



Appeal Decision

Site visit made on 9 September 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2025

Appeal Ref: APP/W1850/C/24/3355230

Land at Brockington Golf Course, Bodenham, Hereford HR1 3HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by G Trustees Limited against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 10 October 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the creation of a new vehicular access onto the A417.
 - The requirements of the notice are to:
 1. Cease the use of the access.
 2. Close up the access by re-planting of the hedge that was previously in place and Re-plant grass verge with grass seed.
 - The period for compliance with the requirements are:
 1. 30 days from the date this notice takes effect.
 2. 60 days from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. Section 173(1) of the Act provides that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. Section 173(3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 173(4) of the Act sets out the purposes, which are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
4. The enforcement notice alleges 'Without planning permission, the creation of a new vehicular access onto the A417.' The reasons for issuing the notice states (amongst other things) that 'The access has been created by removing a section of hedgerow leaving the access with an unbound surface up an incline onto the A417.' The requirements require the appellant to '1. Cease the use of the access. 2. Close

up the access by re-planting of the hedge that was previously in place and Re-plant grass verge with grass seed.'

5. Section 55 of the Act sets out the meaning of development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 336(1) of the Act sets out that "engineering operations" includes the formation or laying out of means of access to highways. While the works need not be substantial, it must be more than merely driving onto the land; something that amounts to the 'formation' or 'laying out' must take place as a matter of fact and degree.
6. From the four corners of the notice, it seems the Council is alleging the creation of a new vehicular access onto the A417 by removal of a section of hedgerow. However, the removal of a hedgerow is not development. Within the Officer Report, at section 4, the Officer states that 'The new access has been created by removing part of the hedgerow with vehicles now driving over a grass verge onto the A417 which at this point is a national speed limit road. The new access is steep with a poor unbound surface meaning exiting the site is unsafe in my opinion.'
7. Within the Council's Statement of Case, paragraph 5.2, the Council states 'A breach of planning control has occurred with unauthorised engineering operations and excavation carried out, removing hedgerow and the grading of the surface to make entry and exit possible.' However, this is not what the notice alleges.
8. Had the allegation used the wording 'formation or laying out of a vehicular access onto the A417' it would have been clear it was alleging operational development, given the wording of the Act. The use of the word 'creation' and the reasons, which state 'The access has been created by removing a section of hedgerow...' suggest the notice is not alleging development at all. Furthermore, while the notice requires the appellant to plant a hedge and grass seed, it does not require the recipient to undo or remedy any engineering works that have taken place. Although the notice requires the appellant to cease the use of the access, the notice does not allege a material change of use and so it cannot require a use to cease.
9. I have wide powers of correction, subject to the correction or variation not causing injustice to the appellant or the local planning authority. I queried with the parties whether the notice is sufficiently precise and unambiguous so that the appellant knows what they have done wrong and what they must do to remedy it. In particular, I raised whether it is clear what is meant by 'the **creation** of a new vehicular access onto the A417' and whether the notice should have referred to 'engineering operations and excavation works'. The Council confirmed that it should have.
10. I also queried whether, if the allegation should have referred to 'engineering operations and excavation works', the notice can be corrected without causing injustice to either party, taking account of any consequential corrections needed in terms of the requirements. The Council suggests that it can be. However, were the allegation to refer to engineering operations and excavation works, if the requirements remain as they are, planning permission would be granted for the

engineering operations and excavation works by virtue of section 173(11) of the Act¹. This would cause the Council injustice.

11. Conversely, were I to include a requirement to require that the site is restored to its condition before the works were carried out, to ensure planning permission is not granted for the engineering operations and excavation works by virtue of section 173(11), this would make the notice more onerous to comply with, which would cause the appellant injustice.
12. I have considered whether the notice is a nullity, however, the allegation and requirements are broadly stated and so I consider it is invalid rather than a nullity.

Conclusion

13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c), (f) and (g) of 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.

M Savage

INSPECTOR

¹ Section 173(11) provides that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and all the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works, or, as the case may be, the carrying out of the activities.