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Legal Team Office
Wycombe & Beaconsfield Magistrates Court
Easton St
High Wycombe
Bucks
HP11 1LR

21st March 2011

Dear Sir or Madam,

Complaint for a Litter Abatement Order against the Secretary of State for Transport Philip Hammond MP

Please find enclosed four copies of:

1. A complaint for a Litter Abatement Order
2. An accompanying statement with photographs and a map
3. A copy of a S91 notice dated 14th March 2011
4. A draft summons

I am also enclosing cheque for the fee of £200 made payable to the "HMCS"

Please contact me by telephone or e-mail to confirm the documents are in order and to let me know about arrangements to issue a summons and to discuss hearing dates.

I look forward to hearing from you

Yours faithfully

Peter Silverman MA MSc

Complaint for a Litter Abatement Order

Wycombe & Beaconsfield Magistrates Court

Easton St, High Wycombe, Bucks, HP11 1LR

Date:

21st March 2011

Defendant:

Mr Philip Hammond Secretary Of State for Transport
Great Minster House, 76 Marsham Street, London SW1P 4DR

Matter of complaint:

That the complainant is aggrieved by the defacement by litter and refuse of the verges and embankments alongside the slip roads of Junction 1 of the M40 motorway with particular reference to the east bound and west bound off slip roads. ("Off" meaning coming off the motorway)

That the defendant has a duty to keep the said highway as far as practicable clear of litter and refuse under section 89(1) of the Environmental Protection Act 1990

And the complainant now therefore makes application to the Court to make a Litter Abatement Order pursuant to section 91(6) of the Environmental Protection Act 1990, requiring the defendant to clear the litter and refuse away from the said highway.

The complainant:

Peter Silverman of 20 Kingsend, Ruislip, Middlesex, HA4 7DA Tel: 01895 625770

Who states that the defendant was responsible for the matter of complaint of which particulars are given above.

Taken before me

Justice of the Peace / Justice's Clerk

Statement

Complaint for a Litter Abatement Order M40 J1

The Law

My understanding of the legal position is as follows:

The Secretary of State (SoS) has a duty under the Environmental Protection Act S 89 (1) (b) to ensure that our motorways (aka special roads) are so far as is practicable kept clear of litter and refuse.

The term "practicable" simply means "physically possible" without the need to take account of cost, time and trouble as opposed to "reasonably practicable" were these considerations would come into play.

In discharging this duty the SoS should have regard to the Litter Code of Practice (EPA 89 (10))

Under EPA 91 anyone aggrieved by the defacement by litter or refuse of a motorway (special road) may make a complaint to a Magistrates' Court after giving the Secretary of State at least 5 days written notice of his intention.

If the court is satisfied that the land in question is so defaced, and the SoS has not proved he has complied with his duty under S 89 (1), the court may make a litter abatement order requiring the SoS to clear the litter or refuse within a specified time.

The Litter Code of Practice is admissible in evidence and, if any provision appears to be relevant, it can be taken into account by the court.

If the court is satisfied that, when the complaint was made, the land was defaced by litter and refuse, and there were reasonable grounds for making the complaint, the court will award costs to the complainant.

Litter Code of Practice

2.6 Says that the EPA gives anyone the right to take legal action against a duty body to remove litter from its land "*where this falls below the acceptable standard set out in the Code for longer than the period specified".*

Acceptable standard:

7.3 Says land should be not fall below B (predominantly free of litter apart from some small items) and should be cleansed to A (no litter) "on a regular basis".

7.4 Says it may not be practical to remove all items from grass etc and in these cases grade B would be acceptable. Motorway verges fall into this category.

Period specified:

Motorway verges on slip roads are categorised as "*low intensity use*" land with a response time of 14 days.

[This is established in the table on page 23 of the Code which includes under roads/low intensity use: "*Motorway and trunk roads roundabouts and lay-bys approach and slip roads connecting these roads*". This is repeated in 11.4.6. In 11.4.7, which refers specifically to motorways, the last sentence says "*Some areas with slower traffic flows such as on-off roads and roundabouts are often the most*

littered but are actually easier to manage than areas with less refuge and higher traffic speeds such as central reservations"]].

Relevant facts

The four slip roads of Junction 1 of the M40 motorway (Denham turn off) are part of England's network of motorways and strategic trunk roads managed on behalf of the Secretary of State for Transport by the Highways Agency.

The verges of these slip roads are almost always badly littered. This is evidenced by the photographs presented on my "M40 J1 Earlier" page.

They were cleaned on the night of 24th January 2011. Some easily accessible areas were however overlooked and a great deal of litter was left in the undergrowth on the embankments. In the subsequent month more litter accumulated.

On 25th February I therefore sent the following e-mail to the Highways Agency:

From: Peter Silverman [mailto:p@petersilverman.com]
Sent: 25 February 2011 10:51
To: 'ha_info@highways.gsi.gov.uk'
Subject: M40 J1 slip roads

Yesterday I took a look at 3 of the 4 slip roads. I did not inspect the westbound "on" slip. ("on" meaning back onto the motorway).

All three were in a dreadfully badly littered state.

Please arrange for them to be cleaned, and on this occasion, please clean the areas identified as having been missed in my e-mail of 25th January to Connect Plus reproduced below.

When did the Highways Agency, as opposed to your contractor, last check these slip roads and verges for cleanliness?

Kind regards

Peter Silverman
20 Kingsend, Ruislip, HA4 7DA, UK
01895 625770

By 14th March no cleaning had taken place and even more litter and refuse had accumulated. I therefore sent the following warning notice to the Secretary of State.

From: Peter Silverman [mailto:p@petersilverman.com]
Sent: 14 March 2011 16:48
To: Secretary of State for Transport philip.hammond@dft.gsi.gov.uk
Cc: 'Nugent, Aran'; 'John.King@highways.gsi.gov.uk'
Subject: Section 91 Environmental Protection Act 1990 Notice - M40 J1

Attention of: Mr Philip Hammond MP, Secretary of State for Transport

Dear Mr Hammond,

TAKE NOTICE that I claim that the highway described in the schedule hereto is one for which you have a duty under S89 (1) of the Environmental Protection Act 1990 to ensure, so far as is practicable, is kept clear of litter and refuse.

AND TAKE NOTICE that you have failed to keep the highway described so far as is practicable clear of litter and refuse

AND TAKE NOTICE that as I am aggrieved by the defacement by litter and refuse of this highway I am giving you five days notice as required by S91 paragraph 5 of the Act that I intend to make a complaint to the Magistrates Court under S91 of the Act for an order to require you to clean the highway.

14th March 2011

Peter Silverman
20 Kingsend, Ruislip, Middlesex HA4 7DA

Schedule: The verges and embankments alongside the slip roads of Junction 1 of the M40 motorway.

The two slip roads on the east side of the roundabout (see map) were cleaned on 18th March. However litter and refuse in the planted areas on either side of the "off" slip road had been missed again as evidenced in the bottom two photographs on my "M40 J1 19th March" page

The two slip roads on the west side of the roundabout had not been cleaned. The right hand side verge of the off slip was in a particularly bad state. This is marked with an asterisk on the map and is shown in the top two photographs on my "M40 J1 19th March" page.

I have underlined the reference to this verge in the in the following extract from an e-mail from the Highways Agency. It was dated 18th March and headed "Re: Section 91 Environmental Protection Act 1990 Notice - M40 J1".

These slip roads were last picked on 24 January 2011.

They were last graded on the 09 March 2011. J1 northbound entry slip was graded B offside and nearside. J1 southbound exit slip was graded C offside and B nearside.

The next planned litter clearance is during the routine maintenance closure on 01 August for J1 southbound exit slip road and 02 August for J1 northbound entry slip road.

The opportunity will be taken to undertake litter picking at an earlier date if these slip roads are closed for emergency works or to facilitate work by a third party.

What they are saying is that, although this verge was inspected (by the contractor – the Agency do not carry out routine inspections) and graded as C (widespread distribution of litter with minor accumulations) there is no commitment to clean it until August.

The Agency's contractor's subcontractor charged with the task of cleaning the M40 state in their own "Code of practice for dealing with litter" that slip roads with no hard shoulders(like those at J1) are targeted to be cleaned (only) twice a year.

Argument

The Secretary of State is blatantly failing in his duty to keep these slip roads, as far as is practicable, clear of litter.

He has allowed the area to fall below an acceptable standard for longer than the period specified in the Litter Code, namely 14 days. 23 days have now elapsed since my e-mail of 25th February and the Highways Agency are not committed to complete the cleaning until August.

Cleaning these slip roads only once every six months is clearly unacceptable.

I request that the court issue a Litter Abatement Order requiring the Secretary of State to clear the offending litter forthwith.

Peter Silverman 21st March 2011

Summons

Wycombe & Beaconsfield Magistrates Court

Easton St High Wycombe Bucks HP11 1LR

Date:

Complainant:

Peter Silverman of 20 Kingsend, Ruislip, Middlesex, HA4 7DA Tel: 01895 625770

Defendant:

Mr Philip Hammond Secretary Of State for Transport
Great Minster House, 76 Marsham Street, London SW1P 4DR

Matter of complaint:

That the verges and embankments alongside the slip roads of Junction 1 of the M40 motorway with particular reference to the east bound and west bound off slip roads. ("Off" meaning coming off the motorway) are defaced by litter and refuse and that the defendant has a duty under S89(1) of the Environmental Protection Act 1990 to ensure so far as is practicable the said highway is kept clear of litter and refuse and the complainant has made an application to the court to make a Litter Abatement Order requiring the defendant to clear the litter and refuse away pursuant to Section 91(6) of the Environmental Protection Act 1990.

Date of hearing:

Time of hearing:

The above complaint has been made before me. You the defendant are hereby summoned to appear on the date and time shown above at Wycombe & Beaconsfield Magistrates Court, Easton St, High Wycombe, Bucks HP11 1LR

Justice of the Peace / Justices Clerk