APPENDIX A.

The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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CH 636.

Mr J R M Ridgwell
Fleury Manico
Pavilion View
19 New Road
BRIGHTON
BN1 1UF

MAIDSTONE B.C.
SECRETARIES DIVISION
RECEIVED
27 JUN 1997
PH/LT

Your Reference:
JR/mjs/21045
Council Reference:
G77/E/989, 414/02/115/2502 & MA/96/1132N
Our Reference:
T/APP/C/96/U2235/643713-4
T/APP/U2235/A/96/273772/P6

Date:
26 JUN 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY ARTHUR FITT LEISURE GROUP
LAND AT HOGBARN CARAVAN PARK, HOGBARN LANE, HARRIETSHAM

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeals against two enforcement notices issued by the Maidstone Borough Council and a refusal of planning permission by the same council, both concerning the above mentioned land. I held an inquiry into the appeals on 15 and 16 April 1997. The evidence as to fact given by Mr Gannon and Mr Jarvis was taken on oath.

2. Both the notices were issued on 14 June 1996.

Notice A

- The breach of planning control as alleged in the notice is:
  (1) The excavation, levelling and grading of the land,
  (2) The laying of a tarmac chipping trackway,
  (3) The installation of electrical services including lighting and caravan power connection points, and
  (4) The erection of a toilet block and waste bin area.
- There are 5 requirements of the notice which, together, require the regrading of the levelled areas to their previous contours and the removal of the trackway, electrical services, toilet block and waste bin area. Finally, the notice requires the establishment of a specified type of woodland. The council, however, no longer wish to pursue that particular requirement.
- The periods for compliance with these requirements are three months and, in respect of the replanting requirement, the end of the next planting season.

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- The periods for compliance with these requirements are three months and, in respect of the replanting requirement, the end of the next planting season.

Notice B

- The breach of planning control as alleged in the notice is the change of use of the land to use as a caravan site.
- The requirements of the notice are to stop using the land as a caravan site and to excavate and remove all electrical services, fittings and fixtures from the land.
- The period for compliance with these requirements is one month.

3. The appeals were made against Notice A on grounds (a), (d) and (f), and against Notice B on grounds (a) and (c), as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. Prior to the inquiry ground (c) was withdrawn in respect of Notice B.

The appeal made under section 78

4. The development for which the Council has refused planning permission is use of the land for the siting of 180 holiday caravans and 18 residential caravans. The application site consists of the existing caravan park and land to the south-east. The land to the south-east is subject to the enforcement notices.

The sites of the appeals

5. The approximately 5.26 hectares (13 acres) caravan site, permitted in 1967, is in a relatively isolated rural location to the north of the crest of the North Downs escarpment. The permission limits the number of residential caravans to 18 and holiday caravans to 180 and the use to the period 1 March to 31 October in any year. A later permission authorises 30 pitches for tented camping. The site is provided with amenity rooms with licensed club and restaurant, play areas and a covered swimming pool as well as the normal facilities and site manager's accommodation. The permitted site is operated, as a matter of management choice, on the basis of 2 residential caravans, 167 caravan pitches and space for some tents. The tent area could hold 6 large frame tents or more smaller tents.

6. The area of the enforcement notices, about 3 ha (7.41 acres), is the steeply sloping side of a dry valley covered in mainly hawthorn woodland. A surfaced vehicular track has been cut through the woodland from the main caravan park. It links three terraces, each about 20x35 metres, which have been formed by cut and fill within the woodland on the valley side. A mobile toilet block has been sited near the entrance point and a refuse bin stand has been constructed. Three lighting columns and 10 electrical "hook up" upstands have been provided.

Matters concerning the notices

7. At the start of the inquiry I raised the question of the effect of s173(11) since it appeared to me that, bearing in mind the judgement in *Murfitt v SSE & E Cambridgeshire DC* [1980] JPL 598 a notice alleging a material change of use could require works to be removed, provided they formed an integral part of the breach of planning control complained of. Indeed Notice B, as issued, included the removal of an item of operational development, which is also covered by Notice A, in its requirements. To the extent that Notice B under enforces by not requiring the removal of all the elements of operational development which had facilitated and formed an integral part of the change of use, it is arguable that s173(11) would have the effect of giving them planning permission. The two notices are not on all fours with the two notices in *Millen v SSE & Maidstone BC* [1996] JPL 735 but the implications are similar. The effect of s173(11) on Notice B could be to cancel out Notice A, other than to the extent of the limited operational development requirement in Notice B.

8. The council say that the matter can be put right by removing all reference to operational development in the requirements of Notice B, thus putting all operational development matters into

one notice and the change of use into the other. However, that does not overcome the *Millen* point unless it can be shown that the operational development did not form an integral part of the change of use and thus *Murfitt* does not apply.

9. You say that the operational development was carried out to facilitate a use which did not require planning permission since it was permitted development. The use which does require permission, the caravan site use in Notice B, came along later. The discovery that there had been a use beyond permitted development rights (Class B Part 4 and Class A Part 5 of the 1988 GDO) caused the withdrawal of the ground (c) appeal. As a result of that withdrawal evidence of the claimed permitted development use was not explored at the inquiry; the point was only made in closing in responding to the *Millen/Murfitt* point. Both the permitted development rights referred to (rallies by exempted organisations lasting up to 5 days and tent camping) relate to essentially temporary uses of land. The operational development was carried out to provide a permanently available facility as an extension to the permitted caravan site, even though it may have been used by exempted organisations and for tents. Prior to the works being carried out the natural slope of the land made such use impractical. Moreover, access is through the main caravan site and the recreational facilities of the main site were available to those on the extended site. It is my assessment that in making the enforcement notice land permanently available for use by caravans through the alleged operational development the planning unit of the lawful caravan site was extended. A material change of use took place and the operational development facilitated it and was an integral part of it. Looked at another way, the fundamental planning change which has taken place to this area of land is that it has become part of the caravan site use. The operational development is secondary to the use. There is a very clear parallel to *Murfitt*, where the operational development of preparing the ground by the laying of hardcore enabled the use for the parking of heavy goods vehicles to take place.

10. I note that in *Millen* the Deputy Judge said that in the very special circumstances of that case the matter was capable of resolution by quashing one notice and varying the requirements of the other. You accept that this falls generally within the scope of s176(1) but in this case consider that to do so would cause injustice to the appellant. It is your client's case that the first terrace and the access to it was substantially completed as a discrete piece of operational development more than 4 years before the notice was issued. If it is immune the local planning authority, through its committee, has not had the opportunity to consider whether they would consider Notice B should be amended or whether they would not wish to take action in recognition of that immunity. There could be no certainty that if the notices were quashed the committee would decide to re-issue one notice in the different format. Thus to amend the notices now does not short circuit an inevitable process.

11. I agree that there can be no certainty how a committee would respond. However, it is clear that the council's case is that the operational development should not be considered separately from the use. In the event of me finding for them on the use they urge that the operational development should not be allowed to remain. At the inquiry the council did not argue that the requirements of Notice A could not or should not be incorporated in Notice B. There is no evidence to suggest that the council would be unlikely to adopt that procedure were the notices to be quashed. This matter has been at large since the start of the inquiry and your client has had ample opportunity to deal with the issue. I recognise that it would deprive the appellant of the ground (d) argument in respect of part of the operational development but even if that were made out it would not preclude its incorporation into the requirements of Notice B. Moreover, it seems to me to be fundamentally right that operational development which has facilitated and formed an integral part of a change of use should not be able to gain immunity on a different timescale to the use which it has enabled. I do not

consider that it can be legitimately claimed that there would be injustice in the particular circumstances of this case if I were to quash Notice A and import its requirements into Notice B. I shall quash Notice A because of the conflict I have identified; the appeal on grounds (a) and (d) and the deemed application do not need to be considered. My further consideration of the appeals before me will therefore be based on the premise of an all embracing Notice B and be directed to ground (a) on that notice and the s78 appeal. I will also deal with the Notice A ground (f) appeal as if it had been made against the corrected Notice B.

The s174 appeal against Notice B on ground (a) and the s78 appeal

12. The main issues are, firstly, the impact of the development on the character and appearance of the countryside in the locality, bearing in mind that it is within the AONB and having particular regard to development plan policies concerning the protection of the countryside and those concerning tourism. The second issue is the impact on the access road leading to the site in environmental and road safety terms.

13. I deal with the second issue first since its resolution helps to throw the first issue into sharper focus. Access to the site from the A20, and hence the main M20/A20 tourist corridor through the county, is by a narrow and winding country lane which climbs the steep scarp slope of the North Downs. It is ill-suited to carry cars towing caravans or camping trailers. In many places de facto passing bays have been created by erosion of the verge, such is the road's restricted width. A caravan site was permitted here in the 1960s but I am in no doubt that such a proposal, were it made now, would be rejected on highway grounds. I also consider the deficiencies of the access road are so severe that a material increase in traffic generation from the appeal site would cause an unacceptable traffic hazard. However, the site can be lawfully used up to the permitted maximum of 198 caravans and 30 tents regardless of the highway implications.

14. The site is presently operated, as a matter of company policy, on the basis of 168 caravans and some tents[1], substantially less than the lawful level of use. I am satisfied from the plan presented to the inquiry and from what I saw at the site that the existing site is physically capable of taking a further 25 caravans and possibly a few more. I take this view notwithstanding the fact that some of the original site area has been effectively lost to built development. No doubt the site would not be so attractive to its existing visitors, many of whom, I understand, are repeat visitors, if it were to loose some of its spaciousness. You felt that it was possible that there could be some slight increase without undermining the current company policy of providing quality pitches on the site. But even if that is not right, company policy could change, or the site ownership could change and a more down market operator could seek to exploit the existing permission and licence to the full. In your experience a lot of companies would do just that.

15. If permission is given to the area covered by the enforcement notice your client would accept a condition relating to the whole of the enlarged site to limit the number to 198 units, including tents. This represents an increase in number of about 25 pitches above the present use but substantially less than the permitted use if the 30 permitted tents are taken into account. Thus to allow this appeal would not increase the potential traffic generation above that which could result from the lawful use of the existing site. It is significant that no formal objection was raised by the council's highway advisor and the council's highway case at the inquiry was put by their planning witness in general terms.

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[1] See paragraph 5 above.

16. From the company's evidence of a full park throughout the 1996 six week summer season and that bookings had to be declined and customers turned away, and from your own experience of the industry, I consider it is probable that without the appeal site the company would be likely to go some way to meeting this demand on the existing site within the terms of the permission and licence. I think it unlikely, based on current policy, that they would risk the character of the site by accommodating the full 25 pitches, but in the longer term a different operator with different objectives is a clear possibility. I do not find the council's case a cogent argument for concluding that this outcome is less rather than more likely; it is a real possibility. Therefore, I conclude that there is no sustainable argument that a limited permission would cause an unacceptable hazard to road safety or lead to unacceptable environmental harm to the countryside through increased traffic.

17. The development plan comprises the 1996 Kent Structure Plan and the 1993 Maidstone Borough Local Plan. Development which adversely affects the countryside is to be resisted; the countryside, especially in the AONB, is to be conserved and enhanced. This is the thrust of KSP policies S2, ENV1, 2 and 3. Policy ENV7 indicates that it is also policy to maintain tree cover in the county. The few exceptions provided for in those policies, for example to meet the social and economic requirements of local communities, do not relate to the appeal proposal. Tourism is an important element of strategic policy and the availability of high quality facilities in an attractive environment is seen as critically important. Policy TO1 is to normally permit new tourism facilities where they make an important contribution to upgrading the tourism attractions of the county provided they are consistent with environmental policies and designed in sympathy with the landscape and setting. Again, provided there is consistency with environmental policies, proposals for the development of touring and camping facilities will normally be permitted where they are well related to the primary transport network and either the ports of entry, the Channel Tunnel terminal or major visitor attractions.

18. The adopted local plan supports the countryside conservation policies in its strategic counterpart. The balance between meeting the needs of tourism and the conservation of the countryside is also recognised. Policy C1 specifically indicates that within the rural area one of the allowable types of development is that relating to tourist accommodation as indicated in policies RT28-31. Under policy RT31 the council will give favourable consideration to caravan proposals provided they have adequate access, are well screened and would not prejudice the landscape quality of their setting, would not have an unacceptable environmental effect and would not conflict with other policies.

19. Both parties agree that this is the sort of case where the principle of what is proposed finds support in the tourism policies of the development plan and where it is necessary to strike a balance between that and the impact on the countryside. I share the council's view that the impact is not simply a visual impact but is a wider one which goes to overall countryside character. Having said that I shall address the visual impact first since that is the main impact.

20. The enforcement notice appeal site is, apart from the cleared areas, covered in a fairly dense hawthorn thicket some 4 to 5 metres high. The only significant public view of the area is from the public footpath to the south and a nearby lane. From here the thicket appears as an extension of adjoining woodland. Caravans on the first terrace would be visible from a relatively short length of the footpath, and a point on the lane to the south, through a gap in the thicket but caravans on the other terraces would not be seen. The first and third lamp posts are also visible from the footpath. This is a very sensitive area of landscape that has already suffered visual damage through the existing caravan site which, because of the topography, is prominent over the south-western boundary planting

in views from the footpath. Given the important planning objective of conserving the landscape in the AONB I consider that any material increase in the visual prominence of this caravan site would be unacceptable.

21. However, your client, on the advice of his landscape architect, proposes certain works of mitigation. It is proposed to replace the lamp standards with 1.0-1.5m high bollard lighting with louvred directional light units. In the day they would not be visible from outside the site and at night the impact would be minimal. I recognise that light pollution in the countryside can lead to a loss of the sense of isolation and rurality but in this case, given the presence of the existing site and limited views, and provided suitable luminaires are chosen, I consider the impact would be negligible. The toilet block, although not visible from outside the site is to be removed. In addition to additional planting on the newly cut slopes a 10m deep block of hawthorn planting, reinforced with oak, would fill the gap through which the first terrace can be seen. A line of ash on the field boundary would provide screening in depth. These seem to me to be well thought out proposals and I see no reason to dispute the landscape architect's conclusion that they would provide an effective screen in about five years time. Your client is prepared to accept a condition that the first terrace shall not be used for the siting of touring caravans until the council are satisfied that there is an effective screen. The combined effect would be that the development would not be visible to the public outside the site.

22. Even so, the loss of tree cover, albeit naturally regenerated hawthorn thicket; the reshaping of a natural landform, albeit a common enough feature; the loss of a particular habitat, albeit not of recognised local or statutory significance; and the concept of protecting the countryside for its own sake from the development of fresh land, are other matters which tell against the development. I also recognise that development in the countryside is not made acceptable just because it cannot be seen; it could be repeated too often, albeit that proposals to extend existing caravan sites are unlikely to arise frequently. However, when I set these considerations in the context of no increase in the permitted level of use, no material visual impact and the policy support for tourism – in particular policy RT31 with which there is no conflict – I find that the impact is not so harmful as to justify a refusal of planning permission. Some local residents fear an increase in noise disturbance but given that the extension would be no nearer to dwellings than the existing site I do not consider that objection can be substantiated.

23. There are two other aspects raised by the council. Firstly, if this extension is agreed where do extensions stop on this site, and, secondly, the impact of this extension should be compared with the impact of expanding within the existing site to the lawful level of use. On the first issue there is a very clear restriction on the creation of a fourth or fifth terrace. Immediately adjacent to the third terrace there is a large dene hole which would limit further physical expansion. Of greater significance, however, is the numbers limit I intend to impose through condition. It is clear from my reasoning above that I have been substantially influenced by the fact that there will be no increase in overall intensity beyond permitted levels; indeed, there is the small planning gain of a reduction when tents are taken into account. I am satisfied that the site is already at its limit in terms of numbers and there was no evidence to show where further physical extensions which would not harm the landscape could take place.

24. I am not convinced that the appellants need to show that more harm would flow from accommodating the lawful level of use within the existing site, provided it can be shown that the extension would not cause unacceptable harm. Nevertheless I consider that the change to the character of this small area of countryside, referred to in paragraph 22, which would not occur if the additional pitches were accommodated within the existing site is outweighed by the benefit to tourists

through maintaining the quality of the caravan site. KSP policy TO1 and the written statement recognise the benefits of upgrading tourist facilities and achieving high standards. A move in the opposite direction would run counter to that policy objective.

25. I now turn to consider the conditions which should be attached to the planning permission I intend to grant. I have already justified the limitation on numbers, the restriction on use of part of the enforcement notice land, the lighting scheme and the landscaping. Removal of the toilet block, as built development on the appeal site, is offered and would be appropriate. Seasonal use, which already applies, needs to be re-imposed. Careful control over the use of the whole site and adjoining land within the control of the appellant is necessary because of the sensitive location and your client would accept removal of Part 4 and 5 permitted development rights. Your client offers a limitation to a maximum of 25 touring caravans on the notice land and I agree that it is a desirable safeguard.

26. The council seek a thickening of the 2m planting belt on the south-western boundary of the existing site to 3m. Your client considers that an unreasonable loss of amenity land adjoining existing caravans, bearing in mind that the existing planting is now maturing. I looked at this belt at my site visit from close to and from the public footpath in terms of potential screening. It seemed to me that it would benefit from improved management and some replacement planting as much as it would from an additional metre of planting. Because that belt is largely on lower land than much of the site many of the caravans are likely to remain visible from the footpath over the top of the planting for some considerable time regardless of the depth of planting. I am not convinced that an additional metre of planting would be so significant that it can be justified in the context of these appeals.

27. The appeal on ground (a) succeeds and permission will be given on the deemed application and on the section 78 appeal. The enforcement notice will be quashed. The appeal on ground (f) does not therefore need to be considered.

28. In reaching my conclusions on all these appeals I have taken into account all the matters raised in the representations but none outweighs the considerations which have led to my decisions.

FORMAL DECISIONS

29. For the above reasons, and in exercise of the powers transferred to me, I determine these appeals as follows:

The appeal under S174 against Notice A [Department's Reference T/APP/C/96/U2235/643713]
I direct that the enforcement notice be quashed.

The appeal under S174 against Notice B [Department's Reference T/APP/C/96/U2235/643714]
I allow your client's appeal and direct that the enforcement notice be quashed. I hereby grant planning permission on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the use of the land at Hogbarn Caravan Site, Hogbarn Lane, Harrietsham, as shown on the plan attached to the notice, for use as a caravan site subject to the following conditions:

1. The combined areas shown edged red and edged and hatched red ("the site") on the plan submitted with planning application reference MA/96/1132 dated 23/08/96 ("the plan") shall be used for a maximum of 18 residential caravans plus holiday units comprising static

caravans, touring caravans and tents, subject to the number of such holiday units not exceeding a total of 180.

2. The site shall not be open to touring caravans and tents, and static caravans shall not be occupied, between 1 November in any one year and 28 February in the succeeding year.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no caravan or camping development permitted by Article 3(1) and Parts 4 and 5 of Schedule 2 of that Order shall take place on the site or the area edged blue on the plan.

4. Within the area hatched and edged red on the plan only touring caravans shall be sited, with a maximum number of 25 at any one time, and, subject to condition 5, only those areas which have already been cleared and levelled shall be so used.

5. The most western of the three cleared and levelled areas within the area hatched and edged red on the plan shall not be used for the siting of touring caravans until the local planning authority have indicated in writing their satisfaction that the planting required under condition 6 has matured sufficiently for the presence of caravans on that part of the site to be no longer visible from the public footpath to the south of the site.

6. The use hereby permitted shall cease within 28 days of any one of the following requirements not being met:

(i) within 3 months of the date of this letter there shall have been submitted for the approval of the local planning authority a scheme for the provision and management of landscaping and for replacement lighting within the area hatched and edged red on the plan and for additional planting within and future management of the existing landscaping strip on the western boundary of the area edged red on the plan (hereafter referred to as a landscaping scheme) and the said scheme shall include a timetable for its implementation.

(ii) within 11 months of the date of this letter a landscaping scheme shall have been approved by the local planning authority or, if the local planning authority fail to approve such a scheme, or fail to give a decision within the prescribed period an appeal shall have been lodged and accepted by the Secretary of State for the Environment.

(iii) in the event of an appeal being made in pursuance of requirement (ii) above, that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State.

(iv) all works comprised in the landscaping scheme as approved shall have been implemented, and completed within the timetable set out in the approved scheme.

7. In the event of the use ceasing by virtue of condition 6, the following actions shall be taken on the land edged and hatched red on the plan within three months of the use ceasing:

(i) excavate the levelled areas and regrade the land to that previously existing to match the surrounding slope and levels;

(ii) excavate the trackway and remove all resultant materials from the land; and

(iii) excavate and remove all electrical services, fittings and fixtures.

8. The existing mobile toilet block sited within the area hatched and edged red on the plan shall be removed within one month of this decision.

The appeal under S78 [Department's Reference T/APP/U2235/A/96/273772/P6]
I hereby allow your client's appeal and grant planning permission for the use of the land for the siting of 180 holiday caravans and 18 residential caravans in accordance with the terms of the application (No. MA/96/1132) dated 23/08/96 and the plans submitted therewith, subject to conditions identical to those set out above.

30. These decisions do not convey any approval or consent required under any enactment, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISIONS

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

Yours faithfully

A D KIRBY RD* MA MSc FRTPI FRSA
Inspector

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