement of commercial vehicles."
- 2.12 The owner indicated that it was his intention to use the land for agricultural purposes including renovating the existing building and improving the condition of the land. At that time it was considered that there was insufficient evidence to clearly demonstrate there had been a material change of use of the land for commercial purposes. Whilst there was a limited amount of storage on the site, including some plant, equipment, building materials and waste materials, it was concluded that in planning terms this did not amount to a material change of use from agriculture to some commercial operation. In this respect, regard was had to the fact that the owner was seeking to improve the land and repair the existing building, and such operations might reasonably be expected to involve having a certain amount of plant, equipment and materials on site and generate a level of vehicular and other activity. Whilst photographic and other material provided by adjoining residents at that time recorded some commercial vehicles coming and going from the site at various times, it was not possible to discern a regular pattern or to otherwise conclude from this, together with other observations, that such activity was linked to a commercial use of the site. Nevertheless in accordance with the normal enforcement protocol efforts were made to ensure that any chattels on the land were only those reasonably commensurate with genuine efforts to improve the site for possible agricultural purposes. The opportunity was also taken to express the Council's concern at any possible use of the site for commercial purposes.
- 2.13 With regard to the works to the building it was concluded that these had progressed beyond what might be considered 'repair and maintenance' and that as this did not benefit from any Permitted Development Rights planning permission would be required. The owner was advised by letter (17th December 2001) not to undertake any further works to the building and to seek planning permission. (This current application seeks to address this specific issue.)

- 2.14 The site was subsequently monitored, although with restricted access to the land and a depleted Enforcement Section during much of 2002, some reliance was placed upon local residents to alert the Council to any ongoing concerns.
- 2.15 Work on the building appeared to curtail and cease following the Council's letter of 17th December 2001, although the owner chose not to submit a planning application as invited (but subsequently in November 2003 did submit a Certificate of Existing Lawfulness application). No further complaints were received regarding the site until towards the end of September 2002, when it was alleged that the site was again being used as a depot for the storage of plant, equipment and materials associated with 'Groundwork 95' and that work on the building had resumed.
- 2.16 These complaints were investigated including further site visits, together with discussions with the owner and his professional advisor and adjoining occupiers. It was found that works to the building had been substantially completed, including a new roof. The owner sought to claim (and still claims) that these works were Permitted Development. In addition a chicken shed and associated runs had been installed on the northern part of the land (para. 1.4 above).
- 2.17 No evidence was found on site of any plant, equipment, vehicles, materials, etc., sufficient to support the allegation that the site was being used as a 'contractor's depot'. Indeed by that time the site generally appeared far tidier than at the beginning of 2002.
- 2.18 In late 2002 and early 2003, further work to the access created onto Muckhatch Lane from the north-west corner of the site was undertaken and gates erected. The access had involved crossing an existing ditch running along Muckhatch Lane and the removal of a telegraph pole. Hardcore was laid down to form a hardstanding possibly as a compound or a metalled road into the site from this access. There has been no evidence of any such uses since that time.
- 2.19 In February 2002 the owner advised that he was taking professional agricultural advice and would be seeking to use the land for vegetable growing.
- 2.20 In March 2003 an information report was presented to the Planning Committee, when the Committee noted the planning history, outcome of the previous investigations and residents' concerns associated with the site. Members agreed that Officers should undertake vigorous monitoring and investigation of the site and report back.
- 2.21 In November 2003, a Certificate of Existing Lawfulness was submitted claiming that planning permission was not required to repair the building (paras. 2.13 and 2.15), boundary wall or front gates.

- 2.22 The site has continued to be monitored and its appearance has become increasingly more like a smallholding or hobby farm with additional chicken sheds, animals and greenhouses (para. 1.5) being kept on the site. Whilst some further complaints have been received these have been spasmodic relating to the occasional storage of materials and machinery not used on this site.
- 2.23 In February 2004 a complaint was made to the Local Government Ombudsman regarding the failure of the Council to take appropriate action to deal with the alleged breaches at this site. As yet there has been no decision by the Ombudsman on this complaint.
- 2.24 In July 2004 the applicant was requested to submit a retrospective planning application for the various chicken sheds in the yard and the open compound areas. No application has yet been submitted to regularise this situation.

3. Application

- 3.1 This is a Certificate of Existing Lawfulness application which seeks to establish whether planning permission was required for the refurbishment works to the almost derelict building in the south-eastern corner of the site. The applicant believes that the refurbishment work does not constitute development and therefore planning permission was not required.
- 3.2 This application also includes the erection of 2.1 metre high gates and the repair to the existing boundary wall which the applicant also believes does not require planning permission.
- 3.3 The areas where the building has been rebuilt are clearly visible externally. This is because the rebuilt areas have used new blockwork, new mortar, new rafters and roof. The upper parts of the wall comprising the eastern elevation have been rebuilt and new double doors inserted. The upper parts of the wall comprising the western elevation have also been almost entirely rebuilt. The southern elevation has almost been completely rebuilt with new blockwork, three stable doors and two UPVC windows. The north elevation has not been altered. The whole building measuring 11.8 metres by 12 metres has been re-roofed. The ridge of the existing building is approximately 2.8 metres high.
- 3.4 The new gates have been repositioned 3 metres to the north. The original gates had a height of 1.85 metres. The new gates have a height of 2.1 metres.
- 3.5 The applicant's agent has submitted various letters, photographs from 1999 and 2002 and a sworn statement from the applicant to support this application. These documents are summarised below :-
- The applicant has stated in his sworn statement that the property was extremely overgrown and the existing outbuildings, wall, gates were in a state of dilapidation when he acquired the site.

- He has spent considerable time and money in refurbishing the whole plot to form a hobby farm for my family's enjoyment.
- The buildings have been rebuilt using all existing walls wherever possible.
- The footprint of the buildings has not been altered or extended at all. The walls were infilled and strengthened where necessary back to their original height, taking the highest existing blockwork as the maximum height.
- The existing roofs had mostly collapsed into the centre of the buildings. These have been reconstructed without increasing the height of the buildings.
- The wall to the southern boundary has been rebuilt in part using similar blocks to the original wall.
- The original pair of gates were in a very poor condition.

3.6 The applicant's agent adds :-

- the buildings were in a serious state of decline;
- we believe that all works carried out to the existing storage buildings on the site are purely refurbishment;
- no extension to the existing footprint;
- no increase in height as can be seen from the remaining old masonry still visible;
- southern boundary wall has been repaired to its original line and height;
- we believe that a physical inspection of the site and as shown on the photographs illustrates that the works have been purely reinstatement;
- we are happy to lodge this application to bring an end to the constant allegations that the applicant has carried out illegal development rather than normal refurbishment and reinstatement.

4. Consultations

4.1 This application has been advertised on the weekly list and letters have been sent to local residents. There have been six letters of objection including one from Thorpe Ward Residents' Association. The main objections are summarised below :-

- the southern half of the building was originally used for activities associated with Blossom Farm when it was used as a pig farm;
- the derelict building had pigsties with corrugated roofing to one side only the rest were open with no roof;
- the covered area of the building was used to boil down the swill;
- the pigsties have now doubled in height and form a very large storage area;
- those buildings never existed in any form like it is claimed;
- in the 1970's the building was used for car sales and repairs a use which was dismissed on appeal;
- any agricultural use of the structures is debatable;
- the height of the surrounding walls on the northern half has certainly increased in height and roofed for the first time;

- whole building is now used for storage. The equipment being stored appears to be more construction related rather than agricultural;
- the property is being used for the storage of building materials and plant/machinery in connection with construction business;
- confused why after so many complaints from local residents the owner is allowed to construct a building which breaches planning laws;
- the building is far too big on this small parcel of Green Belt land;
- use of buildings for animals is not allowed too close to residential properties;
- why was this building allowed to be constructed?
- why has no enforcement action been taken?
- permission should not be given;
- the building or site was never a storage complex;
- the overall size of the building can in no way represent a necessary structure to service agricultural purposes or a hobby farm;
- photographic evidence confirms that these supposed uses are a camouflage to cover the real activity of the site;
- does the hobby farm constitute an agricultural use?
- the applicant's sworn statement is full of inconclusive statements;
- this is a new structure that should be subject to a planning application;
- the owner continues to ignore and flout the Council'
- the Council is still prevaricating and avoiding the issue. The real use of the site is still being ignored.

4.2 The Council's Agricultural Consultants (Humberts) have been consulted and consider that a building of no more than 50 square metres would be necessary to support the agricultural use of the land. The existing building is therefore strictly speaking larger than might be considered necessary for the use of the land for agricultural purposes. However, some form of building is clearly necessary for the storage of animal feed, tools, small machinery and hay/straw.

4.3 The Head of Environmental Protection received complaints regarding guinea fowl. The site was monitored but there was no statutory noise nuisance. The landowner was amicable and removed the guinea fowl from the site.

5. Planning Considerations

5.1 This Certificate of Existing Lawfulness application seeks to establish whether planning permission was required for the refurbishment works carried out to the single storey building in the south-eastern corner of the site, the repositioning of the entrance gates and the repair to a boundary wall. The applicant believes that all of these works constitute refurbishment and reinstatement and therefore did not require planning permission.

5.2 The considerations with this proposal have to be restricted to the technical issues raised by the Certificate of Existing Lawfulness application and not to other matters, allegations or concerns relating to this Green Belt site.

a) Works to Building

- 5.3 The starting point for assessing whether planning permission was required for the works carried out to the single storey building in the south-eastern corner of the site is the Town and Country Planning (General Permitted Development) Order (GDPO) 1995. This document sets out what works can be carried out without requiring planning permission, i.e. permitted development. The relevant section of the GDPO is Schedule 2, Part 6, Class B. The complete extract of this section of the GDPO is attached as an Appendix. The applicant was sent a copy of the same extract with a letter advising him about planning permission in January 2001.
- 5.4 It has not been possible to establish when this single storey building was erected, its original use or its original design or appearance. The applicant has produced photographs of the dilapidated building when he acquired the site in 2000. No earlier photographs or plans of this building have been found.
- 5.5 The previous applications and appeals on this site or adjoining this site do not provide any detailed or specific descriptions of this building. In 1965 (EGH.65/10570) Blossom Farm was still used as a pig farm. In February 1969 (EGH.69/12797) the site was described as vacant land. The Officer's report at the time states 'is a field of rough grass and scrub'. The most pertinent application appears to be EGH.72/15501. The drawings identify a line of buildings immediately north of the bungalow measuring approximately 35 metres in width. These buildings were shown to be demolished and replaced by two garages to store cars and farm machinery. This application was granted planning permission in 1972 but does not appear to have been implemented. The applicant (Mr. Hamblin) stated on the application forms that the existing sheds were not usable. He added in a covering letter dated 28th April 1972, "At present there are three buildings, 2 double garages and a store shed which I would like to demolish before they fall down and erect two identical garages as per plan attached.....".
- 5.6 It would then appear that some of these buildings were demolished to make way for the unauthorised storage of vehicles which took place on the site in 1974. The drawing submitted with planning application RU.74/0199 does indicate a building in the approximate position of the existing single storey building the subject of this application.
- 5.7 Some local residents have stated that when there was a pig farm on the site there was a covered building near to the bungalow. The rest of the site was open pigsties and walled areas. The adjoining landowner states that when he moved into his property in 1997 this site had 'derelict pigsties with corrugated roofing to one side only, the rest was open with no roof'. The photographs submitted by the applicant do not illustrate the existence of pigsties but do confirm this general description of the building. However, photographs of the building and site officer notes (taken in 2001) illustrate four or five covered pigsties along the southern part of the building.

- 5.8 It is considered that in 1999/2000 when the applicant bought this land the building in the south-western corner of the site had a footprint of approximately 140 square metres. At this time the footprint comprised of disused covered pigsties along the southern part of the building with a storage compound in the northern part some of which was partly covered with corrugated sheeting. The remainder was an open storage area with an opening on the eastern elevation. The storage compound was enclosed by blockwork with a height of approximately 2.3 metres along the northern elevation. There was one blockwork column up to approximately 2.5 metres along the eastern side elevation and two blockwork columns along the western side elevation. It is unclear whether the northern part of the building was at any stage completely covered by a roof or what type of roof that might have been. The photographs clearly indicate that the southern part of the building had a lean to roof that was higher at the southern end and lower in the middle forming a valley along the central part of the building.
- 5.9 The applicant states that "he has only tried to reinstate the buildings using the existing footprint (all external walls and central partition were in existence) with a new roof based on the maximum height of existing walls". There is clearly some doubt about the design and heights of the northern part of the building given the lack of detailed information available. There is also some contradiction between the correspondence on previous planning applications and local residents' views (see paras. 5.4, 5.5 and 5.7). The applicant has provided no factual evidence to support this claim.
- 5.10 The evidence regarding the southern part of the building is, however, somewhat clearer. The current building does not appear to have increased the footprint of the building. It does now have a shallow pitched roof with the central ridge at a maximum height of 2.8 metres. The height of the southern part of the building has been raised by up to 0.8 metre to form a ridge rather than a valley. In addition the former pigsties have been replaced by two stables. The southern end elevation has been completely enclosed with new blockwork and two new UPVC windows and three metal stable doors inserted in this elevation. At one point conventional doors were fitted but have since been replaced by the metal stable doors.
- 5.11 It is considered that these changes to the building particularly at the southern end have materially affected the external appearance of the building. This building work therefore fails the test in B.1(b) of Class B, Part 6 of the GDPO. The applicant was advised of this fact in a letter dated 17th December 2001.
- 5.12 The alleged increase in height from the building that existed in 2000 as described in paragraph 5.10 also fails the test in B.2(a) of Class B, Part 6 of the GDPO. The applicant has also previously been advised of this fact in writing.

- 5.13 There is a wall approximately 4 metres from the southern elevation of the building. This wall forms the boundary between the application site and the residential curtilage of the bungalow known as Blossom Farm. This was presumably erected when the dwelling was separated from the agricultural land. The bungalow is located approximately 10 metres from the nearest part of the building.
- 5.14 The extension or alteration of an agricultural building as described in B(a) of the GDPO must not be within 5 metres of any boundary of the agricultural unit. The alteration to the southern part of the boundary is therefore within this 5 metre distance and fails the test in criterion B.2(e) of Class B, Part 6 of the GDPO. The applicant has also been advised of this issue in writing.
- 5.15 This building, which was used to house livestock (pigs) and could be used to house livestock, is also within 400 metres of a 'protected building' (dwellinghouse not within an agricultural unit). The bungalow known as Blossom Farm was originally the farmhouse for the agricultural unit. If this remained the case today, it would not be considered as a 'protected building'. However, the agricultural unit has become subdivided and this bungalow plus other neighbouring properties are all permanent residential buildings unrelated to the agricultural unit and are therefore classed as 'protected buildings'.
- 5.16 The southern end of the building is annotated on the submitted drawings as two stables. Inside these two stables there are feeder trays in the corners. This building could therefore be easily used to accommodate the livestock. Notwithstanding the fact that the building could possibly be used temporarily for livestock in certain circumstances, e.g. emergencies, extreme weather, illness, etc, under Condition B.5 and paragraph D.3, it nevertheless fails the test in B.2(d) of Class B, Part 6 of the GDPO. The applicant has been advised of this issue in writing.
- 5.17 To qualify for Part 6 permitted development rights, the land must be agricultural land which means (see Class D.1 in the Appendix') that it must, before any development permitted by Part 6 is carried out, be land in use for agriculture and be so used for the purposes of a trade or business. When the applicant acquired the site in 2000 the site was overgrown and by the applicant's own admission 'the buildings were in a serious state of decline'. It is not considered that this site was in an agricultural use at or around the time the applicant commenced building works on the building in 2001. The applicant was verbally advised of this situation in June 2001 and subsequently in writing.
- 5.18 Furthermore, Part 6 rights do not apply where the agricultural use is purely recreational such as where the keeping or breeding of a particular species is undertaken as a hobby. There is no clear definition or meaning as to what is meant by the term "for the purposes of a trade or business" in the definition of 'agricultural land' in Class D.1. However, case law (South Oxfordshire DC v. Secretary of State for the Environment in 1987) considered that 'business' excludes any activity which is no more than an activity for pleasure or social enjoyment. The primary meaning of these words, i.e. for trade or business, is 'an occupation by which a person earns a living'.

- 5.19 The question of whether land was in use for agriculture and so used for the purposes of a trade or business is likely to be a complicated enquiry requiring consideration of a range of facts. In simple terms, the size of the unit, the limited size of the vegetable patch and the limited supervision on the site is unlikely to generate sufficient income to warrant the definition of a trade or business. The easiest way to classify the use is as a hobby farm. The Council's agricultural advisor has confirmed that the "use of the land is quasi-agricultural at best and is not being used for a trade or business, by the admission of the owner at our site visit".
- 5.20 It is therefore considered that this land was not in use for agricultural purposes before the building works commenced. Hence permitted developments under Part 6 cannot be legitimately instigated in this circumstance. In addition, no agricultural trade or business is currently being operated from this site.
- 5.21 It is therefore considered for all the above reasons that the refurbishment works do constitute development and do not comply with all the necessary permitted development criteria under Schedule 2, Part 6, Class B of the GDPO. Consequently, planning permission is therefore required for the refurbishment work carried out to the building.
- 5.22 The applicant has been advised that planning permission is and was required for the works to this building. However, rather than submitting a planning application to regularise the situation the applicant has decided to submit a Certificate of Existing Lawfulness to establish whether planning permission is needed.
- 5.23 Having decided that planning permission is required for the refurbishment works it is now necessary to consider the lawfulness of the entrance gates and boundary wall.

b) The Entrance Gates

- 5.24 The starting point for assessing whether planning permission was required for the erection of the replacement gates is Schedule 2, Part 2, Class A of the GDPO. The height of any gate adjacent to a highway cannot exceed one metre above ground level. The height of any gate not adjacent to a highway cannot exceed two metres above ground level.
- 5.25 The existing steel gates are set back approximately 45 metres from Rosemary Lane. The gates are therefore not considered to be adjacent to a highway. However, the steel gates at 2.1 metres in height exceed the 2 metre height criteria defined in A1(b) of Part 2, Class A of the GDPO.
- 5.26 The height of the replacement gates also exceeds the height of the former gates (1.85 metres). Consequently, the existing gates also fail criterion A1(c) of Part 2, Class A of the GDPO. Consequently, planning permission is required because the existing gates exceed 2 metres above ground level.

c) Repair to Boundary Wall

5.27 The applicant has carried out repairs to the southern boundary wall. The height of the wall and its position do not appear to have been altered. This repair work is considered to be permitted development under Schedule 2, Part 2, Class A of the GDPO.

6. Conclusion

6.1 With regard to the building and the entrance gates it is therefore concluded that planning permission was required and therefore that a Certificate of Existing Lawfulness should be refused in this respect.

6.2 It is considered that planning permission was not required for the repair to the boundary wall, and therefore this work can be granted a Certificate of Existing Lawfulness.

6.3 If the Committee are minded to accept these conclusions and Officer recommendations 1 and 2 below, then it is appropriate that consideration be given as to whether enforcement action is appropriate in respect of the unlawful development. At the same time it would be expedient to consider any other alleged unauthorised development at the site.

7. Enforcement Considerations

7.1 There are five separate issues which require consideration as to whether enforcement or other action is justified and expedient on this site. These matters are :-

- a) the works to single storey building which require planning permission;
- b) the erection of gates;
- c) the unauthorised structures erected along the eastern side boundary to house chickens or other similar livestock;
- d) the alleged commercial use; and
- e) access onto Muckhatch Lane and associated gates, fencing and hardstanding.

7.2 In March 2003 a report was presented to the Planning Committee to inform and consider appropriate action in respect of alleged uses and development on this site. This report provides an update on this situation. It should also be noted that a Planning Contravention Notice (PCN) was served on the owner of the land in May 2001 regarding the suspected breach of planning control (see paragraphs 2.11 and 2.12). The owner was also informed that the Council will be monitoring the site.

- 7.3 Before assessing these detailed issues it may be useful to briefly summarise the remit and extent of enforcement legislation. The most relevant documentation are Planning Policy Guidance 18 'Enforcing Planning Control' (PPG18), Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' and 'Enforcing Planning Control: Good Practice Guide for Local Planning Authorities'. In simple terms, whilst these documents state on one hand that it condemns wilful breaches of planning law, acknowledges the increasing public concern about activities which damage the quality of people's lives and there is a need for effective enforcement action to maintain the integrity of the development control process. On the other hand, enforcement action can only be taken against existing breaches of planning control which are causing serious harm to amenity, and where there is clear and sufficient evidence that a breach has occurred and is continuing. The decision to take enforcement action must be reasonable and proportionate. It is not an offence to carry out development without first obtaining planning permission required for it.
- 7.4 The Good Practice Guide states "The decision must not be "unreasonable" in the judicial sense of "Wednesbury unreasonable". This means that it must not be based on irrational factors; or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds". The possibility of a breach is not sufficient grounds for taking formal enforcement action. Paragraph 7 of PPG18 states "it will generally be regarded as "unreasonable" for the Local Planning Authority to issue an Enforcement Notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the Enforcement Notice. Accordingly, Local Planning Authorities who issue a Notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal".
- 7.5 The Local Planning Authority has a general discretion to take enforcement action when they regard it expedient but should be guided by five considerations :-
- 1) Local Planning Authorities have the primary responsibility for taking whatever enforcement action may be necessary;
 - 2) the Local Government Ombudsman has held in a number of cases that there is maladministration if the Authority fail to take effective enforcement action which is plainly necessary;
 - 3) the decisive issue should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

- 4) enforcement action should always be commensurate with the breach of planning control (for example it is usually inappropriate to take enforcement action against a trivial or technical breach of planning control which causes no harm to amenity in the locality of the site; and
- 5) Authorities should negotiate and persuade the owner voluntarily to remedy the harmful effects if this fails enforcement action should not be unduly delayed.

7.6 PPG18 also gives further guidance on unauthorised developments by small businesses or self-employed people. Paragraph 15 of PPG18 states "The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue operating acceptably on the site at its current level of activity or perhaps less intensively.....If the site's owner or occupier is at first reluctant to negotiate with the LPA, the service of a "Planning Contravention Notice" may help to convey the LPA's determination not to allow the development to go ahead by default". A Planning Contravention Notice was served in May 2001 (see paragraphs 2.11 and 2.12 of this report).

7.7 Paragraph 16 of PPG18 adds that "formal enforcement action should not come as a "bolt from the blue" to small business or self-employed person". It adds that "If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the Local Planning Authority should aim to agree a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation".

7.8 Lastly, paragraph 17 of PPG18 states :-

"The Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. LPA's should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing irreparable harm".

7.9 Within this legislative framework the enforcement considerations for each outstanding issue (para. 7.1 above) have been assessed. They are as follows :-

- a) *The works to the single storey building which require planning permission and for which no planning application has been submitted:*

7.10 As this site lies in the Green Belt the re-use of the building is acceptable in planning terms providing it complies with the relevant policies of the Development Plan and Government Guidance. In this instance paragraphs 3.7 to 3.10 and Annex D of Planning Policy Guidance Note 2 'Green Belts' (PPG2), Planning Policy Statement 7 'Sustainable Development in Rural Areas' (PPS7), Policy RU3 of the Surrey Structure Plan 1994 and Policy GB7 of the Adopted Local Plan are all considered to be relevant.

7.11 The most relevant policy in Policy GB7 of the Local Plan which is similar to the criterion set out in PPG2 and Policy RU3 of the Structure Plan 1994. the main elements of this policy are set out below :-

The re-use of a building inside the Green Belt will only be permitted provided that the following criteria are met:

- a) the re-use of the building and associated uses of surrounding land does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including the land in it;
- b) the building is of permanent and substantial construction, and is capable of conversion without major or complete reconstruction;
- c) the form, built and general design of the building is in keeping with its surroundings. (Conversion proposals may be more acceptable if they respect local building styles and materials, though the use of equivalent natural materials that are not local should not be ruled out);
- d) there will be no detrimental effect on the rural character and appearance of the area or residential and visual amenities of adjoining properties; and
- e) the proposal does not adversely affect the agricultural viability or future use of the remaining land or buildings.

A change of use to provide recreational use may be acceptable if it is genuinely associated with a predominantly outdoor recreational use of the land on which it is sited.

That any building extension or associated use around the building which would conflict with the openness of the Green Belt and the purposes of including land in it (e.g. because they involve extensive external storage, or extensive hardstanding, car parking, boundary walling or fencing) will be resisted.

In order to control the nature and extent of the proposed use, the Council may impose an appropriate condition on the planning consent. Depending upon the size of the holding it may be necessary to withdraw agricultural permitted development rights on the whole holding where an application involves the change of use of an agricultural building.

- 7.12 This site has previously been used for agricultural purposes which have included pig farming. The building that existed on the site in 1999/2000 when the applicant acquired the land was lawful. This building has not been extended. The footprint and size of the lawful building has therefore not changed. In these circumstances, demolition of a lawful building is not an option.
- 7.13 The refurbishment works have altered the external appearance of the building and increased the height of the building in certain areas from approximately 2 metres to 2.8 metres. However, overall these alterations do not constitute major or complete reconstruction. The resulting building has no materially greater impact on the openness or the visual amenities than the previous building. In some ways the current appearance of the site is an improvement from the former dilapidated building and overgrown site. The keeping of chickens and goats in a smallholding setting is a typical rural scene and appropriate visually in Green Belt terms.
- 7.14 The single storey building is not visible from outside the site boundaries at ground level. It is, however, visible from the upper floors of the adjoining properties. The form, bulk and general design of the building is not visually offensive especially if the outer blockwork walls were rendered and painted. This would need to be controlled by a planning condition. As stated above in paragraphs 5.4, 5.9 and 7.12 the refurbishment works relate to an existing lawful building which was probably used in connection with a genuine previous agricultural use on this land. Given the lack of definitive and clear information regarding the history of this building it would be very difficult to justify that the form, bulk and general design of the building is out of keeping with its surroundings.
- 7.15 It is not considered that the re-use of the single storey building for purposes ancillary to the keeping of livestock per se causes any serious harm to the residential or visual amenities of the neighbouring properties. This is providing livestock are not regularly accommodated within this building. However, under the terms of D3 of Part 6, Class B of the GDPO (see the attached Appendix) certain exceptional circumstances may arise where livestock could be accommodated within this building. The recently replaced PPG7 (Annex C) advised Local Planning Authorities to exercise particular care when considering applications to house livestock units near to residential properties. However, it also has to be remembered that the bungalow at Blossom Farm, the nearest property to the building, was originally the farmhouse for this adjoining land. This matter could be controlled via a planning condition.

- 7.16 There is not considered to be any extensive external storage uses, or car parking areas associated with the keeping of livestock on this site. All the feed and hay, straw, etc., is currently kept inside the single storey building. The Council's Agricultural Consultants (paragraph 4.2) considers that "some form of building is necessary for the storage of animal feed, tools, small machinery and hay/straw". He also adds that the building is much larger than necessary for the use of the land. However, as stated above in paragraph 7.12 the existing building has not been extended in footprint or floor area terms. It remains an existing lawful building so it is not possible to reduce its size to a level which is more commensurate with the size of the plot or the level of livestock kept on the site. The use within the building and the internal layout of the building could be controlled by planning conditions. Conditions could also reasonably be used to define and control any open storage areas and car parking areas, etc.
- 7.17 Two small chicken sheds and one larger structure have been erected along the eastern boundary of the site. A retrospective application has been requested from the applicant.
- 7.18 The re-use of the building and the associated uses and activities of the site ancillary to the keeping of livestock and the growing of vegetables is considered to comply with the relevant policies of the Development Plan and Government guidance which encourages the re-use of such buildings. This purely 'hobby farm' type use at its current level is therefore considered to be appropriate to the Green Belt.
- 7.19 Consequently, if a planning application was to be submitted to regularise the current 'hobby farm' type use of the land the building it is likely to be acceptable subject to the imposition of planning conditions to control the re-use of the building and use of the land. The applicant has been advised on many occasions to submit a planning application to regularise the situation. Instead of submitting a planning application he chose to submit a Certificate of Existing Lawfulness. Even if the Certificate of Existing Lawfulness could have been granted it would not have been possible to attach conditions to such a Certificate.
- 7.20 As described above, the re-use of this building for purely ancillary activities associated with the current 'hobby farm' use is likely to comply with the relevant planning policies and be an acceptable use subject to conditions.
- 7.21 There is currently no livestock accommodated within this building although the southern part of the building appears to have been designed to accommodate livestock. To date, no livestock have been housed in the building as altered although the original building did include pigsties. If livestock were regularly housed in this building without justification for exceptional reasons (ref. para 5.16 above) and which causes serious harm to the amenity of neighbouring residential properties, then appropriate and commensurate enforcement action could be taken in the future. This could involve injunctive action.

7.22 It is not considered that there is currently any clear and sufficient evidence that a serious breach of planning control has occurred or is continuing to occur with regard to the use of this building. At the current time no enforcement action is recommended relating to the unauthorised building works or subsequent use of this building.

b) The unauthorised erection of gates (Rosemary Lane):

7.23 The existing unauthorised 2.1 metre high green steel clad gates at the entrance to this site also require planning permission.

7.24 These gates are set back approximately 45 metres from Rosemary Lane along a narrow drive. The existing gates are set back a further 3 metres from Rosemary Lane than the original entrance gates to this part of the site. The existing gates are not clearly visible from Rosemary Lane or any other public viewpoint. Given the distance from the highway, the narrowness of the driveway and the existence of the previous gates the current gates are not considered to be detrimental to the amenities of the Green Belt. If a retrospective application was to be made this is likely to be acceptable in planning terms.

7.25 The writing on the solid gates 'Blossom Chicken Farm' and 'Private Keep OUT!' does not require advertisement consent or planning permission.

c) The unauthorised structures erected along the eastern side boundary to house chickens or other similar livestock:

7.26 Two small chicken sheds were erected along the eastern corner of the site in the early part of 2004 and in June 2004 a much larger shed has also been erected along this boundary. Adjoining these sheds are stables within the grounds of one of the neighbouring properties, Stuart Cottage, to the east. These stables are permitted development and do not require planning permission. The Council's Agricultural Consultant has been consulted to assess whether these newly erected buildings are reasonably necessary for the use of the land. These buildings are located within 400 metres of an unprotected building but do not generally appear to be causing serious noise or disturbance to local residents.

7.27 Indeed, there have been no formal complaints regarding the erection of these sheds. If, however, other livestock were housed in these sheds which cause regular serious noise and disturbance issues then there may be the need for enforcement action in the future. The Environmental Protection Section have been monitoring the site and noise recording equipment set up in adjoining property. The Head of Environmental Protection states that "there has been no evidence of noise nuisance occurring and therefore no formal action has been taken". The landowner has removed guinea fowl from the site following requests from the Environmental Protection Section.

7.28 The applicant has been advised to submit a retrospective planning application for these structures by 10th August 2004. As yet no application has been submitted to regularise this situation.

7.29 At present, there does not appear to be any serious harm caused by the erection of these three sheds along the eastern boundary of the site. This, however, needs to be reviewed once the Agricultural Consultant's Report has been received.

d) *The alleged commercial use:*

7.30 In December 2000 a complaint was received that the site was being used for tipping. The County Council's Enforcement Officer investigated this matter and found no evidence of waste disposal. He did, however, note the possible storage of some building materials at the site and referred the matter to the Borough Council in January 2001. At that time further complaints were received that the site was being used for commercial purposes in connection with the owner's land clearance and maintenance business ('Groundwork 95'). Such complaints included allegations together with photographic and other information that commercial vehicles and cars were regularly visiting the site and that plant, equipment, together with associated building and waste materials were being stored on the land.

7.31 The complaints were followed up and investigated. This included the service of a PCN on the owner in May 2001 in accordance with the legislative requirements. The content of the PCN and the owner's response are set out in paragraphs 2.11 and 2.12 above.

7.32 Between December 2001 and September 2002 no further written complaints were received regarding this site. However, in September 2002 it was alleged that the site was again being used as a depot for the storage of plant, equipment and materials associated with 'Groundwork 95' and that work to the building had resumed. These complaints were investigated including further site visits, together with discussions with the owner and his professional advisor and adjoining occupiers. No evidence was found on site of any plant, equipment, vehicles, materials, etc., sufficient to support the allegation that the site was being used as a 'contractor's depot'.

7.33 These complaints continued through February and March 2003. An unannounced site visit in October 2003 found no evidence of any alleged commercial activity. One written complaint was received in November 2003. There were no further complaints until April 2004 which included photographs alleged to illustrate commercial activity. The allegations include the removal of a mini-digger from the site and loading of paving slabs onto a truck. No evidence was however, found, of any commercial activity on a site visit during March, June and August 2004.

7.34 Since December 2000 the appearance of the site has gradually become cleaner and tidier. The site has increasingly resembled the appearance of a hobby farm with the land sub-divided into paddocks and chattels erected within each paddock. The unauthorised chicken sheds along the eastern side boundary reinforce the hobby farm use. The amount of land used for keeping livestock and the numbers of livestock have also increased during this period.

Three greenhouses and two water butts have been sited to the rear of the single storey building to facilitate the vegetable patch along the western side boundary. Inside the single storey building the majority of the internal space is taken up with tools, shovels, forks, wheelbarrows, mowers, rotavators, storage of hay and straw, etc. There is also a car and go kart stored inside the building. There is no significant amount of equipment or materials stored inside the building which is out of keeping or proportion with a hobby farm. There is some open storage of materials such as wood, RSJ's which are at odds with a hobby farm. There is, however, no significant open storage area within the site to indicate a depot use. Indeed storage of such items is not unusual on any farm or smallholding. The potential or capacity for any depot to operate has been significantly reduced since December 2000.

- 7.35 Occasional complaints relating to the alleged use of this site as a Depot still continue (the last being in April 2004). However, the number of such complaints have reduced significantly especially in the past two years. What, if any, commercial related activity appears to be very occasional. There appears to be no regular, consistent pattern to the alleged commercial use of this site. There certainly appear to be long periods where no activity takes place other than that related to the hobby farm. The expansion of the hobby farm in the past two years may have coincided with a corresponding reduction in any possible commercial activity and associated complaints against such alleged use.
- 7.36 At no time since the current owner acquired the site has sufficient evidence been produced either through information provided by local residents or by Officer observations and investigations to conclude that a commercial business is being run from this site. Vehicles, including lorries and vans, have visited the site and there has been a certain amount of activity in the past some of which appears to be a source of disturbance to local residents. Residents have stated that some of those activities have occurred at unsocial hours. The adjoining occupier has also claimed that at times those visiting the site have been abusive and caused damage to property. These issues have appeared to cause a dispute between the adjoining occupier and the applicant, whatever the merits of this private dispute, it would be wholly improper to use enforcement powers which do not meet the legislative requirements set out in paragraphs 7.3-7.8 above.
- 7.37 In conclusion it is considered that there does not appear to be clear and sufficient evidence that a breach of planning control (unauthorised change of use to a commercial depot) has occurred and is continuing to occur on this site. Enforcement action on this alleged change of use could not be substantiated at the current time. However, this site will continue to be monitored by Officers.

e) *Access to Muckhatch Lane, gates, fencing and hardstanding:*

- 7.38 Muckhatch Lane is an unclassified road onto which the construction of an access would not normally require planning permission, providing that the access was required in connection with other development on the land which also constituted permitted development. From the investigation and consideration associated with the Certificate of Lawfulness application above, it would not appear that the vehicular access here, was constructed in a manner which would have constituted permitted development.
- 7.39 The access is, however, reasonably unobtrusive, providing a typical field access to the northern part of the site. It also has the potential to facilitate an alternative and improved access to the site as a whole, and which could help avoid the problems experienced by adjoining occupiers at the existing entrance from Rosemary Lane.
- 7.40 The hardstanding which has been constructed would also require planning permission, but this extends to only a limited area and provides a metalled accessway into the site.
- 7.41 The gates and fencing which have been erected are considered to amount to permitted development.
- 7.42 In the circumstances it is not considered that enforcement action is appropriate in respect of these matters.

8. Human Rights Considerations

- 8.1 Members will be aware that the European Convention on Human Rights secures certain fundamental human rights. The Human Rights Act 1998 came into force on 2nd October 2000 and enables individuals to invoke their Convention rights. The Act makes it unlawful for a Local Authority to act in a way that is incompatible with a Convention right.
- 8.2 The taking of enforcement action can amount to an interference with a person's rights under Article 8. Nonetheless such measures:
- are in accordance with the law;
 - pursue the legitimate aim of protecting the rights of others through preservation of the environment; and
 - may be necessary in a democratic society where the interference answers a pressing social need and in particular is proportionate to the legitimate aim pursued.
- 8.3 The proposed action can amount to an interference with the right under Article 1 of the First Protocol to the peaceful enjoyment of the property. Again, however, such interference is permissible if it is in accordance with the law and in the public interest.

8.4 Article 8 of the Convention states:

Right to respect for Private and Family Life

'Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

8.5 Article 1 of the First Protocol states:

Protection of Property

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of internal law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

8.6 It is recognised that enforcement action could amount to an interference with both the landowner's private and family life and his ownership rights (which fall within the protection of and are consistent with the object and purposes of Article 8). Those interests must be balanced against the public interest in pursuing the legitimate aims in Article 8, particularly the economic well-being of the Country (which includes the preservation of the environment and the Green Belt) and the protection of the rights of others. In this instance it is considered that the hobby farm is an appropriate type of use in the Green Belt.

9. Conclusions on the Enforcement Considerations

9.1 Members must fully and fairly balance the considerations referred to in this report when deciding whether to authorise any enforcement action against the unauthorised development and uses on this site. Members will wish to have regard to the Human Rights issues detailed in Section 7 and will wish to consider whether any action is a proportionate remedy in all the circumstances of the case. Members must take into account all the considerations material to this case.

9.2 The Committee is requested to consider all the facts and the issues in relation to this case and determine whether further legal action is both reasonable, compatible with the Human Rights Act 1998, proportionate to the legitimate aim being pursued, and necessary to bring about the cessation of the continuing breaches of planning control.

10. Conclusion

- 10.1 This site has generated significant complaints and local interest since December 2000. The site has gradually developed into a hobby farm and the appearance of the site has also become cleaner and tidier from its original overgrown and derelict state. The landowner continues to erect structures and enclosure related to the hobby farm without making the necessary planning permissions despite continued and persistent requests to do so from Officers. It is deemed 'unreasonable' for an Authority to issue an Enforcement Notice solely to remedy the absence of a planning application or planning permission. There has to be a significant and material planning objection to any such breach of control in order to justify enforcement action. No significant or material planning objections appear to exist against the current unauthorised development at this site.
- 10.2 The monitoring and investigation of the alleged uses and developments on this site since December 2000 has consumed significant staff resources in dealing with both local residents and the applicant. These matters have been investigated in detail. The applicant continues to refuse to submit retrospective planning permissions to regularise the situation which would enable conditions to be imposed to provide some form of control over the possible intensity of use, appearance of the building and future activity to protect adjoining residents and the appearance of the site in the longer term. Given the concerns and frustrations of local residents and the emotions involved it is possible that complaints will continue to be received and investigated regarding this site.
- 10.3 The recommendation with this Certificate of Existing Lawfulness is that planning permission was required for the works to the single storey building and the gates. Consequently, these elements of the application should be refused. It is also suggested that the applicant also be invited to submit a retrospective planning application to regularise the work to this building.
- 10.4 It is considered that planning permission was not required for the repair to the boundary wall. Therefore, this work can be granted a Certificate of Existing Lawfulness.
- 10.5 This report has also considered the potential for taking enforcement action against various unauthorised works and alleged uses on this site. It is not considered that, at the current time, there is sufficient, clear or robust evidence or planning reasons for taking enforcement action.

Officers' Recommendation

1. **REFUSE A CERTIFICATE OF EXISTING LAWFULNESS** for the refurbishment and repair of the existing single storey building and 2.1 metre high entrance gates because they require planning permission. These works are therefore unauthorised and require the submission of a retrospective planning application.

2. **GRANT A CERTIFICATE OF EXISTING LAWFULNESS** for the repair of the southern boundary wall because it was permitted development and therefore did not require planning permission.
3. That the owner be invited to seek planning permission for :-
 - i) the retention of the building;
 - ii) the retention of the gates (Rosemary Lane);
 - iii) the retention of the various sheds used to house chickens or other livestock; and
 - iv) the retention of the vehicular access and hardstanding off Muckhatch Lane.

Informative:

1. The applicant is advised that this decision relates to the following drawing numbers received on the dates shown:

Drawing Number:

Date Received:

Location Plan
03/378/01; 02

5th November 2003
5th November 2003

Sworn Statement by W. Wharf
dated 13th August 2003

5th November 2003

Eight Photographs
Four Photographs

5th November 2003
19th March 2004

(aa) where approval has been given by the local planning authority, within a period of five years from the date on which approval was given;

(bb) in any other case, within a period of five years from the date on which the local planning authority were given the information referred to in sub-paragraph (d)(ii).

(3) The conditions in paragraph (2) do not apply to the extension or alteration of a building if the building is not on article 1(6) land except in the case of a significant extension or a significant alteration.

(4) Development consisting of the significant extension or the significant alteration of a building may only be carried out once by virtue of Class A(a).

Class B Development on units of less than 5 hectares

Permitted
development

B. The carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares in area of development consisting of—

- (a) the extension or alteration of an agricultural building;
- (b) the installation of additional or replacement plant or machinery;
- (c) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus;
- (d) the provision, rearrangement or replacement of a private way;
- (e) the provision of a hard surface;
- (f) the deposit of waste; or
- (g) the carrying out of any of the following operations in connection with fish farming, namely, repairing ponds and raceways; the installation of grading machinery, aeration equipment or flow meters and any associated channel; the dredging of ponds; and the replacement of tanks and nets,

where the development is reasonably necessary for the purposes of agriculture within the unit.

Development
not permitted

B.1 Development is not permitted by Class B if—

- (a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 0.4 hectare in area;
- (b) the external appearance of the premises would be materially affected;
- (c) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;
- (d) it would consist of, or involve, the carrying out of any works to a building or structure used or to be used for the accommodation of livestock or the storage of slurry or sewage sludge where the building or structure is within 400 metres of the curtilage of a protected building; or
- (e) it would relate to fish farming and would involve the placing or assembly of a tank on land or in any waters or the construction of a pond in which fish may be kept or an increase (otherwise than by the removal of silt) in the size of any tank or pond in which fish may be kept.

B.2 Development is not permitted by Class B(a) if—

- (a) the height of any building would be increased;
- (b) the cubic content of the original building would be increased by more than 10%;
- (c) any part of any new building would be more than 30 metres from the original building;
- (d) the development would involve the extension, alteration or provision of a dwelling;
- (e) any part of the development would be carried out within 5 metres of any boundary of the unit; or
- (f) the ground area of any building extended by virtue of Class B(a) would exceed 465 square metres.

B.3 Development is not permitted by Class B(b) if—

- (a) the height of any additional plant or machinery within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;
- (b) the height of any additional plant or machinery not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;
- (c) the height of any replacement plant or machinery would exceed that of the plant or machinery being replaced; or

(d) the area to be covered by the development would exceed 465 square metres calculated as described in paragraph D.2 below.

B.4 Development is not permitted by Class B(e) if the area to be covered by the development would exceed 465 square metres calculated as described in paragraph D.2 below.

Conditions

B.5 Development permitted by Class B and carried out within 400 metres of the curtilage of a protected building is subject to the condition that any building which is extended or altered, or any works resulting from the development, shall not be used for the accommodation of livestock except in the circumstances described in paragraph D.3 below or for the storage of slurry or sewage sludge.

B.6 Development consisting of the extension or alteration of a building situated on article 1(6) land or the provision, rearrangement or replacement of a private way on such land is permitted subject to—

(a) the condition that the developer shall, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building as extended or altered or the siting and means of construction of the private way; and

(b) the conditions set out in paragraphs A.2(2)(ii) to (vi) above.

B.7 Development is permitted by Class B(f) subject to the following conditions—

(a) that waste materials are not brought on to the land from elsewhere for deposit unless they are for use in works described in Class B(a), (d) or (e) and are incorporated forthwith into the building or works in question; and

(b) that the height of the surface of the land will not be materially increased by the deposit.

Class C Mineral working for agricultural purposes

Permitted development

C. The winning and working on land held or occupied with land used for the purposes of agriculture of any minerals reasonably necessary for agricultural purposes within the agricultural unit of which it forms part.

Development not permitted

C.1 Development is not permitted by Class C if any excavation would be made within 25 metres of a metalled part of a trunk road or classified road.

Condition

C.2 Development is permitted by Class C subject to the condition that no mineral extracted during the course of the operation shall be moved to any place outside the land from which it was extracted, except to land which is held or occupied with that land and is used for the purposes of agriculture.

Interpretation of Part 6

D.1 For the purposes of Part 6—

“agricultural land” means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden;

“agricultural unit” means agricultural land which is occupied as a unit for the purposes of agriculture, including—

(a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or

(b) any dwelling on that land occupied by a farmworker;

“building” does not include anything resulting from engineering operations;

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);

“livestock” includes fish or shellfish which are farmed;

“protected building” means any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include—

(i) a building within the agricultural unit; or

(ii) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture;

“significant extension” and “significant alteration” mean any extension or alteration of the building where the cubic content of the original building would be exceeded by more than 10% or the height of the building as extended or altered would exceed the height of the original building;

“slurry” means animal faeces and urine (whether or not water has been added for handling); and

“tank” includes any cage and any other structure for use in fish farming.

D.2 For the purposes of Part 6—

(a) an area calculated as described in this paragraph comprises the ground area which would be covered by the proposed development, together with the ground area of any building (other than a dwelling), or any structure, works, plant, machinery, ponds or tanks within the same unit which are being provided or have been provided within the preceding two years and any part of which would be within 90 metres of the proposed development;

(b) 400 metres is to be measured along the ground.

D.3 The circumstances referred to in paragraphs A.2(1)(a) and B.5 are—

(a) that no other suitable building or structure, 400 metres or more from the curtilage of a protected building, is available to accommodate the livestock; and

(b) (i) that the need to accommodate the livestock arises from—

(aa) quarantine requirements; or

(bb) an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm; or

(ii) in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure—

(aa) because they are sick or giving birth or newly born; or

(bb) to provide shelter against extreme weather conditions.

D.4 For the purposes of paragraph A.2(2)(c), the relevant area is the area of the proposed excavation or the area on which it is proposed to deposit waste together with the aggregate of the areas of all other excavations within the unit which have not been filled and of all other parts of the unit on or under which waste has been deposited and has not been removed.

D.5 In paragraph A.2(2)(iv), “site notice” means a notice containing—

(a) the name of the applicant,

(b) the address or location of the proposed development,

(c) a description of the proposed development and of the materials to be used,

(d) a statement that the prior approval of the authority will be required to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be,

(e) the name and address of the local planning authority,

and which is signed and dated by or on behalf of the applicant.

D.6 For the purposes of Class B—

(a) the erection of any additional building within the curtilage of another building is to be treated as the extension of that building and the additional building is not to be treated as an original building;

(b) where two or more original buildings are within the same curtilage and are used for the same undertaking they are to be treated as a single original building in making any measurement in connection with the extension or alteration of either of them.

D.7 In Class C, “the purposes of agriculture” includes fertilising land used for the purposes of agriculture and the maintenance, improvement or alteration of any buildings, structures or works occupied or used for such purposes on land so used.