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Appeal Decision

Site visit made on 12 December 2005

By A J J Street MA(Oxon) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date
26 JAN 2006

Appeal A: Notice 1: Ref: APP/B5480/C/05/2001731
Land at Ivy Lodge Farm, Shepherds Hill, Harold Wood, Romford, RM3 0NR

- 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 appeal is made by Mr Paul White against an enforcement notice issued by the London Borough of Havering Council.
- The Council's reference is ENF 1296 (Notice 1).
- The notice was issued on 4 March 2005.
- The breach of planning control as alleged in the notice is "without planning permission the formation of hardstanding at the western boundary next to Ivy Lodge Lane. This hardstanding is currently being used for the parking of motor vehicles and open storage".
- The requirements of the notice are: (i) remove the hardstanding and also remove from the land all building materials and rubble arising from this requirement: (ii) restore the land to its condition before the breach occurred by levelling the ground and re-seeding it with grass.
- The periods for compliance with these requirements are: requirement (i) three months from the effective date of the notice: requirement (ii) 6 months from the effective date of the notice.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the 1990 Act. There is no appeal on ground (a) and the deemed planning application has lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

Appeal B: Notice 2: Ref: APP/B5480/C/05/2001732
Land at Ivy Lodge Farm, Shepherds Hill, Harold Wood, Romford, RM3 0NR

- 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 appeal is made by Mr Paul White against an enforcement notice issued by the London Borough of Havering Council.
- The Council's reference is ENF 1296 (Notice 2).
- The notice was issued on 4 March 2005.
- The breach of planning control as alleged in the notice is "without planning permission there has been an unauthorised change of use within the Ivy Lodge Farm site consisting of: (1) the newly formed hardstanding is being used for the purposes of parking of motor vehicles and open storage: (2) the former tennis courts are being used for the purposes of parking of commercial motor vehicles".
- The requirements of the notice are: (i) stop using the new hardstanding for the parking of motor vehicles and any storage purposes: (ii) stop using the former tennis courts for the purpose of parking of commercial motor vehicles.
- The period for compliance with the notice is: one month from the effective date of the notice.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the 1990 Act.

There is no appeal on ground (a) and the deemed planning application has lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Appeal C: Ref: APP/B5480/A/05/1184143
Land at Ivy Lodge Farm, Shepherds Hill, Harold Wood, Romford, RM3 0NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission.
- The appeal is made by Whites Packaging against the decision of the London Borough of Havering Council.
- The application (Ref: P2207.04) dated 3 December 2004, was refused by notice dated 1February 2005.
- The development proposed is "retention of hard surface for vehicle parking and turning area".

Summary of Decision: The appeal is dismissed.

PROCEDURAL MATTER

1. By letter dated 31 August 2005 an application for costs was made by the Appellant against the Council, relating to Appeals A and B only. This matter is the subject of a separate decision.

BACKGROUND

2. Ivy Lodge Farm lies in a setting of generally open countryside. It is no longer a working farm. Over the years the former farm buildings have come to be used for commercial purposes, in particular storage and distribution. The former farm house continues as a dwelling, occupied by the Appellant. The buildings lie to the north of Shepherds Hill, a busy local distributor road. From Shepherds Hill the buildings are approached by a double private drive. The area lies within the Metropolitan Green Belt.

3. The appeals concern two areas of land that lie broadly within the complex of buildings. The site that is the subject of Appeals A and C and, in part, of Appeal B, is described in Notice 1 as "hardstanding". It lies on the western edge of the complex, to the south of Unit 6, a former double farm barn now used for a storage and distribution business. This site is about 30 by 20 metres in extent. It lies adjacent to a north to south track, Ivy Lodge Lane, which has the status of a footpath. The other site, that is the part subject of Appeal B, is referred to in Notice 2 as "former tennis courts". It lies on the north east edge of the complex, close by the north elevation of the house. It has dimensions similar to those of the "hardstanding" site.

APPEALS A AND B: THE VALIDITY OF THE ENFORCEMENT NOTICES

4. The Appellant submits that both notices are invalid, that the errors in them cannot be corrected and that accordingly they should be quashed. A number of points are made, some

of which I shall refer to later in this decision. However the main contention is that the notices were not properly authorised by the Council. This contention is based on discrepancies identified between the notices themselves and the Committee report and Minutes that the Appellant says authorised the taking of enforcement action. To give an example the Appellant says that requirement (ii) of Notice 1 is not authorised by the Minutes referred to.

5. In my view the Appellant has not substantiated his claim here. He has not set out comprehensively what procedures the Council as a corporate body go through to authorise the taking of enforcement action – for example whether and how decisions are delegated to Committees and officers. He has not explained how, in his view, those procedures have not been adhered to in this case. In the absence of such a framework I cannot judge the merits of what he says. Apparent discrepancies between a – very brief – Committee Minute of one Committee meeting and the – inevitably much more detailed – enforcement notices are not in themselves definite evidence that enforcement action was not properly authorised. The Council have issued enforcement notices the contents of which, in my view, comply with the requirements of the legislation. I have no convincing evidence that they do not reflect the corporate intent of the Council. I am not persuaded that they are invalid.

APPEAL A: NOTICE 1

6. With regard to the appeal on ground (b) here, and to the appeals on grounds (b) and (c) against Notice 2 referred to later, the onus is on the Appellant to prove his case. The standard of proof required is the balance of probabilities.

The Appeal On Ground (b)

7. Under this heading it is said that no hardstanding has been formed – the grassed land previously used for vehicle turning has simply been hard surfaced.

8. There is no substance in this appeal. A large area of hard surfacing has been created on the land identified, involving no doubt the removal of much soil and the importation of much hard material. The word "hardstanding" is widely used and understood. Accordingly, as a fact, a hardstanding has been formed, as alleged in the notice. The appeal on ground (b) fails. The allegation of forming of hardstanding relates to operational development. I shall deal with the matter of the **use** of the land concerned separately.

9. There is no evidence that planning permission has been granted for the forming of the hardstanding or that the works were substantially completed more than four years before the date of the notice. Thus an appeal on ground (c) would have failed also.

10. Notice 1 is aimed primarily at the operational development – this is clear from the terms of the requirements of the notice. However the allegation also refers to the current use of the land. This allegation is repeated in Notice 2, in identical terms. Notice 2 is aimed at the use of land rather than at operational development. The requirements of Notice 1 do not deal with the allegation of use. To avoid confusion between the two notices and complications associated with section 173(11) of the Act I shall delete the reference to the current use of the land from the allegation in Notice 1. This correction can be made without injustice. I shall examine the Appellant's claim that the current use has not taken place in dealing with Notice 2.

The Appeal On Ground (f)

11. Under this heading the Appellant claims that there is no authority for requirement (ii). I have dealt with the general point about the validity of Notices 1 and 2 at paragraph 5 above. I consider requirement (ii) to be valid. It is a sensible requirement and it will stand. The Appellant also says under this heading that in itself the hardstanding does not cause harm. That is a planning merits point that I will deal with in considering Appeal C. The appeal on ground (f) fails.

The Periods For Compliance with Notice 1

12. For the reasons given at paragraph 24 below I shall vary the periods for compliance with requirements (i) and (ii) of the notice to 5 months and 8 months respectively. An appeal against the notice on ground (g) would have succeeded to that limited extent.

Conclusions

13. For the reasons given above and having regard to all of the representations made Appeal A against Notice 1 will be dismissed and the enforcement notice will be upheld with a correction and variation.

APPEAL B: NOTICE 2

The Appeals On Grounds (b) and (c)

14. This notice contains two allegations. I deal with the appeals against each in turn. I deal first with the allegation that the hardstanding that is the subject of Notice 1 has been used for the parking of motor vehicles and for open storage. Although the Appellant disputes this contention he has produced no specific evidence to undermine the Council's claims. However the Council have produced evidence that motor vehicles have been parked there and that "a portacabin and container together with some open storage" have been stationed there. The appeal on ground (b) fails.

15. Although it is clear that the complex of buildings at Ivy Lodge Farm has been used for a number of years for commercial purposes and although it is contended that the former grassed area now occupied by the hardstanding has been used for years for the parking and circulation of vehicles there is no specific evidence either that express planning permission has been granted for such use of the hardstanding land or that any such use has acquired immunity from enforcement action under the 10 year rule. In the circumstances the appeal on ground (c) also fails.

16. I turn to the allegation about the use of the former tennis courts. I observe that there is little dispute between the Appellant and the Council here as to what is, and has been, stationed on this area of ground in recent years. Thus the Appellant acknowledges that a 7.5 tonne truck used in connection with the business White Packaging has been stationed on the land. He also refers to the stationing there of a lorry with hydraulic platform, a mini digger, a mini dump truck and grass cutting equipment. He acknowledges that two touring caravans (not occupied residentially) are stationed there and that two containers and a van body are also present on the site and used for the stationing of a 1936 Ford touring car, garden seating, bicycles, garden lawn mowers and the like. All of these items are referred to in the Council's representations and almost all of them were present on the site at the time of my

inspection. The Council also refer to the storage of construction materials on the land, a matter not referred to by the Appellant.

17. It seems to me that where the parties do differ is in their assessment of the purposes for which these items are, and have been, stationed on the land and in their assessment of the nature of the alleged breach. The Appellant says that the former tennis courts lie within the curtilage of his house: that the land is being used solely for purposes ancillary to his domestic use; that such use does not involve a material change of use; and that accordingly the appeal on grounds (b) and (c) should succeed. He says there has been no parking of commercial vehicles. The 7.5 tonne truck is his personal transport; if need be the notice could be complied with by the removal of that vehicle from the site. He also says that the hydraulic platform, the mini digger and the like are used for the maintenance of the Ivy Lodge Farm property, which includes an extensive area of grassland fields to the south of the buildings. He says that the maintenance equipment is not used commercially and is parked on the former tennis courts site simply for security reasons. The Council on the other hand say that the vehicles, plant and machinery stationed on the land are not there for residential purposes. The site is used for the non-residential parking of commercial vehicles and for storage. That has involved a material change of use and requires planning permission.

18. My view on this matter is that a good proportion of the items stationed on the site in the recent past, and now, such as the garden equipment and Mr White's cherished 1936 car, can reasonably be regarded as items stored or parked for purposes incidental to the enjoyment of Ivy Lodge Farm house as a single dwellinghouse. Were they present in a normal domestic garden setting they would represent part of the residential use of the planning unit and their stationing would not involve development. However a sizeable proportion of other items on the site, including many of the largest, cannot be so regarded. Items like the hydraulic platform and the mini digger and mini dumper may not be used for commercial purposes as such. But they are not on the land as part of the use of the dwelling, but rather to serve the needs of the wider land holding. Their stationing is on such a scale and of such a character as to represent a distinct and separate primary use of the land, for the storage and parking of vehicles, plant and equipment. In my view the 7.5 tonne truck is part of this same primary use. The Appellant has produced no specific information about how the truck is used and on the balance of probability I do not regard the stationing of such a sizeable vehicle as a use incidental to residential use. Compliance with an enforcement notice would not discharge it.

19. Accordingly I find as a fact that there has been an unauthorised change of use at the former tennis court site, as alleged in the notice and the appeal on ground (b) against the second allegation in the notice fails. The Appellant has produced no evidence that a planning permission has been granted for the change of use or that the use introduced is immune from planning control under the 10 year rule. Accordingly the appeal on ground (c) fails also.

20. However, in the light of my findings about the use of the former tennis court site I consider that the second allegation in Notice 2 could have been better expressed. In my view the words used in the allegation as it stands do not adequately reflect the fact that some of the items are stored as well as parked, that some of the items are more commonly described as items of plant or machinery rather than as vehicles and that many are not "commercial ... vehicles" in the narrow sense. I shall correct the wording of the allegation

accordingly to refer to the parking and storage of motor vehicles, plant and machinery. I shall also vary requirement (ii) consequentially – to secure the cessation of the unauthorised use but also to ensure that the parking or storage of items properly incidental to the residential occupation of Ivy Lodge Farm house as a single dwellinghouse can continue in what has been part of the garden of the house. These changes can be made without injustice – both parties are fully aware of all relevant matters.

The Appeal On Ground (f)

21. Under this heading the Appellant says that the compliance periods set out in the notice are not authorised by the Council. I have dealt with this general argument at paragraph 5 above. The Appellant also says that the two sites have not been used for the purposes alleged. These are not ground (f) points and they have been dealt with elsewhere. The appeal on ground (f) fails.

22. With regard to requirement (i) the Appellant says, when considering the validity of the notices, that this requirement would not prevent the land on which the hardstanding lies from being used in future for parking and storage since the requirement, as worded, only prohibits the use of "the new hardstanding" for those purposes, not the actual land on which the hardstanding currently sits. In my view this point is of no substance since it is plain what is intended. However in order to avoid any possible misunderstanding in the future I shall vary the wording of requirement (i) appropriately. This variation can be made without injustice.

The Appeal On Ground (g)

23. Here the Appellant says that the compliance period should be extended to three months. I have sympathy with him on this point. With regard to the cessation of the use of the hardstanding I do not consider that this will cause any great problems as the site functioned without it in the past and as the Appellant himself says that there is adequate space within the complex for the parking of commercial vehicles. I think that there should be no undue problems in complying with requirement (ii) also. However, to prevent any undue disruption of the businesses operating from Ivy Lodge Farm I shall extend the period for compliance with the notice to a limited extent. I consider three months to be an appropriate period and will vary the notice accordingly. The appeal on ground (g) succeeds to that limited extent.

24. There is no appeal against Notice 1 on ground (g). However I have considered the periods for compliance with that notice in the light of my findings in regard to Notice 2. To allow a reasonable time to remove the hardstanding and to restore the land after the unauthorised use of it has ceased I shall extend the periods for compliance with Notice 1 to 5 months in the case of requirement (i) and 8 months in the case of requirement (ii).

Conclusions

25. For the reasons given above and having regard to all of the representations made Appeal A against Notice 2 will be dismissed and the enforcement notice will be upheld with a correction and variations.

APPEAL C

Main Issues

26. In my view Appeal C raises three main and related issues of planning merit. The first concerns the impact of the presence and use of the hard surface on the appearance and character of the nearby area. The second is concerned with whether the construction of the hardstanding should be regarded as appropriate or inappropriate development in the green belt. The third arises if I conclude that the development is inappropriate. It is whether a situation of very special circumstances exists to justify the grant of planning permission for the inappropriate development.

Planning Policy

27. The appeal site and surrounding area lie within the Metropolitan Green Belt. The development plan for the area is the adopted Havering Unitary Development Plan of 1993 (the UDP). Policy GRB2 is particularly relevant. It makes a presumption against any new development in the green belt so as to seek to avoid a number of outcomes including materially affecting the open nature of the green belt. It sets out a number of uses that are regarded as appropriate in the green belt, including agriculture, forestry and some uses of an open nature. Policy GRB10 is of some relevance. It presumes in favour of the change of use of redundant agricultural buildings where the development does not have an unacceptable effect on matters like the appearance and character of the area.

28. PPG2 is also highly relevant to this case. It makes clear that there is a general presumption against inappropriate development in green belts. Such development should not be approved except in very special circumstances. At paragraph 3.1 it defines very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. Paragraph 3.4 sets out categories of development that may not be inappropriate. The PPG also gives guidance on the re-use of rural buildings in the green belt.

Reasons

Issue One: Impact On The Appearance And Character Of The Area

29. Notwithstanding the commercial use of the Ivy Lodge Farm buildings the complex has retained something of an open and rural appearance and character, due in my view to the presence around and between the buildings of areas of open land, including well looked after areas of grass. The appeal development has created a sizeable area of hard surfacing on land that had earlier been grassland. The hardstanding is sited close to Ivy Lodge Lane and is clearly visible from that footpath. I find that the creation of the hard surface will have given this part of the complex a much more built up and urbanised ambiance than it would have had before and that this will have done serious harm to the open appearance and character of the nearby area. Moreover the planning application makes clear that the hard surface is proposed to be used for the parking and turning of vehicles. Such use of this spot would detract further from the relatively open character of the place and give it a still more urbanised feel. PPG2 stresses that the most important characteristic of green belts is their openness. This development is very damaging to the openness of this area of green belt.

30. These very weighty objections to the development could not be overcome by the imposition of conditions on a planning permission. Given the position of the land it would be very many years before it could be screened to any significant extent by planting. A condition prohibiting the use of the land for open storage would do little to reduce the harmful visual impact. The Appellant argues that hard surfacing the land has improved its appearance as it tidied up the rutted and muddy once grassed surface. I attach very little weight to this argument – it could be deployed to justify development anywhere.

Issue Two: Appropriate Or Inappropriate Development In The Green Belt?

31. I have examined the guidance in the UDP and in PPG2 as to what constitutes appropriate and inappropriate development in the green belt. I consider that, regarded in isolation, the use of a sizeable area of land as a hardstanding for vehicle parking and turning is not a use of the kind that is appropriate in a green belt. It is not a use appropriate to a rural area. However in this case it is not proper to consider this development entirely in isolation. The development is planned to improve access, parking and turning for business Unit 6. Unit 6 was once a farm building and the re-use of farm buildings may be appropriate development in a green belt. However the relevant green belt policies make clear that such re-use is not appropriate if associated hardstandings, parking areas and the like damage the openness of the green belt. In my view that is the situation in this case. The area of hard surface is very very much larger than would be required simply to provide a good turning space for a HGV close to Unit 6. Accordingly in my view the policies that regard the re-use of farm buildings as potentially appropriate developments in green belts lend very little support to this appeal development. My overall finding is that the appeal scheme is an inappropriate development. It is therefore by definition harmful to the green belt.

Issue Three: Very Special Circumstances

32. I turn, therefore, to the third issue. In support of the development the Appellant says that the site of the hard surface has long been used by occupiers of Unit 6 for parking and circulation. But, with a grassed surface until very recent years, the potential of the site for such use will have been limited, especially in winter. The Appellant claims that the business use of the farm complex as a whole is lawful due to the long passage of time. But he has produced no specific evidence to back this claim insofar as it relates to the site that is the subject of the present appeal. Nor indeed has he produced any specific evidence that the current use of Unit 6 is a lawful one. In the circumstances I attach very little weight to the Appellant's submissions on this point.

33. The Appellant says that the hard surface was formed in the interests, in part, of road safety, to provide a vehicle turning facility. I accept that this would be a benefit although, as I have said, the hard surfaced area is very much larger than is needed to just provide a turning facility. However I consider that the traffic safety benefit on site would be outweighed by harm to traffic safety elsewhere. In my view the presence of the sizeable area of hardstanding would encourage, inevitably, additional traffic generation at Ivy Lodge Farm. The additional traffic would have to use the junction between the private access and the busy local road Shepherds Hill. That junction is on a bend and has restricted visibility. I concluded at my inspection that additional use of this junction would be materially damaging to traffic safety there. It may be that the junction could be improved but I have no evidence to support this view and the Appellant has not proposed any improvement. I conclude that matters of highway safety weigh against the grant of planning permission.

30. These very weighty objections to the development could not be overcome by the imposition of conditions on a planning permission. Given the position of the land it would be very many years before it could be screened to any significant extent by planting. A condition prohibiting the use of the land for open storage would do little to reduce the harmful visual impact. The Appellant argues that hard surfacing the land has improved its appearance as it tidied up the rutted and muddy once grassed surface. I attach very little weight to this argument – it could be deployed to justify development anywhere.

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33. The Appellant says that the hard surface was formed in the interests, in part, of road safety, to provide a vehicle turning facility. I accept that this would be a benefit although, as I have said, the hard surfaced area is very much larger than is needed to just provide a turning facility. However I consider that the traffic safety benefit on site would be outweighed by harm to traffic safety elsewhere. In my view the presence of the sizeable area of hardstanding would encourage, inevitably, additional traffic generation at Ivy Lodge Farm. The additional traffic would have to use the junction between the private access and the busy local road Shepherds Hill. That junction is on a bend and has restricted visibility. I concluded at my inspection that additional use of this junction would be materially damaging to traffic safety there. It may be that the junction could be improved but I have no evidence to support this view and the Appellant has not proposed any improvement. I conclude that matters of highway safety weigh against the grant of planning permission.

34. The Appellant says that the new area of hard surface is much less significant visually than the driveway recently built nearby for the veterinary surgery. That may be so but I cannot assess the significance of the submission. The two developments are very different and raise different planning issues. The Appellant has not provided me with any information about why the Council decided to approve the driveway. In the circumstances I attach little weight to the matter. I have considered all of the other matters raised in support of the development.

35. Weighing the merits of the development I take the view that: the hard surface represents an inappropriate development in the green belt, by definition harmful to the green belt; that the development has demonstrably harmful effects on the openness of the appearance of the Ivy Lodge Farm building complex and of the green belt and on the character and appearance of the nearby area; and that the development will have damaging effects on traffic safety. I find that these matters clearly outweigh the considerations supporting the grant of planning permission. Accordingly a situation of very special circumstances does not exist to justify the development in the green belt. Planning permission will be refused.

Conclusions

36. For the reasons given above and having had regard to all matters raised I conclude that planning permission should not be granted in respect of Appeal C.

OTHER MATTERS

37. All other matters raised in the representations have been considered in arriving at the conclusions set out above and at my decisions on the appeals.

FORMAL DECISIONS

APPEAL A: NOTICE 1

38. In exercise of the powers transferred to me, I correct the notice at Section 3, "The breach of planning control alleged", by the deletion of the second sentence of the allegation in its entirety. I vary the notice at Section 5, "What you are required to do", by the deletion of the number "3" and the substitution therefor of the number "5" and by the deletion of the number "6" and the substitution therefor of the number "8". Subject thereto I dismiss the appeal and uphold the enforcement notice as corrected and varied.

APPEAL B: NOTICE 2

39. In exercise of the powers transferred to me I correct the notice at Section 3, "The breach of planning control alleged", by the deletion from the second allegation of the words " of commercial motor vehicles" and the substitution therefor of the words "and storage of motor vehicles, plant and machinery". I vary the notice at Section 5, "What you are required to do", by the deletion of all of the text of requirement (i), after the word "hardstanding", and the substitution therefor of the words "and, after the new hardstanding has been removed, the land formerly covered by the new hardstanding, for the parking of motor vehicles and open storage purposes.". I also vary the requirements of the notice by the deletion from requirement (ii) of the words "of commercial motor vehicles", and the substitution therefor of the words "and storage of motor vehicles, plant and machinery,

except items that are parked and stored for purposes incidental to the enjoyment of Ivy Lodge Farm house as a single dwellinghouse". I also vary the notice at Section 5 by the deletion of the number "1" from the text of the requirements at the two places where it occurs and the substitution therefor of the number "3". Subject thereto I dismiss the appeal and uphold the notice as corrected and varied.

APPEAL C

40. In exercise of the powers transferred to me I dismiss the appeal.

INSPECTOR

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Costs Decision

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Site visit made on 12 December 2005

by A J J Street MA(Oxon) DipTP MRTPI

An Inspector appointed by the First Secretary of State

Date
26 JAN 2006

Costs application in relation to Appeals Ref: APP/B5480/C/05/2001731-2
Land at Ivy Lodge Farm, Shepherds Hill, Harold Wood, Romford, RM3 0NR

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Paul White for a full award of costs against the London Borough of Havering Council.
- The site visit was in connection with appeals by Mr Paul White against two enforcement notices issued by the Council and against a refusal of planning permission by the Council relating to the above land. The application for costs relates to the appeals against the two enforcement notices only. Notice 1 alleges the formation of hardstanding next to Ivy Lodge Lane. Notice 2 alleges: that the hardstanding referred to in Notice 1 is being used for the parking of motor vehicles and open storage and: that the former tennis courts are being used for the parking of commercial motor vehicles.

Summary of Decision: The application fails and no award of costs is made.

Procedural matters

1. The application for costs was made in a letter dated 31 August 2005 from the Appellant's agent. The Council's response is by letter dated 13 September 2005.

The Submissions for Mr Paul White, the Applicant

2. In support of the application it is said that the Council has failed to comply with the Planning Inspectorate's timetable for the submission of documents relating to the appeals against the notices. As a result the Appellant, the applicant in this costs application, has been unable to respond further to any additional material that the Council might have submitted in support of their actions. The Council have also failed to support the allegation in Notice 2 with any substantial evidence and thus have prejudiced the Appellant by leaving him unaware of the basis for their action. No planning contravention notice has ever been served. No specific evidence has been produced. It is clear that the Council have behaved unreasonably having regard to the guidance at paragraph 4(2) and 4(3) of Annex 2 to Circular 8/93 and at paragraph 28 of Annex 3 to that Circular as well. The Appellant has been forced to safeguard his position and this has put him to unnecessary expense. Costs should be awarded to the Appellant.

The Response by Havering London Borough Council

3. In response the Council denied that they had acted unreasonably in their handling of the appeals. The Planning Inspectorate's timetable required questionnaires and associated documentation to be submitted by 25 and 26 July 2005 August and statements to be submitted by 22 and 23 August 2005. The questionnaires and documents had been sent on 15 August and the statements on 30 August. The Planning Inspectorate accepts that

questionnaire documents are sometimes submitted late. In their statement the Council provided information substantiating the alleged breach of planning control relating to the former tennis courts. There is photographic evidence and the alleged breach has been observed by enforcement officers on a number of occasions. Copies of letters sent to the Appellant's agent from December 2002 onwards show that the Appellant has had every opportunity to deal with the issue raised by Notice 2. They show that the Council have acted entirely reasonably.

Conclusions

4. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. The Circular advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

5. I note that the Council failed to comply with the timetable set for the processing of this appeal. I do not condone non-compliance with the timetable. But the Appellant has produced no evidence to show that the Council's timing failure has prejudiced the Appellant's appeal in any way. Moreover he has certainly had the opportunity to respond to all of the representations produced by the Council, both before and after the date of the agent's letter of 31 August 2005. There is also no specific evidence that the Council's failure to comply with the timetable caused the Appellant any unnecessary expense.

6. Regarding the Appellant's representations referring to paragraph 28 of Annex 3 to Circular 8/93, I am satisfied that the Council undertook reasonable investigations to establish that there had been breaches of planning control, as alleged in Notice 2 – and indeed as alleged in Notice 1. Substantial evidence was put in in support of the Council's case regarding the enforcement appeals and the Council's representations on the costs application show that they have been investigating possible breaches of planning control at Ivy Lodge Farm since as long ago as late 2002. I am of the view that the Council also advanced a respectable case on the planning merits – although the merits were not of course contested in the appeals against the enforcement notices. I find no substance either in the Appellant's representations based on paragraph 4(2) and 4(3) of Annex 2 to Circular 8/93. Paragraph 4(2) is not applicable to this case as the Secretary of State has not quashed either notice because of a failure to supply information. Regarding paragraph 4(3) there is no evidence that the Council have refused to co-operate in settling agreed facts or supplying relevant information so that the proceedings have been prolonged unnecessarily. There is no evidence that the Council held up the proceedings unreasonably or unnecessarily.

7. In all the circumstances I find that unreasonable behaviour, resulting in unnecessary expense being incurred by the Appellant, as described in Circular 8/93, has not been demonstrated by the Appellant. I therefore conclude that an award of costs is not justified.

Formal Decision

8. I refuse the application for an award of costs.

INSPECTOR