

Appendix A

Appeal by Mr David Revitt

Land at 10 Pottery Lane West, Chesterfield.

2/4071

1. An Enforcement Notice was served on 25th January 2017 requiring the reinstatement of land in the rear garden of 10 Pottery Lane West to its prior level by 1st June 2017. The garden had been excavated to a depth of approximately 1.2 metres over the majority of its area
2. An appeal against the notice was made on grounds (c) and which has been dismissed and the notice upheld.

Procedural matter

3. The notice stipulates a particular date for compliance. Compliance periods should not refer to a specific date because if the notice is appealed, as here, the date will not be valid. However as no injustice will result to the parties by amending the notice to omit the date of 1st June 2017, the inspector has exercised his powers in s176 of the 1990 Act to make this correction.

The appeal on ground (c)

4. The basis of an appeal on ground (c) is that those matters which are the subject of the allegation do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate this on the balance of probability.
5. The appellant's house has suffered from damp and his rear garden has been waterlogged for some time. In the course of removing the saturated soil in the garden, a brick-built well or culvert was discovered, the exact purpose of which is unknown although it may possibly be connected in some way with former pottery works in the area. The appellant does not dispute that for a period of well over a year at least, the garden has been excavated as alleged. However he disputes that the works amount to development or that he needs planning permission to carry them out. He maintains that the works are temporary maintenance works to resolve a ground water

issue.

6. Section 55 of the 1990 Act describes “development” as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development on land. There is no statutory definition of engineering operations. It has been held that an engineering operation can be an operation that would generally be supervised by an engineer but it was unnecessary that it should have been so supervised. The inspector agreed that it would cover excavation works of a nature and scale that change the physical character of the landform beyond a temporary basis.
7. A significant part of the garden has been excavated and a low wall on the east side of the garden has been removed that once separated it from the access lane between Nos 10 and 12 Pottery Lane West, which lane leads to commercial premises. Some drainage pipework has been exposed and in heavy rainfall the site is flooded. Safety barriers have been erected to this side of the garden; however there are large gaps where the lower level of the garden is exposed to users of the access, giving rise to safety concerns. A mechanical digger has been used in the excavation work, and given the large scale of the works, and the length of time the landform has remained altered from its original state, in the inspectors opinion and as a matter of fact and degree, they amount to an engineering operation under s55 of the 1990 Act. The appellant has not pointed to any specific permission from which the development might benefit under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Looking at the position most favourable to the appellant, the inspector considered Part 4 of the second Schedule to the GPDO allows for the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. Development is not permitted if

permission is required for such operations but is not granted or deemed to be granted. Since the notice was issued the appellant states he has installed concrete retaining blocks to secure the stability of his neighbour's garden. When the inspector visited breeze blocks were arranged on three sides of a square, but curiously not on the fourth side which is on the line of the boundary with his neighbour. It is doubtful that this structure stabilises the land. The appellant has stated his intention to build a garage to the rear of his house. He has also told the Council that the excavation was in order to hard surface the entire rear garden, however the works go well beyond what would be reasonably required for this purpose. Yet again, in his appeal statement the appellant contemplates flattening the base of the excavation with 150mm of scalping to enable foundations to be laid for a garage. Whatever the true purpose of the works no permission exists, so far as the inspector was aware for a garage, nor is it explained how such a garage or for that matter a hardstanding over the whole of the rear garden, might benefit from permitted development rights. Therefore the evidence did not persuade the inspector that the development benefits from a temporary permission of the kind set out in Part 4 of the second Schedule to the GPDO.

8. The inspector also considered the possibility that Part 13 of the GPDO, Water and sewerage, might avail the appellant in that the development subject to the notice may be connected to drainage or watercourse related problems. However the works were not undertaken, as would be required for this Part to apply, by or on behalf of a drainage body or other statutory body.
9. In summary therefore, the excavation works do not benefit from permitted development rights and no express planning permission has been granted. Section 171A(1)(a) states that development without the required planning permission is a breach of planning control. The inspector therefore concluded on the balance of probability that the notice correctly alleges a breach of planning control. The appeal on ground (c) must therefore fail.

Formal decision

10. It is directed that the compliance period as described in the enforcement notice is corrected by the insertion of “within” before “three months” and the deletion of “by 1st June, 2017”. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.