

Appendix A

Appeal by Mr Baljinder Singh-Sail Site at Lincoln Street, Chesterfield. 2/2880

1. An Enforcement Notice was served on 17th May 2017 requiring the removal of additional hardsurfaced to the rear of 15 Lincoln Street. The extended hard surface had been formed by use of imported materials, raising the height of the land by 300mm to 400mm.
The period for compliance with the requirements was three months
2. An appeal against the notice was made on grounds (c) and (g) and which has been dismissed and the notice upheld. Full costs have also been awarded against the appellant in the case.

Procedural matter

3. Section 4 of an enforcement notice contains the reasons for issuing it and the relevant period for immunity from enforcement; either 4 or 10 years. As drafted the notice states that the breach of planning control occurred within the last ten years. However, the alleged breach at Section 3 relates to operational development for which there is an immunity period of 4 years. The inspector therefore corrected the notice accordingly using the powers available to me under Section 176(1) of the Act.

The appeal on ground (c)

4. A ground (c) appeal is that the matters alleged in Section 3 of the enforcement notice do not constitute a breach of planning control; in this case operational development comprising of the raising of ground levels and the extension of an area of hardstanding. The burden of proof in legal grounds of appeal, including ground (c), rests with the appellant, and the test of the evidence is the balance of probability.
5. The appeal site is a large area of open land to the rear of No. 15 Lincoln Street. The appellant does not deny that there has been a breach of planning control as alleged.

Instead he states that a waste company to whom he had leased the land may be responsible for the breach and that obtaining planning permission was their responsibility. Also, that deposition of additional materials stopped after he instructed the company to stop until the issue had been resolved. However, those are not arguments or evidence that there has not been a breach of planning control; it merely contends that the breach was carried out by someone other than the appellant. No other evidence or argument is made to demonstrate that there has not been a breach of planning control.

6. It was clear to the inspector from his inspection of the site, and also from his analysis of photographic evidence taken during earlier successive site inspections by Council officers, that a very substantial amount of material has been deposited on the land and compacted to raise land levels and form the area of hardstanding indicated by the area hatched in black on the plan attached to the enforcement notice. Given the extent and quantity of material deposited to form a compacted area of land, it constitutes a significant engineering operation and is thereby “development” as defined by Section 55 of the Act for which planning permission is required. Since no planning permission has been granted for the development it constitutes a breach of planning control as defined by Section 171A(1)(a) of the Act. Therefore the appeal on ground (c) that there has not been a breach of planning control fails.

The appeal on ground (g)

7. The ground of appeal is that the period for compliance, in this case 3 months, falls unreasonably short of what should be allowed. The appellant states that as he was not in control of the land at the time of the breach he was unable to remedy the breach. However, while it is not relevant to the ground (g) appeal, the inspector noted that he accepts in his evidence that he was the owner at that time, and also confirms that at the time of lodging the appeal he remains the landowner. As to whether the compliance period is unreasonably short, he has not suggested a longer period. Moreover, he has not provided any explanation of why 3 months would be an

unreasonably short period of time in which to carry out the necessary works in order to achieve compliance. To conclude, the inspector saw no reason why the necessary works to comply with the notice could not be carried out within 3 months from the date of this decision (the date the notice comes into effect), and there is no persuasive argument made by the appellant as to why any longer period should be granted. The appeal on ground (g) therefore fails.

Costs application

8. Planning Policy Guidance advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process, or substantive, which relates to the merits of the appeal. Examples of unreasonable behaviour which may lead to an award of costs against an appellant are referred to in the PPG.
9. The Council's application was made on the basis of unreasonable behaviour in relation to substantive matters in that the appellant did not support his case evidentially, and that it had no real prospect of success.

The appeal on ground (c)

10. The Council provided a detailed statement of case and photographic evidence of the breach which supported their case. This was not resisted evidentially by the appellant in his ground (c) appeal. Rather than submitting evidence to argue that there had not been a breach of planning control, the appellant acknowledged that the breach had in fact taken place. In his response to the costs application the appellant sought to introduce new evidence relative to the appeal in that the Council had granted a waste exemption certificate to the leasehold company to import waste. That of course is not accurate as the body for issuing such licences is the Environment Agency, not the Council. In any event, such a licence does not bypass the need for planning permission, and it is not evidence that the matters alleged in Section 3 of

the enforcement notice did not constitute a breach of planning control.

The appeal on ground (g)

11. The appellant did not make out a distinctive case as to why the 3 month compliance period was too short, or argue what longer period he considered was necessary. In response to the Council's application for costs the appellant stated that he had argued 3 months was not long enough because he had hoped the appeal would be determined in his favour. Clearly, that does not provide argument or evidence as to why the period in which the notice should be complied with, assuming the notice is upheld, would be unreasonably short.
12. For all the above reasons the inspector found in respect of both grounds of appeal that the appellant failed to make out a reasonable case based on evidence, and that consequently the appeals had no real prospect of success. He therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, had been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Baljinder Singh-Sall shall pay to Chesterfield Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.