



# The Planning Inspectorate

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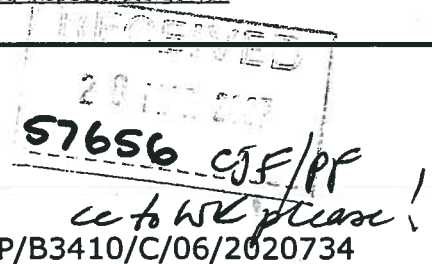
Your Ref:

Our Ref:

Date:

APP/B3410/C/06/2020734

26-March 2007



Dear Madam

**Town and Country Planning Act 1990  
Appeal by Shakespeare Classic Line Limited**

**Site at Barton Turns Marina, Barton Under Needwood, Burton-on-trent, DE13 8DZ**

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

Please note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit  
The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Tel: 0117 372 8252  
Fax: 0117 372 8139  
E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

Yours sincerely



pp Emma Daniells

EDL2(BPR)

*You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -*

*<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>*

*You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*



# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

## Challenging the Decision in the High Court

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### ***Challenging the decision***

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

### ***Grounds for challenging the decision***

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

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### ***Different appeal types***

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

### ***Challenges to planning appeal decisions***

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

### ***Challenges to enforcement appeal decisions***

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

**Important Note** - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

## **Frequently asked questions**

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

~~"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.~~

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

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## **Inspection of appeal documents**

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

## **Further information**

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

## **Council on tribunals**

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

## **Contacting us**

High Court Section  
The Planning Inspectorate  
4/07 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Phone: 0117 372 8962

### **Website**

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

### **General Enquiries**

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

### **Complaints**

Phone: 0117 372 8252

E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

### **Cardiff Office**

The Planning Inspectorate  
Room 1-004  
Cathays Park  
Cardiff CF1 3NQ  
Phone: 0292 082 3866

E-mail: [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)

### **The Parliamentary Ombudsman**

Office of the Parliamentary  
Commissioner for Administration  
Millbank Tower, Millbank  
London, SW1P 4QP

Helpline: 0845 0154033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

E-mail:

[phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)



# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

## Our Complaints Procedures

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### **Complaints**

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

### **How we investigate complaints**

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

### **What we will do if we have made a mistake**

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

### **Who checks our work?**

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.

## **Taking it further**

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

## **Frequently asked questions**

*"Can the decision be reviewed if a mistake has happened?"* – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

*"If you cannot change a decision, what is the point of complaining?"* – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

*"Why did an appeal succeed when local residents were all against it?"* – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

*"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

*"Why did my appeal fail when similar appeals nearby succeeded?"* – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

*"I've just lost my appeal, is there anything else I can do to get my permission?"* – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

*"What can I do if someone is ignoring a planning condition?"* – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

## **Further information**

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - [www.odpm.gov.uk/](http://www.odpm.gov.uk/)

## **Contacting us**

Quality Assurance Unit  
The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

## **Website**

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

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Cardiff CF1 3NQ  
Phone: 0292 082 3866  
E-mail: [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)

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Office of the Parliamentary  
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Millbank Tower, Millbank  
London, SW1P 4QP

Helpline: 0845 0154033  
Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)  
E-mail: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

**Award of appeal costs:**

**Local Government Act 1972 – section 250(5)**

**How to apply for a detailed and independent assessment when the amount of an award of costs is disputed**

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment<sup>1</sup>.

This is handled by:

The Supreme Court Costs Office  
Cliffords Inn  
Fetter Lane  
London EC4A 1DQ  
DX 44454 Strand  
(Tel: 020 7947 7128/6423)

But before this can happen you must arrange to have the costs award made what is called an order of the High Court<sup>2</sup>. This is done by writing to:

The Crown Office  
Royal Courts of Justice  
Strand  
London WC2A 2LL

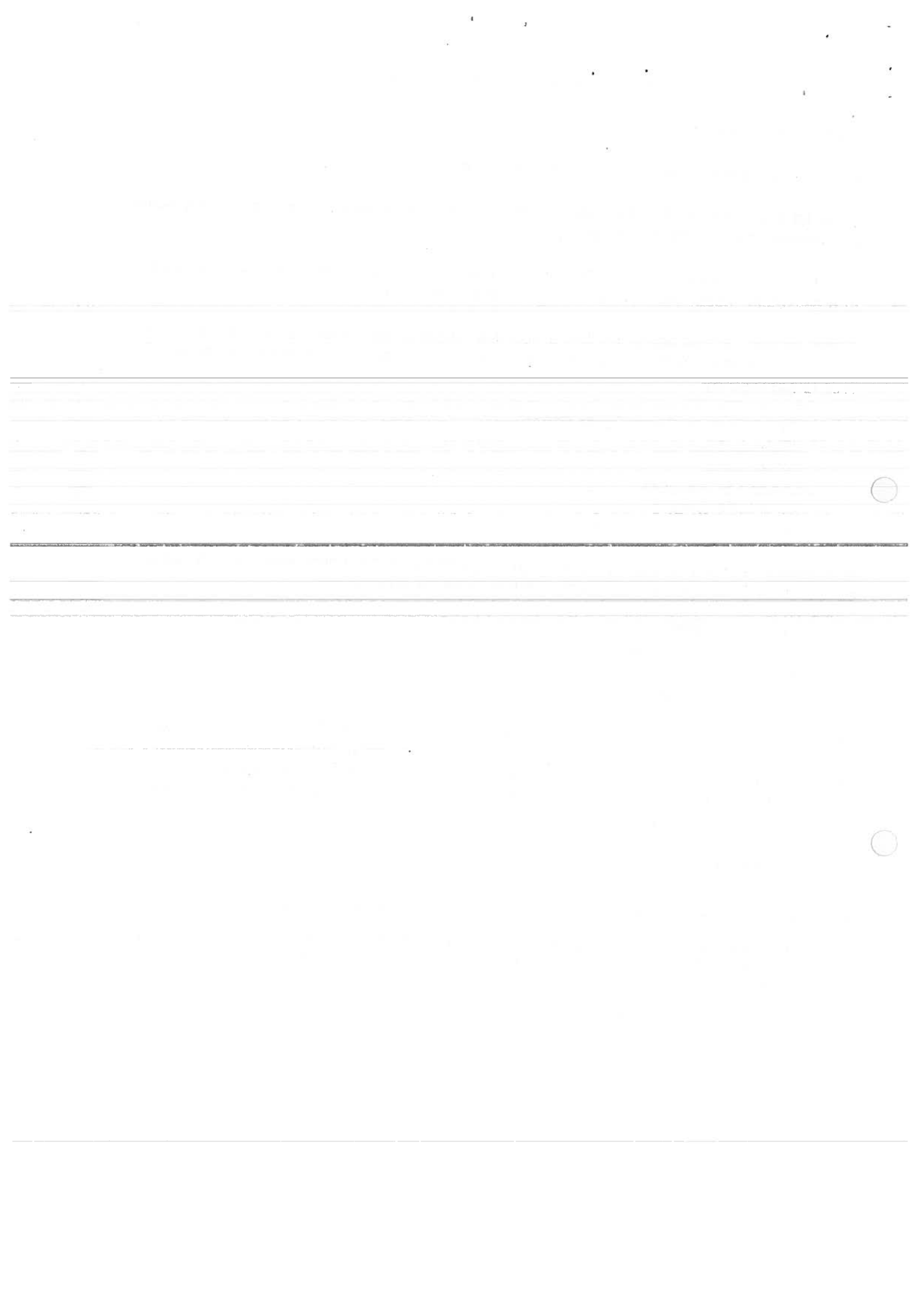
You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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<sup>1</sup> The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

<sup>2</sup> Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.







## Appeal Decision

Inquiry held on 13 March 2007  
Site visit made on 14 March 2007

by **John H Martin RIBA MRTPI**

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

The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
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Bristol BS1 6PN  
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inspectorate.gsi.gov.uk

Date 26<sup>th</sup> March 2007

**Appeal Ref: APP/B3410/C/06/2020734**

**Land known as Barton Turns Marina, Barton under Needwood, Burton upon Trent, Staffordshire DE13 8DZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Shakespeare Classic Line Limited against an enforcement notice issued by East Staffordshire Borough Council.
- The Council's reference is EN/21110/016.
- The notice was issued on 31 May 2006.
- ~~The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from use for mooring canal cruising vessels, to a mixed use for mooring canal cruising vessels and to accommodate floating timber-clad structures on pontoons used as holiday accommodation.~~
- The requirements of the notice are to permanently remove from the land the timber-clad accommodation superstructures, foul drainage holding tanks, service connections and floating pontoons forming the holiday accommodation.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed and the enforcement notice quashed subject to corrections, all as set out in the formal decision below.**

### Procedural Matters

1. At the Inquiry an application for costs was made by East Staffordshire Borough Council against Shakespeare Classic Line Limited. This application is the subject of a separate Decision.
2. During the week before the Inquiry, the Council submitted a bundle of documents (Doc.5) that they had omitted from their proofs of evidence, but I did not receive a copy until the day of the Inquiry. The appellants considered these to be too late to be considered but on examination I found that, apart from a few additional policies not previously referred to, which I am unable to take into account, the bundle included The Trent and Mersey Canal Conservation Area Statement and British Waterways Board (BWB) Boat Licence application, which were both submitted by the appellant (Doc.5 Apps.5 & 6), and a copy of the British Waterways Inland Marina Investment Guide which was submitted by their witness, Mrs Hemming (Doc.7).

### **The appeal site and its surroundings**

3. The water basin of Barton Turns Marina forms part of a hotel and leisure centre with nature reserve and fishing lake on 34.9 hectares of land off Station Road, Barton under Needwood, close to the Barton Turn interchange on the A38 trunk road corridor. The marina is laid out with floating pontoons providing 324 berths mainly for canal narrow boats and small cruisers, the size of which is restricted by a narrow bridged water link from the Trent and Mersey Canal that passes to the east within the linear Canal Conservation Area. The appellants operate a 21 canal boat hire business in the marina administered from a two temporary timber buildings on the east side, and each of the 3 floating structures provides 2-bedroom time-share holiday accommodation.
4. The Barton Turns Leisure Centre development provides a buffer between the A38 trunk road with the Barton Business Park beyond and the village of Barton under Needwood. Work on the marina element has been largely completed and the Public House, restaurant and retail scheme is currently under construction. The final Hotel phase to the south-west of the marina has yet to commence.
5. The marina itself was quite full of narrow boats and small cruisers at the time of the site visit, but I understand there is always some capacity, particularly during summer months. When the enforcement notice was issued, the 3 structures were moored on 3 double berths on the pontoon nearest the canal, close to the temporary fleet hire office building, as can be seen on the submitted photographs (Doc.5 App.2.5 & Doc.6 App.PF2). Mr Harris for the appellants explained that were subsequently moved to other berths to demonstrate that they were not permanently moored.

### **Planning History**

6. Outline Planning Permission No.OU/21110/001 was granted on 19 October 1992 and this was followed by a series of approved applications for reserved matters as set out in the Statement of Common Ground (Doc.3), full details of which can be found in the appellants appendices (Doc.5 App.3). Reserved matters for the whole development were permitted on 23 September 1993 (RM/21110/002); full planning permission for the canal lock between the marina and canal was granted on 16 October 1995 (PA/21110/005) and; full planning permission for the marina services building, workshop, services compound and footbridge etc. was granted on 16 August 2000 (PA/21110/010).

### **Appeal on ground (c)**

#### *Legal Submissions (Doc.4)*

7. At the inquiry, the appellants' advocate, Mr Anderton, made submissions that the planning unit should be the whole leisure complex and not just the marina, against which the alleged change of use should be considered to judge the extent to which it might be material. He gave examples of 4 judgements where, respectively, increases of 21 to 27 caravans; 11 to 16 caravans and; 1 to 2 caravans had not been considered material, and one judgement where an increase of 6 to 16 lorry parking was similarly regarded as immaterial.

8. He dismissed the Council's reliance on the judgement on the case of *Sussex Investments Ltd V Secretary of State for the Environment and Spelthorne Borough Council (1977) EWCA Civ 3049* (Doc.4) because the subject structures are substantially different and do not amount to a material change of use. He preferred the British Waterways Act 1971 "houseboat" definition of any "boat or barge or any vessel or structure" which are not "bona fide used for navigation". He pointed out that the appeal structures fall into this category and have been granted business licences by the BWB.
9. Finally he gave examples at Hartford Marina where similar structures had been granted planning permission as houseboats by Huntingdonshire District Council (Doc.5 App.7).
10. The appellants' request that the whole planning unit be included for the purpose of this enforcement action includes the entire leisure complex on which Outline Planning Permission OU/21110/001 was granted on 19 October 1992 (Doc.5 App.3.1), because the marina formed part of that permission, was integral to it and had not been formed into a separate planning unit. The Council acknowledged that this was a more accurate assessment of the situation than is shown on the enforcement notice which they felt could be corrected without injustice to either party.
11. While I agree that the notice should be put in order in this respect, the allegation would also need to be altered to bring it into line within the change of planning unit. I shall therefore correct the notice by deleting the allegation and substituting a new allegation to read "*Change of use of the Land, within the marina of the approved Hotel and Leisure Centre, from a use for the mooring of canal cruising vessels to a mixed use for the mooring of canal cruising vessels and use for the mooring of floating timber clad structures on pontoons used as holiday accommodation*".
12. In my view, the British Waterways Act definition clearly implies that a "houseboat" must be a boat or barge or any vessel, although the use of the word "structure" is unclear. As was found in the *Spelthorne* case, where a two storey house was built on a pontoon, I find that there is a considerable difference between a boat or vessel designed for or converted into residential accommodation, where the hull usually forms part of the living space, and a flat pontoon on which a timber holiday chalet has been erected.
13. While such a structure might be construed as conforming with the above definition, I find it a tenuous connection. I accept that the appeal structures on their pontoons are floating and are capable of being towed around the marina, as has been demonstrated, and that they are too large and too high to be taken out onto the canal so cannot be used for navigation. Nevertheless, they represent a materially different form of holiday accommodation that is not included within the outline planning permission and cannot strictly be regarded as ancillary to the marina use.
14. The structures bear absolutely no resemblance to a boat or vessel of any description, notwithstanding that other planning authorities may have chosen to permit similar examples. The fact that they are licensed by the BWB was shown to be irrelevant at the Inquiry when their witness, Mrs Hemming, stated

in her evidence in chief that houseboats that cannot be used on the canals do not need to be licensed in any event. In the light of the judgement in the cited case of *Westminster City Council v British Waterways Board (1985) A.C.676, [Bridge L.J.]*, I consider the structures to be out of character with the predominant moored canal narrow boats, they are wider and higher and stand prominently above them. If they were to be regarded as being similar in planning terms, there would be nothing to prevent all the berths being used for floating chalets which I consider would, in Lord Bridge's words, be "*beyond the range*" (Doc.4 p.103) of the uses normally found within such a marina.

15. I heard at the inquiry that the marina is generally full of canal boats and ~~cruisers largely in private ownership~~, and that the appellant company operates 21 narrow boats for hire by the week. While there is nothing to prevent the hirers from remaining in the marina, it is more likely that these boats will be taken out onto the canal. In contrast, the siting of 3 time-share holiday chalets on pontoons in the marina, designed for mooring canal boats and cruisers, could, as raised by Mr Sharpe in his questions to Mrs Hodson, be considered analogous with the stationing of 3 time-share mobile homes on the car parking areas of the complex that are not designed for that purpose. There is no doubt in my mind that such a change would be considered material, apart from the visual impact, because of the introduction of an element of holiday accommodation into the complex for which there is no planning permission.
16. In answer to my question, the appellants' witness, Mrs Hodson, agreed that for planning purposes water is considered to be "land" so, for the reasons stated above, I conclude that the siting of 3 holiday chalets on pontoons used as holiday accommodation amounts to a material change of use from that granted on the original planning permission and that a breach of planning control has thereby occurred. The appeal on ground (c) therefore fails.

### **Appeal on ground (a)**

#### **Main Issues**

17. (i) The effect of the 3 timber clad structures on pontoons on the visual amenities of the marina and the adjacent Trent and Mersey Canal Conservation Area and; (ii) the impact of the structures on the cultural and heritage qualities of the canal network, and on the vitality and activities of the marina - all in the light of relevant development plan policies.

#### *Policy background*

18. The development plan in this case comprises the West Midlands Regional Spatial Strategy 2004, the approved Staffordshire and Stoke on Trent Structure Plan 1996-2011 and the adopted East Staffordshire Local Plan 2006-2011. All these plans encourage tourism proposals in the area and along the canal in particular, while seeking to control the design of developments, protect conservation areas and improve canal facilities. These matters were explored in detail when the Barton Turns Leisure Centre was permitted in outline, during the consideration of reserved matters and when subsequent full planning applications were approved for the marina element.

19. There was no dispute at the inquiry that development itself accords with the raft of policies set out in the Statement of Common Ground, so my concern in this case is whether or not the unauthorised floating structures also comply with the aims and objectives of the development plan as set out in Local Plan Policies BE1 - Design; BE6 Conservation Areas; E19 & 20 - Tourism; L7 - Water-based Recreation and L13 Leisure/Tourism Uses. Tourism Accommodation Policy E21 was raised by the Council in cross examination but does not feature in the reasons for issuing the enforcement notice. I shall pay special attention to the desirability of preserving or enhancing the character or appearance of the Trent and Mersey Canal Conservation Area as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Reasons

20. Section 5 of the Conservation Area statement, Barton Turn to Alrewas, is described in the submitted extract (Doc.5 App.4.5) as running for some distance along the A38, which was built on the line of the Roman Road Ryknild Street, through open farmland. Distinguishing features are the lock, bridge No.38 and ~~listed buildings at Barton Turn which lie some 350m north-east of the entrance to the marina.~~

21. ~~At this point, the linear conservation area is confined to the width of the canal, the unpaved towpath on the south-east side and about 2.0m width of bank on the marina side. Despite its historic interest as part of the network, the canal passes an area of mixed commercial/residential development to the east with open farmland to the west. The waterway has reinforced banks on both sides where a wide turn into the marina has been formed as part of the approved scheme. While the marina lies outside the conservation area and has caused limited harm to its character, the siting of the 3 floating structures on the pontoon of moorings closest to the boundary would have had a detrimental impact on its appearance at the time the notice was issued. Since they have been moved away, any harm they would have caused has been removed.~~

### *1<sup>st</sup> Issue*

22. In my conclusions on the ground (c) appeal, I found that the timber chalet type structures sited on floating pontoons were not truly houseboats because they were not built for that purpose and bore no resemblance a boat or vessel of any kind. They are clearly designed as holiday chalets and are substantially larger than the narrow boats that form the large proportion of the vessels moored in the marina, being over twice the height above the waterline and nearly twice as wide. The structures almost fill their pontoons except for a small deck at one end where gas cylinders are stored, while a projecting deck over the water at the other provides a sitting out area.

23. While I have every sympathy for those people who are either no longer able to enjoy boating on the canal, or are too disabled to access the boats or even just wish to enjoy the ambiance of staying on the water without having to operate locks, this static form of holiday does not sit comfortably in a marina context where the main purpose is to provide a home base for cruising vessels.

24. Nevertheless, I appreciate that 3 structures occupying only 6 of the 324 moorings is less than 2% of the available berths and, provided they are located in the most unobtrusive locations and not lying together as they were when the notice was issued, I consider that this relatively small proportion of incidental water based holiday accommodation is not unacceptable within the overall Leisure Centre scheme. However, I stress that such a use must remain at a very small scale and this can be controlled by planning conditions.
25. Turning then to where the floating structures might be located, it was agreed that their current temporary positions are unacceptable because one is prominently set amongst narrow boats on one of the largest marina pontoons while the other two occupy visitor moorings and obstruct narrow boats moored behind them. At the inquiry, an area of the marina was agreed between the main parties as being beyond any likely impact on the canal conservation area and this is shown hatched in grey on the attached Plan C.
26. Even so, at the site visit I explored with the parties 3 specific locations within this area where the structures could be sited with least impact on the appearance or working of the marina and be seen against the backdrop of the new Public House and Marina Administration buildings, and where they would best preserve the character and appearance of the conservation area. Subject to being relocated in these positions, I conclude that the 3 timber clad structures on pontoons would have a minimal effect on the visual amenities of the marina and the adjacent Trent and Mersey Canal Conservation Area.

#### *2<sup>nd</sup> Issue*

27. Although examples of similar structures have been drawn to my attention, they appear to be on older more established marinas served by rivers rather than a canal. In contrast, this is a new development where the marina makes a valuable contribution towards the British Waterways policy of off-line moorings to take the pressure off on-line canal moorings and, as their witness Mrs Hemming told the Inquiry, a New Marinas Unit has now been set up to encourage such investments (Doc.7).
28. It therefore seems to me that, in taking 2 narrow boat berths each, the 3 structures have resulted in the loss of 6 off-line berths to the detriment of the canal system as a whole. However, if relocated in wider berths on the edge of the marina where it might be more difficult to manoeuvre a narrow boat, this effect would be minimised, while in such peripheral berths they would not interfere with the daily workings of the marina.
29. I accept the commercial benefits in widening the attractiveness of the marina as a tourism destination by making water based holidays available to the non-cruising public, but this can only be permitted if incidental to the main purpose of the marina as a haven for the off-line mooring of cruising vessels that navigate on the canal system. Subject to this proviso, which can be controlled by planning conditions, I conclude that, in their relocated berths, the 3 timber clad structures on pontoons would have no significant impact on the cultural and heritage qualities of the canal network, nor on the vitality and activities of the marina.

30. For the reasons stated above, I conclude that the 3 timber clad structures on pontoons in their relocated berths would have a minimal effect on the cultural and heritage qualities of the canal network, while preserving the character and appearance of the adjacent Trent and Mersey Canal Conservation Area and the vitality and activities of the marina. The appeal on ground (a) therefore succeeds and the appeals on grounds (f) and (g) do not need to be considered.

### Conditions

31. I have studied the conditions discussed at the Inquiry in the light of the advice in Circular 11/95. I agree with the parties that, to ensure that these structures do not become permanent residential accommodation, the use shall be solely for holiday purposes, with a longest letting period of 4 weeks over a maximum number of 51 weeks per annum, to which Mr Harris agreed in answer to my question. I shall also add conditions that limit the number of units to 3 and that they be sited, in the first instance in the agreed locations shown on the Plan C and, thereafter, only within the area hatched in grey. I am less convinced of the need to control their external appearance, or replacement because any changes which significantly alter their size, form or materials would require planning permission in any event. ~~It was also agreed that, as the structures have been moved away from the canal bank, there is no need for a landscaping condition.~~

### Other matters

32. I have taken account of all the other representations submitted, either in writing or at the Inquiry, in particular from Mr Wedgwood, a local resident, Parish Councillor and member of the East Staffordshire Heritage Trust, and Mr Sharpe for the Inland Waterways Association. I noted their general support for the Leisure Centre development and their concern over the static nature of the structures in an area devoted to narrow boats and canal activities where the new hotel should provide all the accommodation needs of tourists.
33. While I have sympathy with this view, I also acknowledge the need of a relatively small number of people, who cannot or do not wish to hire narrow boats, to holiday on the water which will contribute to the diversity of tourism uses around the marina, in the spirit of the development plan policies. I have found nothing to outweigh the considerations that led to my conclusions.

### Conclusions

34. My overall conclusions are: on ground (c) that the unauthorised timber clad structures on pontoons constitute a breach of planning control and; on ground (a) that, the structures in their relocated berths would have a minimal effect on the cultural and heritage qualities of the canal network, while preserving the character and appearance of the adjacent Trent and Mersey Canal Conservation Area and the vitality and activities of the marina and, thereby, they also accord with the aims and objectives of the relevant development plan policies.

### Formal Decision

35. I direct that the enforcement notice be corrected by: (i) deleting the word "red" in the second line of paragraph 2 of the notice and inserting the word "black",

and by substituting Plan B annexed to this decision for the plan attached to the enforcement notice and; (ii) deleting the allegation in para.3 in its entirety and substituting the following allegation: "*Change of use of the Land, within the marina of the approved Hotel and Leisure Centre, from a use for the mooring of canal cruising vessels to a mixed use for the mooring of canal cruising vessels and use for the mooring of floating timber-clad structures on pontoons used as holiday accommodation*".

36. Subject thereto, I allow the appeal, quash the enforcement notice as corrected and grant planning permission for the change of use of the Land, within the marina of the approved Hotel and Leisure Centre, from a use for the mooring of canal cruising vessels to a mixed use for the mooring of canal cruising vessels and use for the mooring of floating timber clad structures on pontoons used as holiday accommodation, on land known as Barton Turns Marina, Barton under Needwood, Burton upon Trent, Staffordshire DE13 8DZ, subject to the following conditions:

(i) *The use hereby permitted shall be limited to the mooring of 3 floating timber clad structures used solely for holiday accommodation.*

~~(ii) *The holiday accommodation hereby permitted shall not be let for periods in excess of 4 weeks at any one time or for more than 51 weeks in any calendar year.*~~

(iii) *The floating timber clad structures hereby permitted shall be sited in the berths marked A, B, & C and edged and hatched in black, as shown on Plan C annexed to this decision and, if moved thereafter, only within the area hatched in greyl.*

*John H Martin*

Inspector



APPEARANCES

FOR THE APPELLANT:

Mr David Anderton	Solicitor - Ansons LLD, 5 Breadmarket Street, Lichfield WS13 6LU
Instructed by:	JVH Town Planning Consultants Ltd.
He called:	
Mrs Janet V Hodson BA(Hons) DipTP MRTPI	Principal - JVH Town Planning Consultants, Houndhill Courtyard, Houndhill, Marchington, Staffordshire ST14 8LN
Mr Andrew Harris	Director - Shakespeare Classic Line Ltd. 5 Newbold Street, Leamington Spa, Warwickshire CV32 4HN

FOR THE LOCAL PLANNING AUTHORITY:

Miss Rachel Makin	Solicitor - East Staffordshire Borough Council, Town Hall, Burton upon Trent, Staffs DE14 2EB
She called:	
<del>Mr Paul Freeman</del> BSc(Hons)	<del>Senior Planning Enforcement Officer - Planning Control Section, Development and Regeneration Directorate, East Staffordshire Borough Council</del>
Mrs Christine Hemming BSc(Hons) MRTPI	Regional Planner - British Waterways Board, christine.hemming@britishwaterways.co.uk
Mr Chris Forreth BSc(Hons) DipTP MRTPI	Team Leader- South Team, Planning Control Section, East Staffordshire Borough Council

INTERESTED PERSONS:

Mr Adrian Wedgwood  
Barton under Needwood Parish Councillor  
31 Meadow Rise, Barton under Needwood, Burton upon Trent, Staffs. DE13 8DT  
Mr Philip G Sharpe  
Inland Waterways Association philip.g.sharpe@ntworld.com

DOCUMENTS

Document 1	List of persons present at the inquiry
Document 2	Letter of notification of the inquiry and list of those notified
Document 3	Statement of Common Ground
Document 4	Legal submissions on behalf of the appellants
Document 5	Appendices to the Mrs Hodson's proofs of evidence
Document 5A	Appendices to Mr Harris' proof of evidence
Document 6	Appendices to the Council's proofs of evidence
Document 7	Appendix to Mrs Hemming's (BWB) proof of evidence
Document 8	Bundle of Council's supplementary documents
Document 9	Letter from Mr Harpham of Barton Turns Marina dated 8 March 2007
Document 10	Bundle of Third Parties letters in response to Document 2

PLANS

Plan A	Plan attached to the enforcement notice
Plan B	1:5000 plan of approved leisure centre site
Plan C	1:1250 approx. marina layout hatched to show mooring locations





## Costs Decision

Inquiry held on 13 March 2007

by **John H Martin RIBA MRTPI**

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

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Date 26<sup>th</sup> March 2007

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### **Costs application in relation to Appeal Ref: APP/B3410/C/06/2020734 Land known as Barton Turns Marina, Barton under Needwood, Burton upon Trent, Staffordshire DE13 8DZ**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by East Staffordshire Borough Council for a partial award of costs against Shakespeare Classic Line Limited.
- The Inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, change of use of the land from use for the mooring of canal cruising vessels, to a mixed use for the mooring of canal cruising vessels and to accommodate floating timber-clad structures on pontoons used for holiday accommodation.

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### **Summary of Decision: The application fails and no award of costs is made.**

#### **The Submissions for the Council**

1. On behalf of the Council, Miss Makin referred to the advice in Circular 8/93 and claimed that the appellants had caused the Council unnecessary expense by their unreasonable behaviour on two counts.
  2. Firstly, she outlined the negotiations with the appellants' agent, Mrs Hodson, on the Statement of Common Ground which she had prepared but it was amended by the Senior Enforcement Officer, Mr Freeman, and sent to the legal section for comment. The amendments were made by the Council's Solicitor for clarification purposes only, but the agent initially refused to make any changes. Although she accepted them the next day, by that time a draft response to this unreasonable behaviour had been prepared. As the Statement of Common Ground should only contain matters agreed between the parties and these events took place prior to the deadline for its submission, the Council incurred unnecessary expense in preparing a response to the agent's refusal to accept the changes.
  3. Secondly, Miss Makin pointed out that the appellants introduced late evidence on the financial hardship that they might suffer if the notice were to be upheld, and in a letter dated 8 March 2007, submitted on the day of the Inquiry, from the Marina Manager concerning the demand for berths. Neither of these matters was included in the appellants' statement of case and by the time the Council received their proof of evidence, their own proof had been submitted and they were denied the opportunity to respond. The expenditure incurred on these matters might have been spent elsewhere. The Council therefore applied for a partial award of costs for the unnecessary expense incurred.
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### **The Response on behalf of the Appellants**

4. For the appellants, Mr Anderton rejected the application for costs.
5. He pointed out that the Statement of Common ground was drafted by Mrs Hodson and agreed by Mr Freeman. It was only when it was due for signing that the Legal Dept. had queries on some disagreement over description. Such negotiations are common and the document was eventually agreed and signed, so it can be no basis for a claim for costs, particularly as the fault lay with the Council.
6. Turning to the question of hardship, Mr Anderton referred to para.4.11 of the appellants' statement of case under ground (g), where they claimed that the ~~period for compliance would be prejudicial because the holiday accommodation~~ was booked well in advance. The Council were therefore given notice of this matter which, with the appellants' submitted accounts on which Mr Harris was not cross examined, suggested that they had conceded the point.
7. With regard to the evidence of berth availability, this was submitted in response to the late submitted evidence of British Waterways because the appellants could not have anticipated the issue of demand being raised. On all counts, therefore, he could find no unreasonable behaviour nor unnecessary expense incurred by the Council as a result.

### **Conclusions**

8. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily. Para.1 to Annex 1 of the circular states that in planning proceedings to which the guidance applies, the parties normally meet their own expenses.
9. Although the Statement of Common Ground should broadly contain matters agreed between the parties, there can be areas where they can agree to differ, in this case over the suggested conditions (Doc.3 para.5.1). As negotiations on the content of the statement are inevitable, and disagreements not uncommon, I do not regard the agent's initial refusal to accept the changes as being unreasonable in the meaning of para.3(2) of Annex 2 to the circular.
10. Although para.4.11 of the appellants' statement of case does not specifically refer to financial hardship, the implication of prejudice to their interests was clearly identified, and the potential hardship was raised in para.5.23 in Mrs Hodson's proof of evidence should the 30 days period for compliance require the investments of all time-share holders to be repaid. The Council had adequate warning of this issue and do not appear to have incurred additional expense in responding to it, having decided not to cross examine Mr Harris on the submitted accounts.
11. Lastly, the matter of demand for mooring berths was raised in the evidence of Mrs Hemming for British Waterways Board who, despite being a third party called by the Council, submitted a statement in her letter to the Inspectorate

dated 12 September 2006 which raised the matter of demand for moorings. However, it was not until 9 February 2007 that Mrs Hemming submitted a Statement of Case which set out the Marina Licence terms and the Board's policy on moorings. Despite this, it was not until she submitted her proof of evidence that these matters were explored in more detail, sufficient to require a response from the appellants.

12. The letter from Mr Harpham dated 8 March 2007 (Doc.9) was therefore a legitimate response from the Marina Manager to the claims made by the Board regarding any potential breach of its licence and availability of moorings.

13. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

**Formal Decision**

14. I refuse the application for an award of costs.

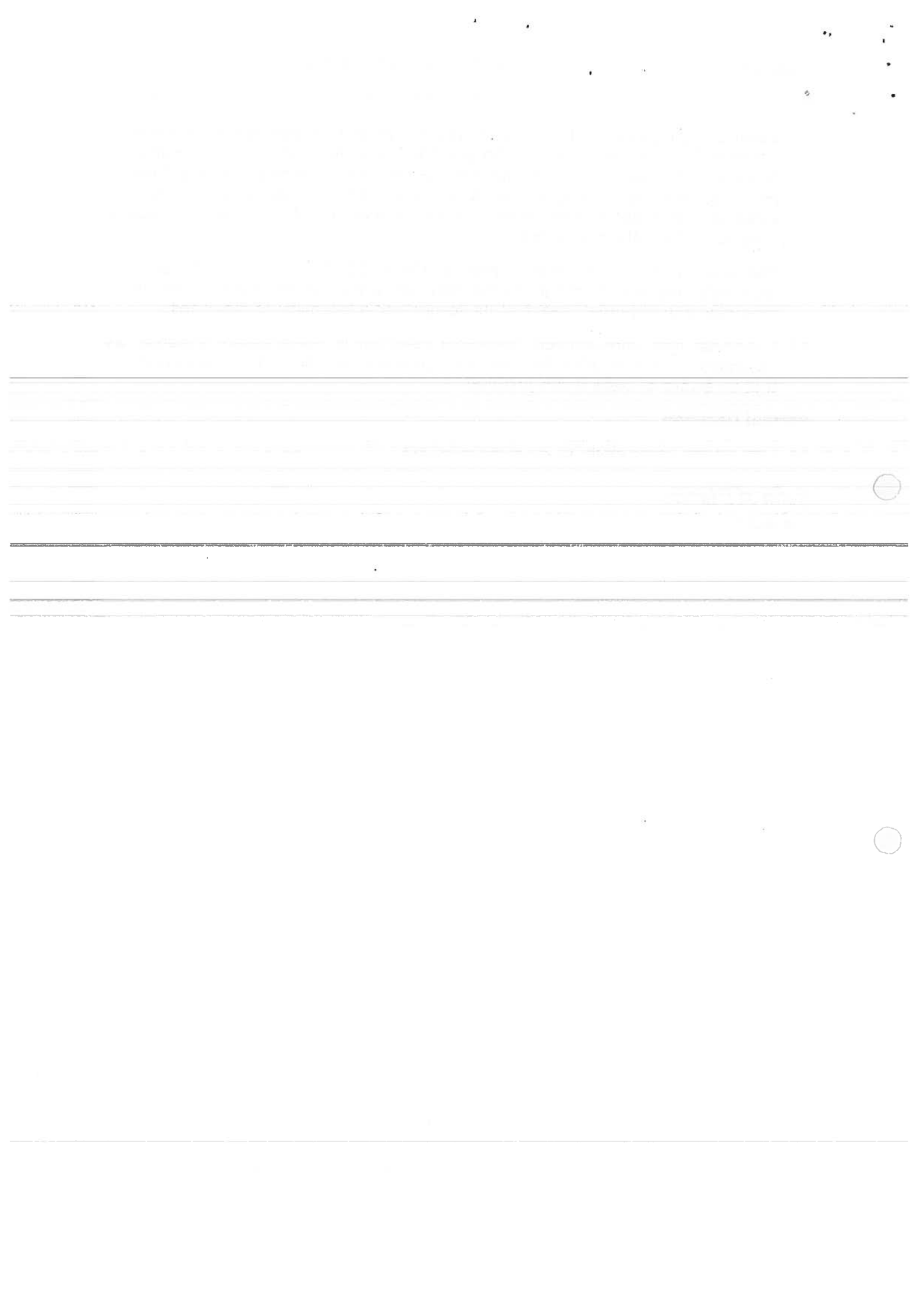
*John H Martin*

Inspector

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Plan 1:5000

This is the Plan B referred to in my decision

dated: 26th March 2007

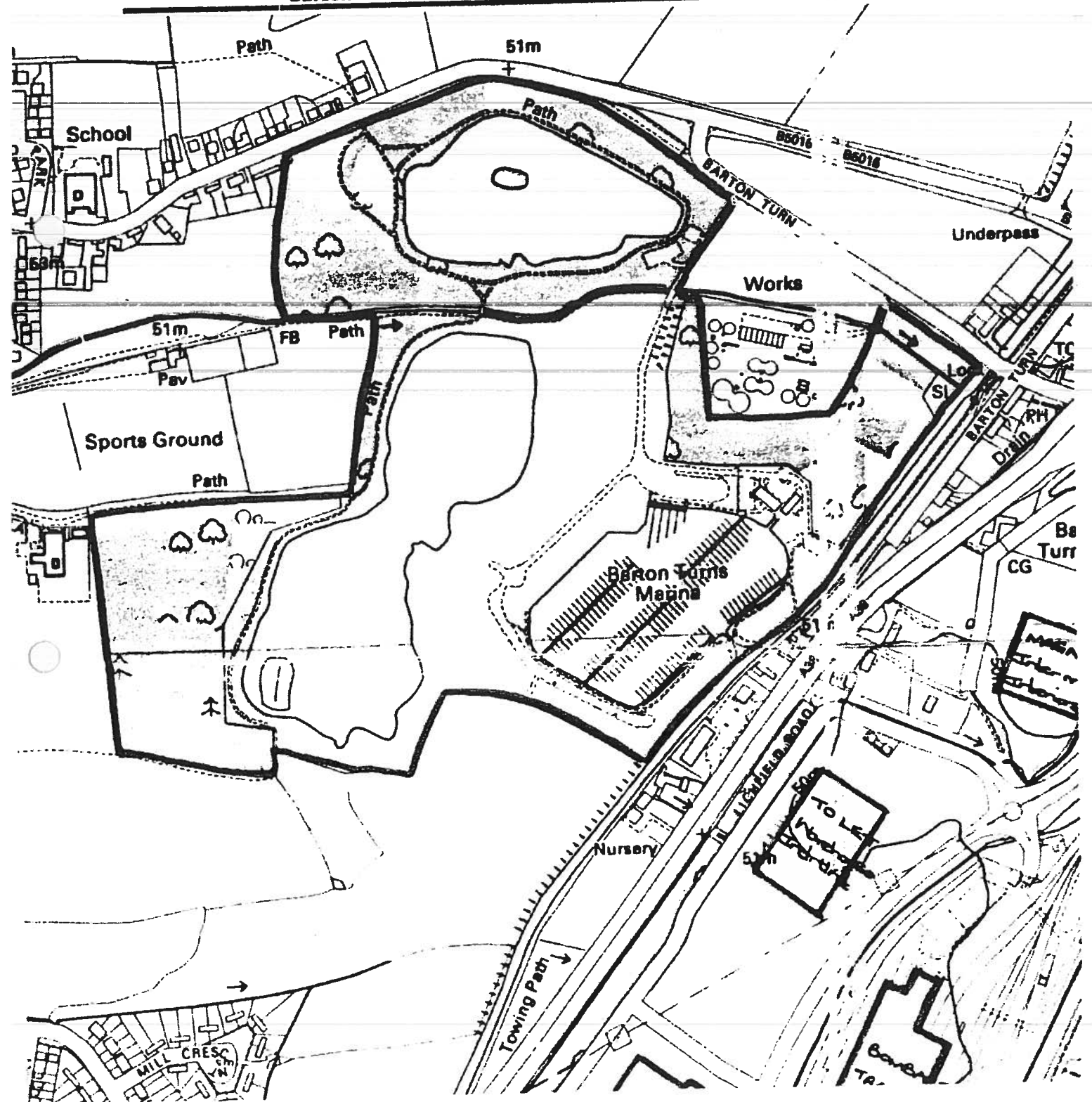
*John H Martin*

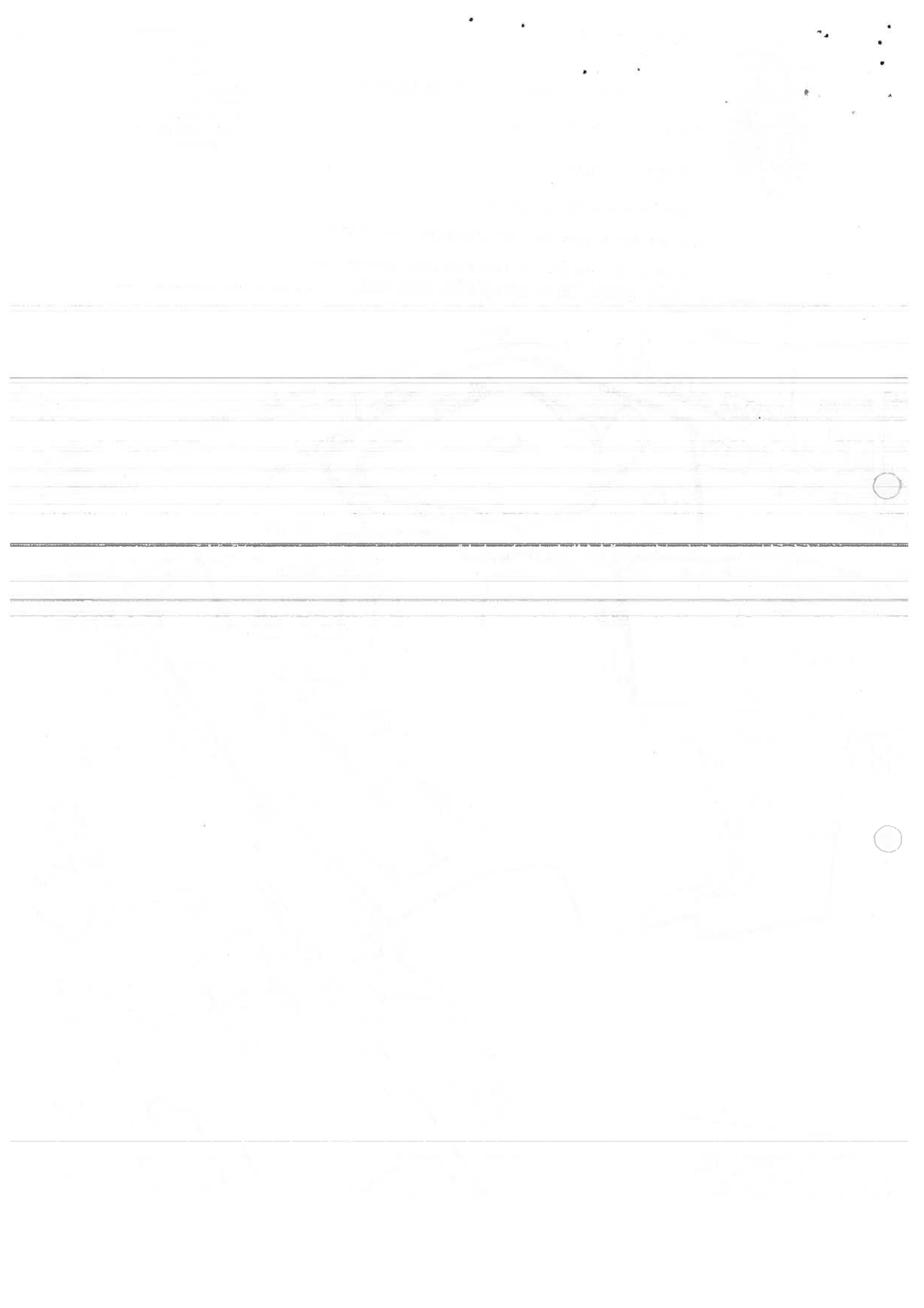
John H Martin RIBA MRTPI

Inspector Appeal Ref: APP/B3410/C/06/2020734

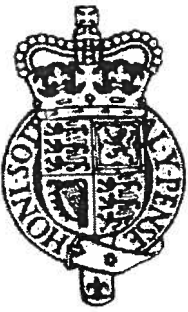
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**Plan 1:1250 approx.**

This is the Plan C referred to in my decision

dated: 26th March 2007

*John H Martin*

**John H Martin RIBA MRTPI**

**Inspector Appeal Ref: APP/B3410/C/06/2020734**

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