

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Walter Finch
"Wakiki"
16 Orchard Avenue
Berkhamsted
Herts

Formation of hardstanding
.....
.....
at "Wakiki", 16 Orchard Avenue, Berkhamsted
.....
.....

Brief
description
and location
of proposed
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 13 March 1989 and received with sufficient particulars on and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

- 1. Nos. 16 and 18 and other similar semi-detached dwellinghouses located on the northern side of Orchard Avenue are positioned at a lower level than the highway and consequently sloping driveways and front gardens are established features of the locality. The raised hardstanding, which encompasses the whole of the front garden of No. 16, by reason of its surface area, design, height and prominence would introduce an alien feature within the street scene and if permitted would set an undesirable precedent for other similar proposals which would be seriously detrimental to the visual amenity of the residential area.

Dated day of 19

Signed..... *W. Barnard*

SEE NOTES OVERLEAF
P/D. 15

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.

PLANNING APPLICATION No. 4/0476/89

Reasons continued:

2. The use of the hardstanding for the parking, manoeuvring and routine maintenance of vehicles is likely to be to the long term detriment of the residential amenity of No. 18 Orchard Avenue by reason of noise, disturbance and the loss of privacy, and the character and visual amenity of the street scene.
3. The close proximity and height of the hardstanding to the front living room window of No. 18 Orchard Avenue is detrimental to the residential amenity of this dwellinghouse by reason of the oppressive impact of the development.

Dated Twenty-ninth day of June 1989

Signed: 

Designation: CHIEF PLANNING OFFICER



Planning Inspectorate

Department of the Environment

Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ
 Telex 449321

Direct Line 0272-218 915
 Switchboard 0272-218811
 GTN 1374

CHIEF EXECUTIVE
 OFFICER

20 JUL 1990

File ref.
 Refer to *DP 20/7*
 Cleared

PLANNING DEPARTMENT
 DACORUM B.C. Council Ref: 4/0137/90E/NG/MB

Penny & Thorne,
 Solicitors
 175 High Street
 BERKHAMSTED
 Hertfordshire
 HP4 3HG

Rel.	C.P.O.	T.C.P.M.	O.P.	D.C.	B.C.	AGK.	Admin.	File
23 JUL 1990								
Received								
Comments								

Your reference 33555
 T/APP/MO/030464/Finch
 Our reference
 T/APP/C/90/A1910/000001/P6 and
 Date T/APP/A1910/A/89/143528/P6
 18 JUL 90

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
 LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
 APPEALS BY WALTER FINCH
 LAND AND BUILDINGS AT NO 16 ORCHARD AVENUE, BERKHAMSTED, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. These appeals are against an enforcement notice issued by the Dacorum Borough Council and against the refusal of planning permission by that Council concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council and also those made by other interested persons and I inspected the site on 22 June 1990.
2.
 - a. The date of the notice is 8 December 1989.
 - b. The breach of planning control alleged in the notice is an engineering operation to form a raised hardstanding.
 - c. The requirements of the notice are to remove the raised hardstanding.
 - d. The period for compliance with the notice is 4 months.
 - e. The appeal was made on the grounds set out in Section 88(2)(a)(h) of the 1971 Act as amended.
3. The development for which planning permission was refused was (retention of) hardstanding for car at pavement level.
4. The appeal site, No 16 Orchard Avenue, is a semi-detached house set in a quiet road of similar houses in Berkamsted. Orchard Avenue at this point is on a north facing slope. The odd-numbered houses here are set at a higher level than the road and the even-numbered houses, including the appeal property, are set below the level of the road. At the front of No 16 Orchard Avenue a hardstanding, which occupies most of what was the front garden, has been formed at pavement level. From the road, the house is approached by steps leading down to one side of the house or via a sloping path for pedestrians. Unlike the other houses in the vicinity, No 16 has no garage, there being a side extension to the house.

Appeal on Ground (a) and Section 36 Appeal

5. Since I find that both the Section 88 and Section 36 appeals raise the same issue, I propose to deal with them together. From my view of the site and its surroundings and having read the representations, I consider that the principal issue is whether the hardstanding materially detracts from the street scene by itself or by the precedent it might set.

6. In the immediate vicinity of the appeal site, the semi-detached houses have attached garages to the side with sloping drives giving access. There are gardens to the front of the houses and the overall appearance is a pleasant, relatively green and leafy suburban road. The engineering operation you have carried out at the site to provide this hardstanding has, in my view, significantly affected the street scene. From the road, the view of No 16 Orchard Avenue is stopped abruptly by the hardstanding. Only the top part of the main ground floor window is visible from the road. (When standing directly outside this front window, the height of the hardstanding is some 1.2-1.3 m high.) The front door is similarly obscured. In my view, the effect of the hardstanding when seen from the street is incongruous and contrasts oddly with the sloping driveways and front gardens nearby. I have no doubt that, if this were allowed to become a precedent, the pleasant appearance of the road would be deleteriously affected. I have concluded therefore that both by itself and by the precedent it might set the hardstanding materially detracts from the street scene. I have come to this view notwithstanding the other raised hardstandings which you say have been granted in the area and of which you have provided photographs. I do not know how recently these permissions have been granted. However, I remain firmly of the view that to allow this engineering operation to remain would be out of keeping and materially detrimental to the street scene.

7. I have also considered the effect of the hardstanding on the visual amenities of your client's neighbours at No 18 Orchard Avenue. At my site inspection, I visited No 18 and saw the hardstanding from the sitting room window there. I agree with your client's argument that a hedge or even a fence close to the boundary here would have a similar effect to the hardstanding. However, in this case it seems to me that the overbearing effect of which your client's neighbours seem to complain is due to the parking of a vehicle on the hardstanding, which increases the height of the visual intrusion. They also complain of noise and disturbance close to their window. I agree that there has been some loss of visual amenity to the neighbours and my view on this aspect adds weight to my conclusion on the main issue that the retention of the hardstanding is unacceptable.

8. I have taken into account your client's wife's severe arthritis. It is not clear to me how the hardstanding facilitates easy access to the house; it seems to me that it is the alternative of steps and path (with rail) which promote easier access to the house and this could have been achieved without such a deleterious effect on the street scene. I have considered all the other points raised, but I have found nothing to alter my conclusion on the main issue.

Appeal on Ground (h)

9. Your client has argued that he would not be able to afford to remove the hardstanding within the 4 month period specified by the Council. He refers both to the cost of the work and his own new business activities. I have considered whether a longer period would be appropriate and I have concluded that in these circumstances a 6 month period would be reasonable. A longer period than this would not in my view be acceptable, having regard to the effect of the hardstanding on the street scene. The ground (h) appeal therefore succeeds.

FORMAL DECISIONS

10. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the enforcement notice be varied by the deletion of the compliance period of 4 months and the substitution therefore of the period of 6 months.

Subject thereto, I hereby dismiss your client's appeal under Section 88, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the Act as amended.
I also dismiss your client's appeal under Section 36 of that Act.

RIGHTS OF APPEAL AGAINST THE DECISIONS

11. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decisions to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

Caroline Briggs

CAROLINE BRIGGS BA(Hons) FRTPI Barrister
Inspector

ENC

IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY

(a)

Dacorum Borough

Council

**TOWN AND COUNTRY PLANNING ACT 1971
(as amended)****Enforcement Notice
Operational Development**

(b)..... WAKIKI 16 ORCHARD AVENUE

..... BERKHAMSTED HERTFORDSHIRE

WHEREAS:

(1) It appears to the^(a) Dacorum Borough Council ("the Council"), being the local planning authority for the purposes of section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of 4 years before the date of issue of this notice on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.^(c)

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] [^(d)

within [the period of FOUR [days] [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that Schedule~~].^(e)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 19th January 1990.^(f)

Issued 21st December 1989

Council's address

Civic Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(Signed)

Keith Hunt

(Designation)

BOROUGH SECRETARY
(The officer appointed for this purpose)**CONTINUED OVERLEAF — P.T.O.****NOTES TO THE LOCAL PLANNING AUTHORITY**

- (a) Insert the name of the Council issuing the notice.
 (b) Insert the address or a description of the land to which the notice relates.
 (c) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
 (d) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
 (e) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
 (f) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

SCHEDULE 1

Land or premises to which this notice relates

(address or description)

Wakiki, 16 Orchard Avenue, Berkhamsted, Hertfordshire.

shown edged [red] [] on the attached plan.^(g)

SCHEDULE 2

Alleged breach of planning control

(description of operations carried out on the land) (h)

Engineering operation to form a raised hardstanding (shown coloured green on the attached plan).

SCHEDULE 3

Steps required to be taken^(j)

(i)

Remove the raised hardstanding.

NOTES TO THE LOCAL PLANNING AUTHORITY

- (g) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).
(h) Where the works being enforced against are on only part of the land identified in Schedule 1, their position should be shown on the plan.
(j) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear and precise. See also notes (d) and (e) overleaf.

EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

- (a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or
- (b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

- (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or
- (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
- (c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or
- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

may be issued only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

- (a) any steps which are required by the authority to be taken in order to remedy the breach;
- (b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

(a) of restoring the land to its condition before the development took place; or

(b) of securing compliance with the conditions or limitations subject to which planning permission was granted,

including—

- (i) the demolition or alteration of any buildings or works;
- (ii) the discontinuance of any use of land; and
- (iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

(a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or

(b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

- (a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and
- (b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

(a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and

(b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and

(c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;
- (e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;
- (f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;
- (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;
- (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section*, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

- * (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

*NOTE: The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
 - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
 - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.
- (7) Subject to subsection (8) below, the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.

(9) If—

- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
 - (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,
- the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

(10) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

88A.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal the Secretary of State may correct any informality, defect or error in the enforcement notice, or give directions for varying its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or to the local planning authority.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

88B.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and any planning permission granted by him under that subsection may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
 - (b) be granted subject to such conditions as the Secretary of State thinks fit;
- and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(3) Where an appeal against an enforcement notice is brought under section 88 of this Act, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (1) of this section—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
- (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

(4) On an appeal under section 88 of this Act against an enforcement notice relating to anything done in contravention of a condition to which section 71 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.

Penalties for non-compliance with enforcement notice

89.—(1) Subject to the provisions of this section, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £2,000 or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under subsection (1) of this section has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in this section referred to as "the subsequent owner") brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—

- (a) on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £2,000, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference to this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith of such extended period as the local planning authority may allow for compliance with the notice.

Note.—Attention is also directed to section 91 relating to the execution and costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

Annex to Enforcement Notice dated: 8th December 1989

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

The Council, as the local planning authority, consider it expedient to serve this Notice upon you for the following reason(s):-

The raised hardstanding, by reason of its surface area, design, height and prominence introduces an alien feature within the street scene and sets an undesirable precedent for other similar proposals which would be seriously detrimental to the visual amenity of the residential area.

The use of the hardstanding for parking, manoeuvring and routine maintenance of vehicles is likely to be to the long-term detriment of the residential amenity of no.18 Orchard Avenue by reason of noise, disturbance and loss of privacy and the character and visual amenity of the street scene.

The close-proximity and height of the hardstanding to the front living room window of no.18 Orchard Avenue is detrimental to the residential amenity of this dwellinghouse by reason of the oppressive impact of the development.

I would first like to point out that the work that was carried out on the above property was undertaken by a firm who assured me that no planning permission would be necessary and that only Building Regulation Consent was needed. This of course is not the basis of the appeal set out in this Statement but gives one an insight into my actions regarding this matter. Had I been given the correct information regarding planning permission the situation would be quite different.

It is arguable whether in fact the 'sloping driveways and front gardens are established features of the locality' I would argue that the only reason that many of the residential properties along Orchard Avenue and the surrounding roads were built with sloping driveways and front gardens was due mainly to the natural lie of the land. Had the properties within locality been built with hardstandings it would follow one must argue that this is the established feature of the locality.

I would further argue that my property was built on a slope of 35. Therefore on both sides of the property the slope is very steep. It is thus very dangerous particularly in bad weather and it is impossible in such weather to manoeuvre my car off the drive.

With reference to '..... would introduce an alien feature within the street scene undesirable precedent would be seriously detrimental to the visual amenity of the residential area' I would like to state that locality itself has changed over the years both through natural processes and/or artificially created ones. One cannot be arguing that 'change' is inherently a bad thing for the locality. I can name a number of developments that have been granted in recent years although not exactly the same as my own but can be termed comparable developments.

To illustrate my point I enclose two photographs of comparable developments in the immediate vicinity. These can also be said to introduce an alien feature within the street scene but planning permission was granted in respect of these. I submit that if one is arguing that no 'alien features' ie change should be introduced into this locality then all of these previous developments should not have been allowed.

The Hardstanding itself was not as was stated, built for the routine maintenance or manoeuvring of vehicles. It was in fact built for the purpose of parking.

Presently my wife suffers from arthritis in both knees and has great difficulty in manoeuvring the sloping driveway. On a number of occasions, particularly in bad weather my wife has fallen and severely injured herself. In the interest of her health and to ease an already congested road (with buses etc;) the hardstanding is the ready solution. I would submit that I cannot envisage how this hardstanding interferes with the long

term residential amenity of the residents at No. 18. Clearly the hardstanding has been built on what can be termed my own land and notwithstanding, any nuisance caused, will be to ourselves.

With reference to the close proximity and height of the Hardstanding to the front living room window of No. 18 I would argue that a hedge of the same height at No. 12 would have exactly the same effect if their submission is correct.

On the basis of the above arguments I ask that my planning application be given further consideration.

A handwritten signature in black ink, appearing to be 'R. Smith', written in a cursive style.

4th December 1989





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WHITEWOOD ROAD

FINCH ROAD

ORCHARD AVENUE

El Sub Sea

Path

GREENWAY

Marchwood

High Chaparral

Post

GILBERT

St Thomas More
Primary School

Grey Fold