



Appeal Decision

Site visit made on 2 October 2017

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2017

Appeal Ref: APP/A1015/C/17/3179494

Land at Lincoln Street, Chesterfield, S40 2TW

- 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 Act).
 - The appeal is made by Baljinder Singh-Sall against an enforcement notice issued by Chesterfield Borough Council.
 - The enforcement notice was issued on 17 May 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the extension of the existing hard surfaced area to the area hatched black on the plan by use of imported materials, raising the height of the land by 300mm to 400mm.
 - The requirements of the notice are to remove the imported materials and reinstate the land to its former condition and levels.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected in the first sentence of Section 4 by deleting the word "ten" and substituting instead the word "four".
2. Subject to the correction the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Chesterfield Borough Council against Baljinder Singh-Sall. This application is the subject of a separate Decision.

Procedural matter

4. 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.
5. I have therefore corrected the notice accordingly using the powers available to me under Section 176(1) of the Act. I am satisfied that correcting the notice in this way does not result in injustice to the appellant, because he was notified of this matter early in the appeal process in order that an appeal on ground (d) could be considered and no appeal on ground (d) was subsequently made.

The appeal on ground (c)

6. 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.
7. 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.
8. 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 states¹ 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 resolved².
9. 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.
10. It is clear to me from my inspection of the site, and also from my 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.
11. 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.
12. Therefore the appeal on ground (c) that there has not been a breach of planning control fails.

The appeal on ground (g)

13. The ground of appeal is that the period for compliance, in this case 3 months, falls unreasonably short of what should be allowed.
14. 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, I note 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 landowner³.
15. As to whether the compliance period is unreasonably short, he has not suggested a longer period. Moreover, he has not provided any explanation of

¹ Appellant's Enforcement Notice Appeal Form - Section E: Grounds and Facts (c)

² Appellant's Final Comments

³ Appellant's Enforcement Notice Appeal Form - Section D, question 2

why 3 months would be an unreasonably short period of time in which to carry out the necessary works in order to achieve compliance.

16. To conclude, I see 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.

17. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR