Appendix B

Appeal by Mr David Revitt
Land at 10 Pottery Lane West, Chesterfield.
2/4071

1. An Enforcement Notice was served on 6th February 2020 requiring the removal of two unauthorised metal structures from the property within 28 days.

2. An appeal against the notice was made on grounds (b) and (c) and which has been dismissed and the notice upheld.

3. The appeal site lies at the rear of an end terrace house alongside which runs an access that leads to commercial premises to the north. The structures in question, each of which appear to be about 2.5m high, are in an elevated position. They sit on metal girders placed on top of a series of concrete blocks about 1.8m high that are positioned around the edges of the site.

4. Although grounds (b) and (c) are separate grounds of appeal, distinct from each other, the matters raised in this instance are closely interlinked. It was more appropriate therefore for the inspector to deal with them jointly. Grounds (b) and (c) are legal grounds of appeal, distinct from any planning merits. The Courts have held that the onus on proving them lies with the appellant. In order for the appeal to succeed on ground (b) it has to be shown that the matters alleged in the notice have not occurred as a matter of fact. And, for the appeal to succeed on ground (c), it has to be shown that the matters alleged in the notice do not constitute a breach of planning control.

5. Citing section 13 of the Caravan Sites Act 1968, the appellant submitted that when fully assembled, the structures in question will be a twin unit caravan, designed and adapted for human habitation. It was further stated that the caravan needs to be separately constructed in 2 halves which will be bolted together.

6. The inspector noted that the metal structures would

appear to fall within the size parameters for a twin unit caravan but from what he saw, which more or less accorded with what was depicted on the photographs appended to the enforcement notice, it is far from apparent that the structures in question, are, either individually or jointly, in the words of section 13(1)(a) of the 1968 Act, "*designed or adapted for human habitation*". The inspectors impression was that both structures are essentially shells, devoid of any internal fittings, and large portions of their sides are voids. To the inspector, all this adds a great deal of uncertainty insofar as just what the structures actually are, or are intended to be. The appellant provided no indication of whether and how they would be arranged internally, or whether or not further external works are envisaged. This uncertainty was fuelled further by the structures having been positioned well above the ground. The inspector found this rather odd for something that would have to be capable of being moved by road in order to accord with section 13(1)(b) of the 1990 Act.

7. In the light of the foregoing and, as a matter of fact and degree, the inspector was not satisfied that the appellant's case is sufficiently clear to demonstrate that the structures in question can reasonably be regarded as falling within the definition of a caravan. Given the nature of the structures and what he regarded as the high degree of uncertainty that attaches to what they actually are, he saw nothing untoward in the Council's approach. In particular, having regard to the 3 primary factors regarded as being relevant to the question of what is a "building", namely size, permanence, and physical attachment referred to by the Council, the inspector found the allegation soundly based.

8. The structures are substantial in size and, notwithstanding the claim that they are to become a caravan, there is nothing to indicate that their presence is a temporary expedient, or that their removal from the land is imminent. And, although the structures did not appear to be fixed to either the metal girders or the concrete columns below them, it seemed to the inspector that their very weight would provide an

appreciable degree of stability. Viewing the structures in their current state in the light of these factors, it is not unreasonable to regard them as buildings as a matter of fact and degree, despite the appellant's explanation. No claim is made that the structures are 'permitted development' and the inspector could not envisage why they should be regarded as such.

9. Given the lack of clarity, uncertainty and ambiguity inherent in this case, the inspector was not satisfied that it has been shown that the matters alleged in the notice have not occurred as a matter of fact, or that, in the apparent absence of any relevant planning permission, there has not been a breach of planning control. In other words, the inspector concluded that the burden of proof that lies with appellant has not been discharged.