

Appendix A

Appeal by Mr Nigel Chadwick

Land at 2 York Street, Hasland, Chesterfield.

2/3991

1. An Enforcement Notice was served on 1st August 2017 requiring the owner of 2 York Street to:
 - a. remove the vending machine at the northern end of the Hampton Street frontage;
 - b. remove the canopy above the vending machine at the northern end of the Hampton Street frontage;
 - c. remove the vending machine at the west end of the York Street frontage.
2. An appeal against the notice was made on grounds (a), (b), (c) and (f) and which has been dismissed and the notice upheld.

The appeal on ground (b)

3. The allegation relates to the installation of two vending machines. The site plan attached to the issued notice outlines all of the property known as No 2 York Street. However, it specifically identifies the land upon which the vending machines are placed (from now on referred to as 'the land'). Although the land is under the ownership of the appellant, the ground floor of the premises is in use as a beauty salon while the first floor is a self-contained flat. The vending machines are physically separate from the salon and the first floor given their location. The appellant has not provided sufficient evidence to show any functional link between the stationing of the vending machines on the forecourt and the beauty salon. Consequently, the inspector concluded that the land forms a separate planning unit primarily used for retail sale, given the nature of the activity associated with the vending machines. This amounts to a change in the use of land upon which the vending machines are situated.
4. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. The vending machines

are sited to the front and side of commercial premises and supply drinks and confectionary, primarily to passers-by. The introduction of the machines has changed the physical layout and appearance of the forecourt. The way and manner in which the forecourt is used is significantly different from its previous use as an open forecourt. This nature of the activity has resulted in offsite effects, such as disturbance to nearby residents, which has planning consequences. Overall, the inspector considered that the physical change in the land and activity resulting from the siting of the vending machines constitutes a significant difference in its character, amounting to a material change of use.

5. The allegation also includes the fixed roof above the vending machine at the north end of the Hampton Street frontage. The size, location and built form of the roof suggest that it has been installed to facilitate the change in the use of the land. As such, it is integral to the use of the land for siting vending machines.
6. It is clear that the notice is directed at the vending machines. For the reasons given above, the inspector considered that their siting amounts to the making of a material change of use of the land requiring planning permission. However, the alleged breach is not stated in those terms and should be corrected. The Courts interpret the power to correct notices very widely, provided there would be no injustice to any party. The inspector considered that the notice can be corrected so that the allegation refers to the material change of use of the land identified on the site plan to the stationing of two vending machines facilitated by the erection of a fixed roof over the vending machine at the north end of the Hampton Street frontage.
7. Having had regard to all matters raised, the inspector concluded that the breach as set out in the corrected allegation has occurred as a matter of fact. Therefore, the appeal on ground (b) must fail.

The appeal on ground (c)

8. The appeal on ground (c) is that the matters do not constitute a breach of planning control. The appellant

has not provided evidence of planning permission being granted for the alleged matter as corrected. As a matter of fact and degree, a new planning unit has been created which is primarily used for retail purposes, the use of which is not functionally linked to the beauty salon. The change in use does not benefit from the provisions under s55(2)(f) of the 1990 Act as amended and Article 3(1) of the Schedule to the Use Classes Order, which permit changes of use of buildings or other land to other uses within the same Use Class. Consequently, express planning permission is required and so the matters constitute a breach of planning control. Therefore, the appeal on ground (c) must fail.

The appeal on ground (a)

Main Issue

9. The main issue is the effect of the vending machines on the living conditions of neighbouring occupiers, with regard to noise and disturbance.
10. No 2 York Street is sited on the corner of York Street and Hampton Street. The ground floor of the premises is a commercial unit, which is operating as a beauty salon. There were two vending machines selling drinks and confectionary sited on the pavement at the front and side of the premises. The machine on the Hampton Street frontage had a metal canopy, which was fixed to the wall. Both machines have internal illumination. The surrounding area is predominantly residential in character. The vending machine on the Hampton Street frontage is located close to the boundary with No 14. It is sited further forward towards the road and would be prominent in views from the downstairs front window of that house, which is likely to be a main habitable room. This machine is also opposite Nos 15 and 19 and would be prominent in views from main habitable rooms of both houses. The second vending machine is sited adjacent to a side extension at No 2 York Street, which provides an element of screening. Although this machine is less prominent, it is still visible from a number of houses in the vicinity.
11. Both machines are located close to houses. They are

conspicuous and do not reflect the nature of the surrounding residential area. The vending machines appear to be available for use at all times, including in the evening and at night when local residents could reasonably expect to enjoy their homes without disturbance. The vending machines provide a service, but could also be used as a congregation point. The use of the machines at unsociable times would cause noise and disturbance, especially if they did become a congregation point. There is no information to suggest that the illumination is turned off at night and this could also be a source of nuisance to those people living opposite. Due to their siting at street level, lower than the streetlights, the light would shine in through windows of main habitable rooms. Moreover, residents would expect a level of street lighting during the hours of darkness but not the added illumination of the vending machines.

12. The appellant claims the area is already subject to noise and disturbance due to local traffic and the nearby working men's club. The roads are residential in nature and there is no evidence that they are heavily trafficked. The club referred to is not operating throughout the night and activity takes place indoors. Consequently, the effect of the vending machines is likely to be greater. The appellant argues that the use has been operating for several months without detriment to residential amenity and litter is regularly cleared. Whether or not the allegations made by the Council and neighbours are exaggerated or inaccurate, the inspector must consider how the machines could be used should permission be granted. Even if the use is currently operating without harm to neighbours' living conditions, as the appellant suggests, this could change. A lack of statutory nuisance does not necessarily mean the development is acceptable.
13. During the inspectors site visit she saw the other nearby vending machines identified by the appellant. These were significantly smaller than the two subject to this appeal, were not illuminated and sold small items of confectionary. Consequently, they are not comparable. The appellant also states that planning permission was

granted for a hot food take way at the premises. The details of this are not before me, but any such permission appears to have expired and does not constitute a valid fall-back position.

14. The appellant explains that the two vending machines provide a service to local people, especially users of Eastwood Park and Ashgate Hospice. I also understand that a proportion of the proceeds are donated to the hospice. Whilst the donation of proceeds to local causes is a worthy benefit, this does not outweigh the harm to neighbouring residents identified above. The inspector considered the letters of support from local people and noted that the appellant has updated the shop front and pays business rates. There is no evidence that these works and payments are dependent on the vending machines, which are not associated with the use of the premises.
15. The inspector understood that there is a skate board park nearby. The appellant has not fully explained the significance of this, other than it may be a source of customers for the vending machines. The inspector also noted the concerns that the Council should be targeting its resources elsewhere, but this is not a matter that the inspector can consider in an appeal in relation to an enforcement notice. The inspector acknowledged the appellant's argument that local businesses should be supported, and that there are financial considerations. However, the planning system does not exist to protect the rights of one individual over another and the inspector gave this consideration little weight. Finally, the inspector had regard to the personal circumstances of the appellant but there is no evidence to support the claim that his treatment has been unfair.
16. To conclude on this matter, the inspector found that the vending machines would have an adverse effect on the living conditions of neighbouring occupiers, due to noise and disturbance, contrary to Policies CS2 and CS18 of the Chesterfield Core Strategy 2011-31 (adopted July 2013) which, amongst other things, seek to ensure development is sited in suitable locations and protect

neighbours' amenity. Consequently, the appeal on ground (a) and the application for deemed planning permission fail.

The appeal on ground (f)

17. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control by requiring the removal of the vending machines and the fixed canopy, as this is part and parcel of the material change of use. This can only be achieved by their removal. No lesser steps have been identified that would achieve the statutory purpose behind the notice. Therefore, the appeal on ground (f) must fail.

Formal Decision

18. It is directed that the enforcement notice be corrected by deleting the words: "the installation of two vending machines on the land:
- A vending machine at the north end of the Hampton Street frontage with a fixed roof above it
 - A vending machine at the west end of the York Street frontage"

in paragraph 3 after "without planning permission" and their replacement with the words "the material change of use of the land identified on the site plan to the stationing of two vending machines facilitated by the erection of a fixed roof over the vending machine at the north end of the Hampton Street frontage".

And the deletion of the following superfluous words in paragraph 3 "The vending machines are permanent fixtures on the land. They are attached to the building on the land and have a permanent electricity supply". Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.