



Appeal Decision

Site visit made on 28 May 2025

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2025

Appeal Ref: APP/W4223/C/24/3353592

Land at Besom Hill End Farm, 817 Ripponden Road, Oldham OL4 2JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the Act”).
- The appeal is made by Mr Jamie Lord against an enforcement notice (“EN”) issued by Oldham Metropolitan Borough Council.
- The EN was issued on 10 September 2024.
- The breach of planning control as alleged in the EN is the unauthorised change of use of the land from a farm to use for the storage of demolition equipment and the erection of breeze block walls on the land. Planning permission was refused by the Council under reference FUL/350806/23 and dismissed on appeal under reference APP/W4223/W/23/3329244.
- The requirement of the EN is to permanently remove from the land all plant hire machinery, containers, portable cabins, building materials such as concrete blocks, bricks, tyres, scrap metal and the breeze block walls except for 1x excavator, 1x bulldozer and 1x container to be used solely for the demolition of the farmhouse on the Land granted planning permission under FUL/351111/23. The 1x excavator, 1x bulldozer and 1x container should all be stored only within the area edged in blue on the attached plan and then permanently removed from the land once the demolition of the farmhouse is complete.
- The period for compliance with the requirement is within three months of this EN taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f), and (g) of the Act.

Decision

1. It is directed that the EN is corrected and varied by:
 - the deletion of the words “Planning permission was refused by the Council under reference FUL/350806/23 and dismissed on appeal under reference APP/W4223/W/23/3329244” from the allegation in paragraph 3;
 - the deletion of “breeze” from the allegation in paragraph 3;
 - the deletion of “breeze” from the requirement in paragraph 5;
 - the deletion of “three months” and its substitution with “six months” as the time for compliance in paragraph 6; and
 - the substitution of the plan annexed to this decision for the plan with the red and blue edges attached to the EN.
2. Subject to the corrections and variations, the appeal is dismissed, and the EN is upheld.

Background and Preliminary Matters

3. An appeal on ground (a) was initially made, but where an EN has been issued after 25 April 2024, ground (a) is barred if the requirements of s174(2A) and (2AA) of the Act are met. In this case the EN was issued within two years after a related application (APP/W4223/W/23/3329244) was made that is no longer under consideration. Thus, the appeal is proceeding on the other stated grounds.

Reasons

The Enforcement Notice

4. The allegation stated on the EN includes reference to a scheme that was refused planning permission by the Council and the subsequent appeal relating to that decision. Although they relate to the alleged breach of planning control, they are not necessary and simply state the site's planning history.
5. For reasons that I shall explain below, it is necessary to correct the reference to "breeze block walls" in the allegation and the requirement. This reflects the evidence and my own observations. No injustice would arise as a result given that it would not widen the scope of the allegation or its requirements.

The appeal on ground (e)

6. An appeal on ground (e) is that copies of the EN were not correctly served. The EN relates to a parcel of land broadly to the north, east and west of the farmhouse at Besom Hill End Farm. The EN was served on a company at the farm and at a business centre, as well as two individuals at a separate address.
7. The appellant submits that the EN was served on his accountants, who have no interest in the land; a business centre which is their office supplier; and an address where they do not live, and the persons living there have no ownership of the land in question despite being an agent/secretary and involved in agriculture on the land. The appellant further explains that the name stated on the EN for a person living at this address is also not correct.
8. The Council accept that the name of the individual living at a separate address was incorrect and that they are not a director of the company operating at the appeal site. Furthermore, they accept that the address is not connected to the operation at the appeal site.
9. Section 176(5) of the Act sets out that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the EN 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.
10. The appellant has not explained how or why they have been substantially prejudiced by the EN being served as it was. They have clearly known about the EN and have not suggested that they are not connected to the demolition service company upon which the EN was served. The appellant has been able to make their appeal within time, and as such, I am satisfied that they have not been substantially prejudiced by the Council's actions in respect of the EN being served correctly. The appeal on ground (e) therefore fails.

The appeal on grounds (b) and (c)

11. An appeal on ground (b) is that those matters stated in the EN have not occurred. An appeal on ground (c) is that the matters stated in the EN do not constitute a breach of planning control. On these grounds, it is for the appellant to make out their case to the standard of the balance of probabilities.
12. Section 174(2)(b) of the Act is worded in the past tense, and the question is whether the alleged breach had occurred by the date of EN being issued. Therefore, for the alleged breach of planning control to be true, it would need to have taken place by the date when the EN was issued.

13. Section 55(1) of the Act confirms the meaning of 'development'. This includes making of any material change in the use ("MCU") of any buildings or other land. What is meant by MCU is not defined in statute or statutory instrument, but the concept is that, for an MCU to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
14. The appellant does not dispute the Council's view that prior to March 2021 the land was primarily used for agriculture. I have no reason to doubt this. Nor is there any evidence to indicate that the activities which took place on the land were any different from that of a typical farm. The appellant maintains that the land is still a farm, but there is no evidence explaining the type, nature and extent of agricultural activities that have taken place or are taking place on the land in recent years.
15. 'Demolition equipment' could cover many things, but when the allegation is read alongside the EN's requirement, there is a clear understanding of what is meant by it. There is no evidence to suggest that the number and types of demolition equipment have changed since the EN was issued. While a digger and excavator may also be used on a farm, there are numerous diggers and excavators on the land as well as a large quantity of large storage containers. The amount and type of equipment stored on the land points to a demolition operation in my judgment rather than an agricultural one, and the appellant has not shown that the land was not primarily being used to store demolition equipment when the EN was issued. In fact, the appellant's Appeal Statement provides the appeal site's address and the name of the demolition company.
16. Furthermore, the storage of demolition equipment facilitates the appellant's business, which takes place away from the appeal site at various geographic locations. To this end the equipment is moveable, but it is still stored on the site until it is needed. Given the amount of equipment stored at the site, there could be numerous trips to and from the site. This is unlike agricultural activities either directly taking place on the land itself or on nearby parcels of land which may require some short trips to move specific agricultural equipment.
17. There are also large block walls near to the road, but they are not breeze blocks as the EN states. They are concrete. Given the Council's description of an enclosed area within the site and the appellant's photographs, I consider the parties to be talking about the same wall, albeit the correct material is not stated. Thus, no injustice would arise if 'breeze' was removed from the allegation and the requirement, as evidently the block walls stated on the EN had occurred when the EN was issued, notwithstanding the purpose behind the wall's erection, as that is a planning merit matter which I am not considering on this ground of appeal. I note that the appellant is looking to move or relocate the walls to work with the Council, but this nor the presence of any fencing, changes my opinion that that matters stated in the EN constitute a breach of planning control.
18. This is because there has been a significant change in the character of the activities taking place on the land due to the amount and type of demolition equipment stored on the land as well as how the business operates compared to a farm. An agricultural use would not require all the demolition equipment stored on the land, which includes numerous repeats of the same or similar equipment. The appellant contends that the EN incorrectly refers to 'plant hire machinery' but provides no substantive evidence setting out what services the demolition business offers to disprove the EN.

19. The MCU is also facilitated by the concrete block walls that enclose areas of land to store equipment and materials within. Despite claims that they are temporary, they appear to have been in situ for some time now and in the same place. The walls may have a dual use to protect trees, but this does not change the activities that have taken place on the land. Nor has the appellant explained why they are not 'development', permitted development, or benefit from planning permission. In my assessment, given their size and extent, they are a building operation, as their construction would have been an operation normally undertaken by a person carrying on business as a builder, considering the land's sloping topography. Even if the appellant constructed them himself, his competency does not change my opinion that this is an operation that would normally be undertaken by a builder.
20. The EN's requirement sets out what is meant by building materials. While it is not an exhaustive list, it does clearly mean materials used in connection with the demolition operation rather than the construction of the new dwelling.
21. Planning permission has been granted for two agricultural sheds and a dwelling which will require machinery and materials, but those planning permissions have not been implemented. I do not also know the reasons why those planning permissions were granted. But, in assessing this appeal on its own merits, for the reasons set out, I consider that a building operation and MCU, which are both 'development' for the purposes of the Act, have taken place. They are both a breach of planning control. As such, the appeal on grounds (b) and (c) fails.

The appeal on ground (d)

22. An appeal on ground (d) is that at the date when the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
23. S171B(1) of the Act provides that no enforcement action may be taken in respect any unauthorised operational development after the end of the period of 10 years beginning with the date on which the operations were 'substantially completed'. Section 171B(3) also provides that no enforcement action would have been possible after the end of the period of 10 years beginning with the date of the breach. Therefore, if the alleged MCU and operational development had already occurred before 10 September 2014 and the use had been continuous since that time (and it was possible for the Council to have taken action in respect to it), then the appeal should succeed under ground (d), providing that the use had not been superseded by a new chapter in the land's planning history.
24. Within the officer's report for the refused planning application registered on 13 April 2023, there is commentary that the demolition company operated successfully from another location for seven years before they had no other option but to vacate half of that site and temporarily store equipment at the appeal site. The Council noted within its report that storage of demolition equipment started in March 2021 and cites streetview images to support this. The appellant does not dispute this, nor have they provided any substantive evidence to suggest otherwise, albeit the precise date when the MCU took place is unclear. That is not, however, determinative, as it still falls some way short of the time limit of ten years required to be immune from enforcement action.
25. There is also no suggestion or substantive evidence to demonstrate that the block walls were erected at any time prior to March 2021. They were substantially completed at some point around then, but that is again not determinative given that the time since then is still short of the time limit of ten years required to be

immune from enforcement action.

26. I am not therefore satisfied on the balance of probabilities that, at the date that the EN was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the EN. Thus, the appeal on ground (d) does not succeed.

The appeal on ground (f)

27. An appeal on this ground is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or to remedy any injury to amenity which has been caused by any such breach.
28. The appellant considers the EN to be excessive in requiring the dwelling's demolition to be completed by a bulldozer and an excavator given its location next to a highway which includes a footpath. How the dwelling is demolished is not a matter for this appeal, as the breach of planning control does not relate to the dwelling. Nevertheless, the EN's requirement could be read as the demolition must be undertaken using an excavator, bulldozer and a container. Given this, it would be more appropriate to vary the requirement so that those pieces of equipment could be used in connection with the dwelling's demolition if the appellant wishes to before they are removed from the site. I shall vary the requirement to that effect.
29. The EN also requires those items to be stored with the area edged blue. This would avoid them being placed across the wider landscape, but the blue edge is relatively tightly drawn, and part of the area includes the dwelling to be demolished. Hence, in the interests of safety, it is necessary to enlarge this area whilst also remedying the breach of planning control. I shall therefore replace the plan appended to the EN to this effect. No injustice would be caused in doing so.
30. The appellant cites communication and collaborative working issues, but these are not lesser steps to the EN's requirement which would remedy the breach of planning control. The appellant makes further points about maladministration and the conduct of councillors, but these matters lie outside of the scope of this appeal. They make further points about the content of objections and where those people live, but as the appellant recognises, this is a matter being considered elsewhere, and the planning merits of the EN are not before me given the grounds of appeal.

The appeal on ground (g)

31. An appeal on ground (g) is that any period specified in the EN falls short of what should reasonably be allowed.
32. The time period for compliance on the EN is three months. Although the appellant decided to bring the equipment onto the land, which have been in place for around two years, they have the right of appeal and to ascertain whether that has been successful or not before any reasonable compliance period starts.
33. The appellant claims that the EN would cause agricultural activity to cease at the site, which would necessitate animals being rehomed and affect their business contracts. Further, they say that they would need to buy another farm or place for the demolition company to operate from, which would not be possible in three months, and they would need to let local staff go.
34. There is no substantive evidence of agricultural activity taking place on the land or substantive evidence to indicate that agricultural activity would cease as a result of the EN or the bearing that a three-month or a longer compliance period would

have on any agricultural activity. There is also no evidence of what the demolition company' requires in a site or of any searches being undertaken of potential alternative sites, and there is no indication of what may be available on the market. That said, three months is a relatively short period of time to find, secure and move to an alternative site, especially given that it would need to be suitable for large equipment not connected with the demolition of the farmhouse.

35. Therefore, I consider the time period stated on the EN falls short of what should reasonably be allowed, and instead I shall vary the EN so that the compliance period is six months so that the appellant has a longer period of time to find an alternative site and to provide continuity to their business and its employees. Accordingly, the appeal on ground (g) succeeds.

Other Matters

36. Submissions were made by the parties about the allegation's planning merits, including a planning condition imposed on the planning permission for the new dwelling and policy references. However, these are not relevant to this appeal, as there is no ground (a) appeal before me to consider the development's planning merits. Enforcement action is also intended to be remedial rather than punitive, so I have had that in my mind in considering the appeal in the public interest, regardless of whether the appellant owns the land in question. Points are also made by the appellant about the Council's approach to the matter and its conduct. Should the appellant wish to pursue this, then in the first instance he should follow the Council's complaints procedure, and if he is not satisfied with the response, contact the Local Government Ombudsman.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with corrections and variations.

Andrew McGlone

INSPECTOR



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated:

by Andrew McGlone BSc MCD MRTPI

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Scale: DO NOT SCALE

