

ENFORCEMENT NOTICE (B)

RE: LAND WEST OF KNOLL COTTAGE, SOUTHEND ARTERIAL ROAD,
HORNCHURCH, RM11 3UB

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE

- TO:
1. The Owner of the said land
 2. The Occupier of the said land
 3. Mr William Bond, Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB
 4. Mrs Bond, Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB
 5. Dorothy May Jefford, Knoll Cottage, Southend Arterial Road, Hornchurch RM11 3UB
 6. Northern Rock PLC, Northern Rock House, Gosforth, Newcastle Upon Tyne, NE3 4PL

ISSUED BY: London Borough of Havering

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to the Council that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations.

2. **THE LAND AFFECTED**

The land to the west of Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB shown edged black on the attached plan ("the Land")

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without the benefit of planning permission a material change of use, through intensification, from limited lawful use of the area outlined red on the attached plan for covered and open storage to a maximum height of 1.8 metres and the parking of one vehicle with an Operators License and one light van to a commercial use. The

unauthorised and intensified commercial use includes the storage of large vehicles and ancillary storage of catering equipment on the Land.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The Land lies within the Metropolitan Green Belt.

A Certificate of Lawful Use was granted on 21 November 1997 (E0013.97) in relation to the area outlined red on the attached plan permitting covered and open storage to a maximum height of 1.8 metres and parking of one vehicle with an Operators License and one light van only. The business operating at the site has since changed and intensified.

Harm in the form of increased noise and disturbance is caused by the site's intensified use in close proximity to residential properties contrary to Policy ENV1 of the Havering Unitary Development Plan. The character and appearance of the Green Belt is also harmed by the unauthorised material change of use by reason of intensification and physical impact.

There are no very special circumstances which would justify this inappropriate development in the Green Belt which is contrary to policies GRB2 of the Havering Unitary Development Plan.

5. WHAT YOU ARE REQUIRED TO DO

- (i) Cease using the Land for commercial vehicle parking and storage of commercial equipment including open storage (other than the limited lawful use falling within the Certificate of Lawful Use E0013.97).

Time for compliance: one month from the effective date of this notice.

- (ii) Remove from the Land all machinery, equipment apparatus and vehicles brought on to the site in connection with the unauthorised use.

Time for compliance: one month from the effective date of this notice.

- (iii) Return the Land to its authorised use of limited covered/open storage and parking as identified as lawful in the Certificate of Lawful Use E0013.97 and for no other purpose.

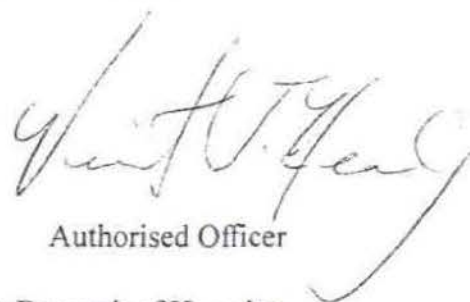
Time for compliance: one month from the effective date of this notice.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 3 August 2006, unless an appeal is made against it beforehand.

Dated: 29 June 2006

Signed:



Authorised Officer

on behalf of London Borough of Havering
Town Hall
Main Road
Romford RM1 3BD

YOUR RIGHT OF APPEAL

You can appeal against this Enforcement Notice to the Secretary of State by the 3 August 2006. Further details are given in the attached explanatory note.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 3 August 2006 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the Notice.

FAILURE TO COMPLY WITH AN ENFORCEMENT NOTICE WHICH HAS TAKEN EFFECT CAN RESULT IN PROSECUTION AND/OR REMEDIAL ACTION BY THE COUNCIL.

EXPLANATORY NOTES

STATUTORY PROVISIONS

A summary of Sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990 (as amended) is enclosed with this Notice.

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be in writing and received, or posted (with the postage paid and properly addressed) in time to be received in the ordinary course of the post, by the Secretary of State before 3 August 2006. The enclosed booklet "Enforcement Appeals - A guide to Procedure" sets out your rights. Read it carefully. If you appeal you should use the enclosed appeal forms. Two copies are for you to send to the Secretary of State if you decide to appeal. The other

is for you to keep as a duplicate for your own records. You should also send the Secretary of State a copy of the Enforcement Notice.

GROUNDS OF APPEAL

The grounds of appeal are set out in Section 174 of the Town and Country Planning Act 1991 and are also set out on page 2-5 the enclosed appeal forms.

PLANNING APPLICATION FEE

Should wish to appeal on ground (a) - that planning permission should be granted for the unauthorised use - then a fee of £265 is payable both to the Secretary of State and to the Council. If the fees are not paid then that ground of appeal will not be valid.

STATEMENT ON GROUNDS OF APPEAL

You must submit to the Secretary of State, either when giving notice of appeal or within 14 days from the date on which the Secretary of State sends him a notice so requiring him, a statement in writing specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts on which you propose to rely in support of each of those grounds.

RECIPIENTS OF THE ENFORCEMENT NOTICE

The names and addresses of all the persons on whom the Enforcement Notice has been served are:




- TO:
1. The Owner of the said land
 2. The Occupier of the said land
 3. Mr William Bond, Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB
 4. Mrs Bond, Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB
 5. Dorothy May Jefford, Knoll Cottage, Southend Arterial Road, Hornchurch RM11 3UB
 6. Northern Rock PLC, Northern Rock House, Gosforth, Newcastle Upon Tyne, NE3 4PL


At 1430hrs Thursday 29th June 2006
Visited Knoll Cottage, Southend Arterial Road.
No response at door. Envelope contains
Notices placed in letter box.
V B Long



Crown Copyright. All rights reserved.
 of Havering. UPRN 100023211656
 ence No 100024327

Map Reference: TQ5589SW Scale: 1:500 Scale 0 4 8 12 16 20 m
 Date: 28/12/2005


 London Borough of Havering
 Planning Department
 Mercury House, Mercury Gardens
 Romford, RM1 3SL
 Tel. 01708 434343

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Appeal Decisions

Site visit made on 15 March 2007

by **Peter Norman** MA MRTPI

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

1452 - 1453 - 1461
1474 - 3D
The Planning Inspectorate
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Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
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e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date
16 Apr. 07

Appeal A: APP/B5480/C/06/2022311

Land west of Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB

- 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 William Bond against an enforcement notice (Notice A) issued by the Council of the London Borough of Havering.
- The Council's reference is 1452.
- The notice was issued on 29 June 2006.
- The breach of planning control as alleged in the notice is, without planning permission, the alteration and extension of a former storage building, by way of widening and heightening, to provide additional parking and storage for commercial vehicles and ancillary equipment.
- The requirements of the notice are to
 - (i) Demolish the storage building.
 - (ii) Remove all materials and equipment brought on to the site in connection with the breach of planning control.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B: APP/B5480/C/06/2022313

Land west of Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB

- 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 William Bond against an enforcement notice (Notice B) issued by the Council of the London Borough of Havering.
- The Council's reference is 1453.
- The notice was issued on 29 June 2006.
- The breach of planning control as alleged in the notice is, without the benefit of planning permission, a material change of use, through intensification, from limited lawful use of the area outlined red on the plan attached to the notice for covered and open storage to a maximum height of 1.8 metres and the parking of one vehicle with an Operators Licence and one light van to a commercial use. The unauthorised and intensified commercial use includes the storage of large vehicles and ancillary storage of catering equipment on the Land.

- The requirements of the notice are to
 - (i) Cease using the Land for commercial vehicle parking and storage of commercial equipment including open storage (other than the limited lawful use falling within the Certificate of Lawful Use E0013.97).
 - (ii) Remove from the Land all machinery, equipment apparatus and vehicles brought on to the site in connection with the unauthorised use.
 - (iii) Return the Land to its authorised use of limited covered/open storage and parking as identified as lawful in the Certificate of Lawful Use E0013.97 and for no other purpose.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal C: APP/B5480/A/06/2023938

Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by William Bond against the Council of the London Borough of Havering.
- The application, Reference P0267.05, is dated 11 February 2005.
- The development proposed is a replacement storage building.

Summary of Decision: The appeal is dismissed and planning permission refused.

Procedural Matters

1. I note that the appellant is critical of the Council's approach to this matter, in that they took the view that the application for the replacement building, now the subject of Appeal C, could not be processed except as part of an application for both a new building and the change of use of the land. In this document I will consider the two aspects of the development separately. As the use of the land is perhaps the more fundamental point, I deal with Notice B first, then the planning merits of the proposed building (Appeal C), and finally some matters arising from the fact that the partly-built structure is the subject of a separate enforcement notice (Notice A).

THE USE OF THE LAND

Appeal B: The Appeal against Enforcement Notice B

Ground (c)

2. There is no dispute that the appeal site is used by the residents of Knoll Cottage in connection with their business which they run from home. I saw that it can be reached only via the residential curtilage of the house. The appellant argues that the site and the cottage therefore constitute a single planning unit, and by inference that the notice should refer to the whole of the unit and to a mixed use. I note that an earlier enforcement notice, which

came into effect in 1997, was drafted in that way referring to a mixed residential and manufacturing/storage use.

3. A change of use requires planning permission only if it is a material change, and the concept of the planning unit has evolved, largely through case law, as a means of determining the most appropriate area against which to assess the materiality of any change. The definition of the planning unit is a matter for judgement on the facts of the case. Sometimes it may comprise the whole unit of occupation even though the occupier carries on several activities not necessarily incidental or ancillary to one another. In other cases, where two or more physically separate and distinct areas within a single unit of occupation are occupied for substantially different purposes, each area used for a different main purpose may properly be considered as a separate planning unit. In this instance, whilst I acknowledge that access to the notice land is via the house drive, the land is otherwise physically and functionally separate from the house and garden, and I find no fault in the Council's decision to treat it as a separate planning unit.
4. In support of ground (c) the appellant argues that the present use of the land is for storage, and therefore in accordance with the certificate of lawful use apart from a technical infringement of the height limit set out in the certificate. He submits that a change from the storage of garden ornaments to the storage of catering units does not constitute a material change of use. He accepts that the land is used as a permanent base for his catering business; he keeps one goods vehicle and one van there and also owns two catering trailers, 3.1 metres high, which return to the site when not in use at fairs, shows, etc. He makes the point that it is in his own interest to minimise the time the trailers spend at base, since that is dead time from a business point of view.
5. In order to determine whether there has been a material change of use requiring planning permission it is necessary to make a careful comparison between the authorised use and the present use. This site is unusual in being subject to an enforcement notice which took effect in 1997, and also having the benefit of a certificate of lawful use. The terms of the effective notice prevent the use of the land subject to the present notice for the manufacture/storage of garden ornaments and other materials and parking and storage of commercial vehicles. The certificate applies to only part of the land subject to the present notice, as shown on the notice plan; it certifies that, on the land to which it applies, covered and open storage to a maximum height of 1.8 metres, and the parking of one 'O' licensed vehicle and one light van, are lawful. By virtue of section 191(6) the lawfulness of any use for which a certificate is in force is conclusively presumed, but any other uses prohibited by the 1997 notice remain prohibited and, in that part of the notice land not covered by the certificate, the 1997 notice still has full effect. Thus the only authorised uses are storage, to a limited height, and the parking of one goods vehicle and one light van, all within the area covered by the certificate, whilst the use of any other part of the site for storage or for parking commercial vehicles is specifically prohibited.
6. It is important to remember that the certificate of lawful use is not a planning permission, and the height restriction included in it is not a planning condition. Breach of the height limitation therefore does not in itself amount to a breach of control, and minor changes in the way the land is used do not necessarily amount to a material change requiring permission. The question is whether the lawful and current uses are different in character.

7. The present use is described by the Council as a commercial use including the storage of large vehicles and ancillary storage of catering equipment. The notice alleges that there has been a material change of use through intensification, and also that there has been a change to a commercial use. I find this analysis somewhat ambivalent because 'intensification' implies more of the same and does not in itself constitute a material change; on the other hand it is difficult to accept that there has been a change *to a commercial use* because the lawful storage use (which had apparently gained immunity from enforcement by virtue of the storage of garden ornaments) was itself in connection with a business.
8. The true position, it seems to me, is that the land is no longer mainly used for storage, a term which implies something being put away for a period of time because it is not needed in the short term, or perhaps pending sale. Rather the land is used as a depot, or in the appellant's words a permanent base, for a business which is a mobile catering business. The catering units are not stored on the land: they simply return to base between jobs. No information has been supplied about how often or at what times the units leave or return to the site, but it is reasonable to suppose that movements will be frequent and that some events will involve early starts, returns late at night, or both. I have no doubt that the permanent base for such a business will be used for cleaning and re-stocking the units. I conclude that, on the evidence put forward on behalf of the appellant, the present use of the appeal site is as a base or depot for a mobile catering business, and that this is a use materially different in character from that specified in the certificate of lawfulness. In the absence of planning permission for the new use there has been a breach of control and the appeal on ground (c) will fail.
9. I will use my powers under section 176 of the Act to correct the misdescription of the change of use in the enforcement notice. I am confident that this can be done without injustice because the correction will simply substitute a more accurate description of the current use, based on the appellant's own information.

Ground (a) and the Deemed Application

Planning Policy

10. The appeal site lies in the Metropolitan Green Belt. National policy on Green Belts, set out in Planning Policy Guidance note 2 (PPG2), explains that they are designated for several purposes, including checking the unrestricted sprawl of large built-up areas and helping to safeguard the countryside from encroachment. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and therefore the most important attribute of Green Belts is their openness. So that the Green Belts can continue to fulfil the purposes for which they were designated, there is a general presumption against inappropriate development within them. Such development is by definition harmful to the Green Belt, and the Government's policy is that it should not be permitted unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations: only in such very special circumstances may permission be granted.
11. PPG2 defines what kinds of development are appropriate or inappropriate. Changes of use are inappropriate unless they maintain openness and do not conflict with the purposes of including land in the Green Belt; however the re-use of an existing building is not inappropriate, provided the building is in keeping with its surroundings and that the new use does not have a materially greater impact than the former use on the openness or purposes

of the Green Belt. New buildings are not appropriate unless for agriculture, forestry, outdoor recreation or cemeteries, or unless they are the limited extension, alteration or replacement of an existing dwelling.

12. These national policies are restated in policy GRB2 of the Havering Unitary Development Plan. In that plan the Council acknowledge that it is not practical to relocate or discontinue the use of most established commercial sites in the Green Belt, but make plain their intention to lessen the environmental impact of such uses: policy GRB16 says that applications for changes of use or other development such as replacement buildings will be allowed only if they would result in a particularly substantial improvement in current environmental conditions and enhancement of the Green Belt. Policy ENV1 of the development plan is also relevant to this appeal; it seeks to ensure that all development is compatible with the surrounding area and does not have unreasonably adverse effects by reason for example of noise.

The Issue

13. The issue here is whether the use of the appeal site as a base or depot for a mobile catering business is an appropriate use of Green Belt land and, if not, whether there are any other considerations which clearly outweigh the harm by reason of inappropriateness and any adverse effect which the use may have on the living conditions of neighbouring residents.

Reasons

14. Whilst I disagree with the proposition that there has been a material change of use 'through intensification' (because in my view the new use is different in character from the old) I do accept that use as a base for a mobile catering business necessarily implies a greater degree of activity on the land, and more vehicle movements to and from it, than the lawful restricted use for storage. It is agreed that the height of the catering units based at the site exceeds the height limit on storage set by the certificate of lawfulness. Moreover, whilst it might be possible to confine stored items to the lawful storage area if the site continued to be used simply for storage, if permission were granted for the present catering use it would not be reasonable or practical to restrict activity to only part of the land. In essence the site comprises a building with a concrete yard about 15 metres deep in front of it, which any business occupant would wish to use for access, manoeuvring, loading and parking.
15. Thus the grant of permission would allow more activity at the site than the lawful use, including an increase in traffic, and an expansion of the area lawfully in commercial use, as well as ending the restriction on the height of what may be kept or stored. The land would therefore become permanently more urban in character, contrary to the Green Belt purposes of restricting urban sprawl and safeguarding the countryside from encroachment, and less open. It follows that the unauthorised use as a base for a mobile catering business is not appropriate in the Green Belt, and that there is a presumption against it. On the basis that the storage use which had gained immunity from enforcement action prior to the issue of the certificate of lawfulness was in connection with a garden ornaments business, policy GRB16 applies to the appeal site as an established commercial site in the Green Belt. Use as a base for a mobile catering business would not result in a particularly substantial improvement in current environmental conditions or enhancement of the Green Belt, and that policy therefore reinforces the presumption against the grant of permission.

16. No considerations have been put forward which might outweigh the harm to the Green Belt by virtue of the fact that the unauthorised use is inappropriate in principle. Therefore, although any adverse effect on the living conditions of neighbours by reason of additional noise might well be small, there are no very special circumstances to justify the grant of permission in this case. As the development is unacceptable in principle, it could not be made acceptable by the imposition of planning conditions.

Ground (f)

17. The appellant submits that the requirements of the notice are not clear. I have some sympathy with that view. The difficulty in framing clear requirements arises because the notice alleges the intensification of a lawful use for (restricted) storage to a commercial use including storage of certain items. I have concluded from the evidence available to me that the unauthorised use is not simply an intensification but a use materially different in character from that specified in the certificate of lawfulness. I will therefore need to vary the notice to take account of that conclusion, requiring the use of the land as a base or depot for a mobile catering business to cease, and I believe that variation will remove any ambiguity.

Conclusions on Appeal B

18. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

THE BUILDING

Appeal C: The Section 78 Appeal

Planning Policy

19. I have set out the policy background in paragraphs 10 to 12 above.

The Issue

20. The issue is whether the proposed building would be an appropriate form of development in the Green Belt and, if not, whether the harm by reason of inappropriateness is clearly outweighed by any other considerations.

Reasons

21. Although it would in part occupy the footprint of an existing building, the proposal is for a new building. PPG2 makes it clear that a new building, whether for the lawful storage use or another commercial use, is by definition inappropriate in the Green Belt. The proposal is also contrary to policy GRB16 of the development plan because, whilst it would make it possible for catering units now stored unlawfully in the open to be kept inside, it would not result in a substantial improvement in environmental conditions or an enhancement of the Green Belt, by comparison with the lawful use of the site. In fact the proposed building would be bigger and taller than the building to be replaced, and could lead to the land being used more intensively. There are no other relevant considerations to indicate that the building should be permitted despite the presumption against inappropriate development.

Conclusion on Appeal C

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Appeal A: The Appeal against Enforcement Notice A

Ground (b)

23. The notice alleges the alteration and extension of an existing building. The appellant says that the existing building remains unaltered, and that he has started to construct the steel frame of the proposed new building around it. My inspection confirmed that this is so, and I will correct the notice to refer to the partial construction of the framework of a building.

Ground (f)

24. The notice requires the demolition of the storage building. The Council concede that this requirement is ambiguous since it could be taken to refer to the unaltered storage building which has existed on the site for many years. It is agreed that the existing building is lawful and that the notice cannot require its demolition. To avoid any ambiguity I will vary the notice to make clear that it is the partly-built frame of the proposed new building which is to be demolished.

Conclusions on Appeal A

25. For the reasons given above, and having regard to all other matters raised, I conclude that the breach of control is inaccurately described and that the requirements are excessive. I will correct and vary the enforcement notice accordingly, prior to upholding it. The appeal on ground (f) succeeds to that extent.

FORMAL DECISIONS

Appeal A: APP/B5480/C/06/2022311

26. I direct that enforcement notice A be corrected by deleting paragraph 3 and inserting in its place

“3. THE BREACH OF PLANNING CONTROL ALLEGED

Without the benefit of planning permission the partial construction of the framework of a new building around an existing former storage building.”

27. I further direct that the notice be varied by deleting subparagraph 5(i) and inserting in its place

“(i) Demolish the partly-constructed framework of the new building.

Time for compliance: three months from the effective date of this notice.”

28. Subject to these corrections and variations I dismiss the appeal and uphold the enforcement notice as corrected and varied.

Appeal B: APP/B5480/C/06/2022313

29. I direct that enforcement notice B be corrected by deleting paragraph 3 and inserting in its place

“3. THE BREACH OF PLANNING CONTROL ALLEGED

Without the benefit of planning permission a material change of use from limited lawful use of the area outlined red on the attached plan for covered and open storage to a maximum height of 1.8 metres and the parking of one vehicle with an Operators Licence and one light van to use as a base for a mobile catering business.”

30. I further direct that the notice be varied by deleting paragraph 5 and inserting in its place

“5. WHAT YOU ARE REQUIRED TO DO

(i) Cease using the Land as a base for a mobile catering business.

Time for compliance: one month from the effective date of this notice.

(ii) Permanently remove from the Land all items or materials stored and all vehicles stored or parked, other than any items or materials stored or vehicles stored or parked in accordance with the terms of the Certificate of Lawful Use or Development, reference E0013.97, issued on 21 November 1997.

Time for compliance: one month from the effective date of this notice.”

31. Subject to these corrections and variations I dismiss the appeal, uphold the enforcement notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C: APP/B5480/A/06/2023938

32. I dismiss the appeal and refuse planning permission for the erection of a replacement storage building at Knoll Cottage, Southend Arterial Road, Hornchurch, RM11 3UB.

Peter Norman

INSPECTOR