



Appeal Decision

Inquiry held on 5 July and 12 September 2005

Site visit made on 5 July 2005

by **Wendy McKay LLB**

an Inspector appointed by the First Secretary of State

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Date
22 NOV 2005

Appeal Ref: APP/C1950/C/05/2000866

51 Kentish Lane, Brookmans Park, Nr Potters Bar, Hertfordshire AL9 6NG

- 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 Mr Luciano Capaldo against an enforcement notice issued by Welwyn Hatfield District Council.
- The Council's reference is TP/EN.10/04.
- The notice was issued on 16 December 2004.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwellinghouse to a mixed use as a dwellinghouse and a film set.
- The requirements of the notice are to cease the use of the land as a film set and remove all vehicles and other materials and works associated with the unauthorised development.
- 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), (f) and (g) 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.

Procedural Matters

1. At the Inquiry, the oral evidence was given on oath.
2. The land affected by the notice is described in Schedule 1 of that document as being "shown hatched on the attached plan". The notice plan does not include a "hatched" area but instead shows the site edged in red. The parties agreed that this was a typographical error on the part of the Council and that this could be corrected without any injustice being caused.
3. The Appellant also pointed out that an area within the rear garden of the dwellinghouse had been excluded from the notice plan. The land within his occupation extends much further westwards for about a third of the width of the remainder of the plot giving it a depth in part of some 155 m. It was requested that this area should be included within the scope of the notice. However, to do so would extend the scope of the notice as drafted and could potentially place the Appellant in a worse position than if he had not appealed. Since this could cause injustice to the Appellant I do not propose to amend the notice plan in this respect.
4. The Appellant criticised the wording of the alleged breach of planning control. He submitted that to describe it as a "film set" was incorrect since no specific measures or special works were needed to be taken to render the property suitable for filming. The Appellant suggested that it was more accurately described as "an occasional location for

filming". There was also uncertainty as to whether or not the description included still photography shoots. The Appellant did not consider that still photography was covered by the enforcement notice whereas the Council contended that the appropriate way of describing the use was as a "film set" and that this description covered the use of the property for both still photography and filming. The Council suggested that the alleged breach of planning control could alternatively be described as the "occasional use for film location and for still photography".

5. There is no relevant statutory definition of the term "film set". It is therefore appropriate to give the words their ordinary meaning. The Oxford English Dictionary does not contain a relevant entry for the term. The Collins English Dictionary, 6th edition defines it as the "scenery and props as arranged for shooting a film". The Chambers dictionary defines it as "the scenery, furniture etc arranged for the scene of a cinema film". The Oxford Pocket English Dictionary defines the term "set" as the "setting, stage, furniture etc for a play or film etc". Although generally little is done to render the property suitable for filming, there is a degree of "setting-up" before filming. The use has involved the construction of scaffolding; the provision of lighting; the laying of trackways for cameras; the positioning of a generator; furniture has been moved and props installed. The property provides the necessary structural setting for the filming process. I am satisfied that the motion film making activity is properly described as a "film set" use and it is not necessary to correct the allegation in this respect. Nevertheless, it seems to me that the ordinary meaning of the term "film set" does not incorporate a use for still photography shoots. To include specific reference to "still photography" at this stage would extend the scope of the notice and could potentially cause injustice to the Appellant. I shall therefore deal with this appeal on the basis of the alleged breach of planning control as originally set out in the notice.

The appeal on ground (c)

6. On ground (c), the Appellant argued that, as a matter of fact and degree, the level of usage of this property as a film set has not changed its primary use from that of a private residence to a mixed use as a dwellinghouse and a film set and that, accordingly, a material change of use has not taken place.
7. PPG4 paragraph 32 advises that permission is not normally required where the use of part of a dwelling-house for business purposes does not change the overall character of the property's use as a single dwelling. However, paragraph 33 explains that once the business or non-residential use of the property ceases to be ancillary to its use as a single dwelling because, for example, the business has grown and the use of the dwelling for activities related to the business has intensified, a material change of use for which planning permission is required is likely to have taken place.
8. The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) provides no permitted development rights for changes of use within dwellings. The Appellant agreed that he could not benefit from permitted development rights granted for temporary uses under Schedule 2 Part 4 paragraph B of the GPDO as paragraph B.1(a) provides that such development is not permitted by Class B if the land in question is a building or is within the curtilage of a building. However, it was submitted that the 28 day rule for the use of land embodied in the Town and Country Planning (General Permitted Development) Order 1995 should be taken as a guideline for the purposes of determining whether or not a material change of use had taken place.

9. Mr Capaldo has prepared a table of the number of days when any form of shooting activity has taken place from the beginning of 2002 to the end of May 2005. The table does not include still photography. It shows activity broken down into actual filming days, days during which preparation occurred prior to filming and days for dismantling/returning everything to normal which are referred to in the industry as "strike off days". In 2002, there were 10 filming and 2 preparation days. In 2003 there were 15 days on which filming took place with a total of 23 days for all activities. In 2004, there were 18 days filming and 22 days in total, and 8 days filming out of a total of 10 days so far in 2005. In terms of hours of activity, preparation and strike-off are limited to the normal working day. The majority of filming has taken place from 7.30 am through to 6.30 pm with only 4 days in 2003 and 3 days this year when filming has extended into the evening but not any later than 10.30 pm.
10. Mr Capaldo explained that when the house is used for filming the film crew usually arrives at 7.30 am with the generator, at least one truck and other vehicles. The generator van is parked in the drive in front of the garage and other vehicles are parked in the drive. The trucks are usually parked on the road in front of the house. On a few occasions the furniture has been moved within a room to allow other film temporary props to be used but at the end of each operation it is repositioned back to its original place. The film crew is usually brought to the house by minibus from a satellite base. As soon as the filming scene is complete the actors and the extras are taken back to the remote satellite base in the mini bus. During the filming, he and his wife are at home and they never have to leave the house during the day or the night. They carry on with their life without making alterations to their routine. No excavation or work of a structural nature has ever taken place to allow filming of a particular scene.
11. The Council referred to the case of *Harrods Ltd v SSETR and the Royal Borough of Kensington and Chelsea COA 7.3.02*. In that case, a change of use would not be material if it was one normally associated with the operation of department stores. The right approach is therefore to see what dwellinghouses in general have as reasonable incidental activities. What could a reasonable person consider the normal use of a dwellinghouse to comprise?
12. Both film and set-up crews visit the property and bring their own vehicles, props and equipment. The use of the property for filming is carried out by the film company and not by the Appellant. It is a business use carried out by different companies with no connection with the residential use. It is done on a commercial basis with no particular input from the Appellant other than the provision of the building and the land. Neither the Appellant nor his wife is involved in the production/creative process. In cross-examination, Ms Orsborn, for the Appellant agreed that the use of lights mounted on scaffolding was not ordinarily associated with a residential use nor was the arrival of some 30 film crew staff in the morning and their departure late at night. In my view, there are a number of the activities associated with the unauthorised use that are clearly not what one normally associates with a dwellinghouse use. I do not believe that the unauthorised use can be regarded as being ancillary to the residential use.
13. In any event, the Council has received numerous complaints as regards the level of activity and disturbance experienced by residents when filming takes place. At the time of his visit to the premises on 7 October 2003, the Council's officer, Christopher Horan, noted 10 vehicles parked on the roadside including 1 police car, 3 vans, 4 large trucks and 2 cars.

There were a large number of cables running from some of the trucks. There were approximately 50 people in the front garden of the property. I am satisfied that the non-residential use generates visitors, traffic and noise over and above what might be expected if the property were in use as a single dwelling. Although Mr Capaldo's list showed that the activities were restricted to less than 28 days in any calendar year, filming in the house and garden can involve intensive levels of staff and equipment which dominate the character of the premises when in use for that purpose.

14. Having particular regard to the number of people and the number and size of vehicles visiting the premises in connection with the filming activities; the substantial parts of the building and garden used for business purposes; the nature of the equipment brought onto the site and the hours of operation during active days I find, as a matter of fact and degree, that the material change of use alleged in the notice has occurred. Since no planning permission has been granted the appeal must fail on ground (c).

The appeal on ground (a) and the deemed application

The Main Issues

15. The main issues are first, whether the use would amount to inappropriate development in the Green Belt having regard to development plan policy and the guidance included in PPG2, secondly, the implications that the development would have for the safety of people using the public highway, thirdly, the effect on the living conditions of neighbours with particular regard to noise and disturbance and external lighting, and fourthly, whether the benefits of the development would outweigh any harm resulting from the other issues.

The Development Plan and other policies

16. The Development Plan for the area includes the Hertfordshire Structure Plan Review 1991-2011 adopted in 1998 and the Welwyn Hatfield District Plan adopted in 2005.
17. The Structure Plan contains no policies directly relating to filming within the County. The Key Diagram shows the area around Hatfield and Welwyn as Green Belt. Policy 5 confirms that the precise boundaries of the Green Belt should be defined in Local Plans and sets out the approach on boundary reviews, exclusions and safeguarded land. It applies a presumption against inappropriate development and confirms that permission will not be given, except in very special circumstances, for purposes other than those detailed in PPG2.
18. Other relevant Structure Plan policies are Policy 14 Development for Employment Needs; Policy 15 Key Employment Sites; Policy 22 Reduction of Travel Need and Car Usage; Policy 29 Traffic and Road Safety Implications of Development Proposals.
19. The District Plan identifies the detailed boundary of the Green Belt. The Proposals Map includes the appeal site and other properties along Kentish Lane within the Green Belt. Policy RA1 sets out the criteria to be applied to development proposals within the Green Belt. Other relevant District Plan policies are R17 Noise and Vibration Pollution; R18 Light Pollution; RA31 New Development using Rural Roads. Both the Appellant and the Council agreed that RA17 which relates to the re-use of buildings in the Green Belt was not an applicable policy.
20. Relevant national guidance is set out in PPG2: Green Belts; PPG4: Industrial and Commercial Development and Small Firms; PPG18: Enforcing Planning Control.

Reasons

Whether the use would amount to inappropriate development in the Green Belt

21. On the first issue, the appeal site is located within the Metropolitan Green Belt. PPG2 paragraph 3.12 states that the statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt.
22. The District Plan Policy RA1 states that apart from development referred to in other policies or in very special circumstances, permission will only be given for (i) agriculture, forestry or mineral extraction; (ii) small scale essential facilities for outdoor sport and outdoor recreation or for cemeteries and for other uses of the land which preserve the openness of the green belt and which do not conflict with the purposes of including land within it; (iii) the re-use of buildings in accordance with Policy RA17. The Council submitted that to fall within exception (ii) the use had to be related to the small scale essential facilities for outdoor sport or recreation. However, the policy post-dates PPG2 and, I believe that the interpretation of this criterion that is consistent with that advice allows for the other "uses" to be considered separately.
23. As regards the impact on openness, the Council contended that there was an adverse impact upon the openness of the Green Belt by reason of traffic generated, vehicles parked at the premises and on the highway, and the general activity and equipment on the site. Whilst the activity is going on there is a limited impact on the openness of the Green Belt. However, this fluctuates and at the end of the filming project all equipment and vehicles are removed. The activity makes use of the existing structures and facilities on the site which have an impact on openness whether or not the use takes place.
24. One of the purposes of including land in the Green Belt is to assist in safeguarding the countryside from encroachment. The site is located within the rural area of the District. However, this must be seen in the context of an existing residential dwelling that is, itself, urban in character. Most of the activity occurs within the existing residential plot and does not encroach into the surrounding countryside. The increase in vehicles accessing and parking at the site and along the road has some impact on the rural character of the surroundings. Nevertheless, I do not find this to be significant in the overall context of the site and surroundings.
25. In my view, the time over which the use would operate is also a material consideration. Given the intermittency of the use I am satisfied that openness would be maintained and there would be no significant conflict with the purposes of including land within the Green Belt.
26. I conclude that the development falls within criterion (ii) of Policy RA1, and the category of appropriate material changes of use mentioned in PPG2 paragraph 3.12, and thus does not amount to inappropriate development in the Green Belt.

The effect on highway safety

27. On the second issue, the Council was concerned that cars, vans and lorries were often parked on the highway outside the site and other premises in Kentish Lane during the film shoots. The Council submitted that the parking associated with the unauthorised use disrupted traffic flow on the B158. The Council's officer had inspected the site on the 7 October 2003 when it was noted that there were 3 vans, 4 trucks and 2 cars outside the property. A police car was stationed on the road warning on-coming traffic of the obstruction. An inspection was also undertaken on 13 April 2005 when up to 4 vehicles were observed parked on the highway. The Location Manager responded by stating that all their vehicles were parked on the drive except for the 2 which were parked directly in front of the property and that 2 cars could pass the parked vehicles simultaneously. Mr Beatty, the occupant of No 59 Kentish Road, gave evidence that the filming had caused traffic and pedestrian disruption. He alleged that his wife was nearly involved in a serious accident on 3 September 2003 when attempting to exit her driveway due to visibility being obstructed by vehicles parked on the road.
28. It is clear that the roadside parking generated by the use has, at times, created additional problems for residents exiting their drives. Nevertheless, neither the Highway Authority nor the Police have raised any objection. The Hertfordshire Constabulary has a dedicated Film Liaison Officer who is notified in advance by the Location Manager of a shoot. This officer provides advice as regards controlling the impact of on-road parking. The Highway Authority has provided information concerning personal injury accidents records for this stretch of the B158. For the period 1 January 2000 to 31 December 2004, one personal injury road traffic accident was reported to the police. There is no record of any accidents having been caused as a consequence of filming. This section of Kentish Lane is not deficient in terms of width, alignment or structural condition. The capacity of the local road network is sufficient to accommodate the additional traffic generated by the filming activity. On the evidence before me, I do not consider that the roadside parking associated with the use materially affects the safety of people using the public highway. It would not conflict with Structure Plan Policy 29 or District Plan Policy RA31.

The effect on the living conditions of neighbours

29. On the third issue, the Appellant stated that he has sought to operate in a spirit of good neighbourliness and that all Location Managers are always at pains to minimise the impact of filming activity on neighbouring property by providing written notification a few days in advance that filming will be taking place together with a contact number in case of any problems.
30. Jessica Lewington, the former Head of Locations and Inward Investment at Screen East, Regional Screen Agency for the East of England, explained that filming generally involved a 12 hour working day. On location, she would expect there to be stand-by vehicles from 7 am onwards, a generator to be on from 7.30 am and equipment to begin moving into place at the same time. During filming hours, she would expect the noise and activity levels to be low, as sound has to be recorded and, once the scene is set up, most of the crew simply remain on set as stand-by. Not all productions break at lunch, but they do tend to wrap at about 7 pm, when again equipment will be removed to the stand-by trucks. If the crew is coming back the next day, the minimum possible will be removed from the set. Every

effort would be made to complete the day's schedule so that filming could go on beyond 7 pm at times. She would expect most crews to work no longer than half an hour after wrap.

31. At the Inquiry, Mr Jowett, the occupant of the adjacent property at No 47 Kentish Lane, gave evidence that the filming has caused him repeated disruption. There was a significant amount of equipment and lighting brought onto the appeal site when filming took place. The general pattern was that the film crew arrived about 7 am with a fleet of lorries. They parked outside on the road and then backed into the Capaldo's property one by one. This caused disturbance particularly as they had their beepers on as they reversed. This took place from 7 am to 8-8.30 am. The generator was parked near to the boundary with his property. This produced a droning noise that went on all the time up to 11.30 pm. It was a continuous annoying noise. There was also noise disturbance arising from on-site activity, for example, scaffolding being put up or people talking. Mr Beatty, the occupant of No 59 Kentish Lane, complained of noise arising from vehicles that visited the site and stopped and started outside the house. At times, he has been disturbed by lorries and vans turning in his drive every few minutes. He has been disturbed by noise from the filming activities within the site which he found to be intrusive.
32. The Appellant contended that noise could only be an issue when setting-up or striking-off since there has to be absolute quiet when filming occurs. However, the evidence of neighbours indicates that whilst it might be quiet during the actual filming, the disturbance arose at other times during the process. It is clear that there is intense activity during filming days with noise from visitors and traffic and general comings and goings. The Appellant proposed that no more than 30 crew members plus actors should be present on the site. However, the proposed limit on crew members represents a very significant increase in associated activity compared to that which would normally be associated with a residential dwelling of this size. Furthermore, this does not place any restriction on the number of actors that could be present. This might vary greatly with consequences for the level of on-site activity that would not be subject to planning control.
33. The equipment was powered by the film company's own generator. This was normally sited in front of the garage away from the rear garden where outside filming normally occurs. One of the conditions offered by the Appellant was to restrict noise levels from the electricity generator to no more than 60 d(B) and to gain approval from the Council's Environmental Health Officer to the type of generator to be used. This was proposed on the basis that 60 d(B) was the same level of sound generated by normal conversation at a distance of 1 m and that any noise from the generator would be drowned out by the noise of passing traffic. However, PPG24: Planning and Noise, paragraph 11, advises that noise characteristics and levels can vary substantially according to their source and the type of activity involved. It explains that noise which contains a distinguishable continuous tone will require special consideration. Given the tonal nature of the generator noise and the lack of details as to existing background noise levels, there is insufficient evidence to enable me to conclude that this objection could be satisfactorily overcome in this way.
34. The Appellant has previously offered to limit the filming activity to no more than 28 days in any calendar year of which no more than 15 days would involve filming outside the dwelling. The Appellant made a comparison with the permitted development rights for temporary uses granted by the GPDO, Schedule 2, Part 4, Class B. However, the permission granted by the GPDO extends only to open land, and there are no grounds for

supposing that applying a similar restriction on filming days to the appeal site would render the development acceptable. The Appellant also proposed that the hours of use could be restricted to between 0730 hours and 2300 hours. Although this was the preferred option, the finishing time could be earlier. However, even if filming were to cease at 7 pm this would still involve an unsociable early morning start; a working day of some 11½ hours and intrusion into the early evening period. The proposed restrictions on the days and times of filming would not prevent neighbours experiencing noise and disturbance during those periods when the filming activity takes place. Likewise, the advance notification of filming activity does not, in itself, prevent neighbours being disturbed.

35. PPG24: Planning and Noise advises that noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. In my view, the noise and disturbance resulting from the unauthorised use has had a significant adverse impact on the living conditions of neighbours. The planning conditions proposed would not ensure an adequate level of protection against noise disturbance being experienced by neighbours nor would they satisfactorily control the level of noise emitted. I do not consider that these measures would be sufficient to overcome the harm to the amenities of neighbours. I conclude that the use is contrary to District Plan Policy R17.
36. As regards light pollution, the Appellant acknowledged that evening filming or day time filming during dull weather conditions necessitated the use of flood lighting. Jessica Lewington confirmed that the majority of shooting was done during summer months. However, at certain times of the year, and in bad weather conditions, external lighting would be required. The Appellant stated that there would be minimal interest in the site for filming if no external lights were permitted.
37. Mr Hewitt complained that he has been disturbed by light spillage arising from the use of floodlighting at the appeal property. He stated that the film set lights were huge and he has been able to sit and have dinner in his home without any of his own lights on at all. This was supported by the file note dated 9 October 2003 of the site visit made by an officer of the Council, Christopher Horan, on 8 October 2003. He observed a significant amount of light spilling through the trees of the property into No 47. He met with the owner of No 47 who showed him into the rear conservatory of the house. From there he could see that there were 2 large lighting masts, one was a large cherry picker that was parked close to the house, this had the arm extended and a powerful light emanating from it. There was also a scaffolding structure that had been erected towards the back of the property. This also had a powerful light on top of it. He took photographs from inside the conservatory and then walked into the back garden. There was a considerable amount of light spill into the rear garden.
38. Mr Capaldo claimed that light spillage had not occurred because No 49 was screened with 8-9 m high conifers along the full length of the boundary. Furthermore, the lights were used for illuminating only the scene being filmed in or around the curtilage of the house and not other areas. As far as No 53 Kentish Lane was concerned, because Mr Capaldo's swimming pool was positioned along the immediate boundary, there was no room to use any lighting equipment. He cast doubt upon the Council's photographic evidence, questioning the date that the photographs were alleged to have been taken and whether such views could have been obtained into his property from the conservatory at No 47. However, he admitted that he had not been inside the conservatory of that property.

39. For the Council, Mr Robson confirmed the accuracy of the time and dates of the photographs that had been taken by Mr Horan by reference to the Council's computer system of recording such matters. At the time of my site visit, I observed the appeal site boundary from the conservatory and rear garden at No 47. I am satisfied as to the genuineness of the Council's photographs. I find no substantial evidence to suggest that they have been contrived or modified in any way. They show intense light sources within the appeal site, including a light positioned on scaffolding that could be seen above the height of the boundary hedge.
40. The District Plan paragraph 5.45 explains that light pollution concerns the adverse effects of light spill from artificial light installations. Residential amenity and both rural and urban views can be detrimentally affected. In my opinion, the effect on neighbours of floodlighting associated with external filming is far greater than that which they could reasonably expect to experience living adjacent to a residential property. I consider that the external lighting required for filming has had a significant adverse effect on the amenity of the surrounding residential area, contrary to District Plan Policy R18.
41. The Appellant proposed that there should be no artificial lighting used in association with filming after 2230 hours. This could be reduced further but external lights up to at least 1900 hours were needed. It was also proposed that crane mounted lighting should not be used; that any tower mounted lighting should be fitted with spillage protectors and should not be within 2 m of the boundaries nor higher than 7 m.
42. It is clear that there would be a need for external lighting to support the use even during the reduced hours proposed by the Appellant. In my view, this would materially detract from neighbours' enjoyment of their properties particularly during winter evenings. The floodlights produce a significant degree of illumination and, even set back 2 m from the boundary and at a height of 7 m, they would be in close proximity to the adjacent dwelling at No 47. I do not believe that reliance should be placed upon the existence of the conifer boundary hedge to safeguard neighbours, particularly in the long-term. The measures proposed would not satisfactorily overcome the problems already experienced by neighbours. I do not find, on the evidence before me, that a satisfactory scheme of lights could be provided.
43. Circular 11/95, paragraph 35 advises that a condition may be unreasonable because it is unduly restrictive. The Appellant indicated that if the conditions imposed were unduly restrictive then it would render the property totally unsuitable for filming and the film makers would go elsewhere. In this case, the conditions designed to protect the amenities of neighbours would need to be so restrictive as to effectively nullify the benefit of any permission granted. I do not consider that reasonable and enforceable conditions could be imposed that would satisfactorily overcome the problems associated with the use.

Whether the benefits of the development would outweigh any harm resulting from other issues

44. On the fourth issue, the Appellant explained that the film industry has become a key component of the Bright Green Industrial Strategy in Hertfordshire. Leavesden Studios near Watford where Screen East is based, is one of only six "Key" Employment Sites in Hertfordshire. There are also several other studios throughout the county including a large TV complex at Elstree and at Park Lane. The availability of a choice of film locations in relative proximity to Leavesden Studios and other centres of local programme making such

as Elstree Studios in Borehamwood provide crucial support for this strategy. There are four properties on Kentish Lane, including the appeal site, that are registered with Screen East for the purpose of filming. There are other properties in Brookman's Park also registered with them.

45. Jessica Lewington, stated that the economic impact of the film and creative industries is vast and essential to the economy of Hertfordshire which is the busiest of all the regions' counties regarding filming activity. In 2004, there were 928 shoot days recorded in the County with 55 of these in the Welwyn Hatfield District. She calculated that about £550,000 was spent by productions in the Welwyn Hatfield District in 2004. In the whole of Hertfordshire the figure for economic benefit is nearly £10 million (excluding a number of major productions). She was concerned as regards the impact that the case could have on Hertfordshire's reputation as a "film-friendly" county. In support, she quoted the views of Matthew Bryant, Chair of the Guild of Location Managers *"Although this case refers to one property, the precedent it sets could be applied to other properties in similar disputes, to the detriment of the film and TV industries. In Hertfordshire the hard work of the many people and organisations that have created a film-friendly county with a firm reputation for accessibility, flexibility and support, could be undone. The economic benefits that the film and TV industries have brought to the region will be severely damaged, as location managers will simply not come to the county."*
46. At the Inquiry, Laurie Hayward of Screen East, supported the views of Jessica Lewington. He was also concerned that if a precedent were set by this case then other local planning authorities could follow suit with enforcement action, resulting in fewer locations being available for film production. This would be detrimental to the UK film production industry and contrary to Government policy in establishing the Film Council.
47. It is clear that there are significant employment and economic benefits to be gained from the film and creative industries within the District, the County and elsewhere in the UK. However, each case must be judged upon its own merits. The activities within this site take place in close proximity to neighbours. The impact on those individuals and, in particular the noise and disturbance experienced by them, is unacceptable and causes serious harm to their living conditions. In this location, an acceptable balance cannot be achieved through the imposition of planning conditions. As regards the film industry's concerns that this case could be relied upon in similar disputes, the impact of such a use will vary from site to site and must be assessed on an individual basis. The practical difficulties that location managers may experience in complying with planning legislation, perhaps at short notice, do not outweigh the need to safeguard people from the adverse impact of unauthorised development. I conclude that the benefits of the development are strongly outweighed in this case by the harm which I have identified. The appeal on ground (a) fails and planning permission will not be granted for the deemed application.

The appeal on ground (f)

48. On ground (f), the Appellant submitted that the requirements of the notice were excessive. There were no works or materials to be removed and vehicles were removed at the end of each day's filming. It was contended that a re-worded notice requiring only cessation of the occasional use of the property as a location for filming would suffice. However, the use has involved the erection of scaffolding, the laying of trackways, the importation of props and

the parking of vehicles on the site. I do not consider that the requirements are excessive or unduly onerous.

49. The Appellant's other overriding concern with the notice as currently drafted was that, if upheld, it would prohibit lawful ancillary or incidental activities. It was suggested that the notice should specifically state the extent of activity beyond which a breach of planning control would be taken as having occurred. The use by either Mr or Mrs Capaldo of any part of their property for still photography, so long as the activity remains incidental to the enjoyment of their home, would not constitute development.
50. The "Mansi" principle from the High Court decision of *Mansi v Elstree RDC (1964 16 P and CR 153)* provides that the requirements must not purport to prevent an Appellant from doing something which he is entitled to do without planning permission. However, this principle need not be extended to cover incidental uses which are obvious to anyone such as a householder parking or repairing his own car in his own garage (*Cord v SSE JPEL 40*). As indicated above, I do not believe that the notice encompasses still photography. In any event, the requirements of the notice merely seek to remedy the breach of planning control. Whether any activity falls outside the scope of an ancillary use is a question of fact and degree in each case. It is not necessary to give special protection to any ancillary residential activity in this case by specifically excluding it from the requirements. The appeal on ground (f) fails.

The appeal on ground (g)

51. On ground (g), the Appellant submitted that the period of one month for compliance is too short a period to allow for rescheduling of filming to take place. The disruption factor to the industry of having to find a replacement location in such a short period of time, or re-film an entire series, could be seriously damaging. A minimum period of 6 months was sought.
52. Although it is now some time since the Council issued the notice, I consider that Mr Capaldo was entitled to await the outcome of this appeal before taking steps to reschedule or cancel any filming. Whilst I believe that a 6 months compliance period would be excessive, I consider that 3 months would be a realistic period for the industry to find a replacement location. To this limited extent the appeal succeeds on ground (g).

Formal Conclusion

53. 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.

Formal Decision

Appeal Ref: APP/C1950/C/05/2000866

54. I direct that the enforcement notice be corrected by deleting from the description of the land affected set out in Schedule 1 the word "hatched" and substituting therefor the words "edged red" and varied by deleting from the time for compliance set out in Schedule 5 the words "One month" and substituting therefor the words "Three months". Subject to these corrections and variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.



INSPECTOR