

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 29 July 2025

Appeal Ref: APP/Q3115/C/24/3336385

Land at Town Farm Cottage, Brook Street, Kingston Blount, OX39 4RZ

- 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 Mrs T Clark against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice was issued on 20 November 2023.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the formation of an access onto a classified road in the approximate location shown between points A and B on the Land ("the Access") by the infilling of an existing drainage ditch, the removal of a section of existing hedge row and erection of a five-bar gate.
 - The requirements of the notice (in paragraph 5) are to:
 - (i) Remove from the Land the five-bar gate and post and rail fence facilitating the Access.
 - (ii) Remove from the Land the earth used to fill in the ditch that facilitated the creation of the Access. The finished levels should be of a depth to be consistent with the ditch that runs either side of Access.
 - (iii) Reinststate any areas of the Land disturbed arising from compliance with paragraphs 5(i) and 5(ii) of this notice by reseeding that disturbed Land with grass.
 - (iv) Reinststate the section of hedge which was removed to enable the Access. The hedge should be a Rural Hedgerow Species Mix consisting of 70% main matrix such as Hawthorn, Crataegus monogyna, Blackthorn, Prunus spinosa and 30% interplant such as Hazel, Corylus avellana, Holly, Ilex aquifolium, Dog Rose, Rosa canina, Field Maple, Acer campestre, Dogwood, Cornus sanguinea, Spindle, Euonymus europaeus, Wild Privet or Ligustrum vulgare. The hedge planting should be carried out in accordance with BS4428:1989, Code of practice for general landscape operations. The hedge should only be planted between the months of November and March, while plants are still dormant and avoid planting in very cold or wet weather. Hedging should be planted in two, staggered rows at a density of not less than 5 per meter, with approximately 450mm between plants in the same row, and 300-400mm between rows. The interplant whips/transplants should be planted within this pattern in groups of 2/3.
 - The compliance periods of the notice are:
In relation to paragraphs 5(i) and 5(ii): 3 months after this notice takes effect.
In relation to paragraph 5(iii): between 1 March and 31 October after compliance with paragraph 5(i) and 5(ii) above.
In relation to paragraph 5(iv) by the end of the next planting season after compliance with paragraphs 5(i) 5(ii) above. Planting season means the period between 1 November and 31 March.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) of the Town and Country Planning Act 1990 as amended. Since the appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended (the Act) falls to be considered.
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Decision

1. The notice is found to be a nullity and no further action will be taken in connection with this appeal. In the light of this finding the Council should consider reviewing the register kept under section 188 of the Act.

The enforcement notice

2. Section 173(9) of the Act states:

'An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.'

3. The step required by paragraph 5(iii) of the notice simply requires it to be done 'after' certain other steps (those specified in paragraphs 5(i) and 5(ii)) - as long as it is done between 1 March and 31 October - but no year has been specified. The way the notice has been written, the step could be undertaken between those dates in any year and there is accordingly no compliance period.
4. As the notice fails to specify a period of time for compliance as regards the requirement in paragraph 5(iii), it does not accord with section 173(9) of the Act. The omission of this vital element constitutes a fundamental error on the face of the notice. Therefore, the notice is a nullity without legal effect, and no further action can be taken in this appeal.

Conclusion

5. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

Andrew Walker

INSPECTOR