



Appeal Decisions

Inquiry held on 16 & 17 September 2025

Site visit made on 1 October 2025

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 20 October 2025

Appeal A Ref: APP/D3125/C/25/3366181

Appeal B Ref: APP/D3125/C/25/3366182

Land at Little Willow, Oxford Road, Eynsham OX29 4BT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Martin Maughan (**Appeal A**) and Mr James Maughan (**Appeal B**) against an enforcement notice issued by West Oxfordshire District Council.
- The notice was issued on 4 April 2025.
- The breach of planning control as alleged in the notice is:
 - Without planning permission –
 1. The carrying out of a material change of use of the land edged blue on Plan B accompanying this Notice "the blue land" from agriculture to use for the stationing of caravans for residential purposes;
 2. The carrying out of operations on the blue land to raise land levels, the erection of a retaining structure and creation of an area of hardstanding on the blue land; and
 3. The erection of timber fencing on the raised area within the blue land.
- The requirements of the notice are to:
 - (i) Cease the use of the blue land for the stationing of caravans for residential purposes or for any purpose ancillary to that use;
 - (ii) Remove all caravans and any other units used for residential purposes from the blue land;
 - (iii) Remove from the blue land all other items that are not required for agricultural purposes, including vehicles, trailers, children's play equipment, other domestic paraphernalia and waste items;
 - (iv) Dismantle and remove all fencing located on the blue land;
 - (v) Remove all fencing and other structures located in the area within the blue land approximately shown shaded green on Plan B "the green land" that have been used to retain the raised land;
 - (vi) Remove all hardstanding, aggregate and other materials that were used on the green land to raise the land above the pre-existing natural ground levels;
 - (vii) Reinstatement the green land to pre-existing natural ground levels, as shown on Plan C (headed "Levels") accompanying this Notice;
 - (viii) Restore that part of the blue land to which steps (iv) – (vii) apply to a similar condition as the immediately adjoining agricultural land to the southeast by seeding it with grass;
 - (ix) Restore to that part of the red land shaded pink "the pink land" on Plan B its pre-existing boundary hedge by planting along this boundary evergreen trees and shrubs of at least 50 centimetres in height at a density of 4 per metre;
 - (x) Remove from the red land all materials and waste resulting from carrying out steps (i) – (ix);
 - (xi) In the event of any trees and/or shrubs within the pink land dying or becoming diseased within 5 years of the date on which this Notice takes effect, replace within 2 months with another tree or shrub of the same species, age and size.
- The periods for compliance with the requirements are six weeks for requirements (i) – (iv), and three months for requirements (v) to (x).
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decisions: The appeals on ground (b) succeed in part, but the Notice is upheld, with corrections, in the terms set out in the Formal Decisions.

Procedural matters

1. An application for a full award of costs was made by the Appellants against the Council. That application is the subject of a separate Decision Letter of even date.
2. On 29 July 2025 I held a Case Management Conference (CMC) with representatives of the Appellants and the Council, at which we discussed the management of the Inquiry and the presentation of evidence. Arrangements were made for me to visit the Appeal Site the day before the Inquiry opened, but since a burst water main had rendered the site inaccessible, that visit had to be cancelled. As arranged at the Inquiry, I made an accompanied site visit on 1 October.
3. All oral evidence to the Inquiry was given on oath.

Brief summary of relevant planning history

4. The enforcement notice that is the subject of these appeals (“The Current Notice”) concerns land owned by the Appellants and known as Little Willow. It identifies two distinct areas within this land: “Area 1”, which is edged blue on Plan B attached to the Notice, and “Area 2”.
5. Since July 2010, Area 2 has had planning permission for the siting of caravans for residential occupation.¹ Subsequent applications² have resulted in amended conditions, such that the current lawful use of Area 2 is as a caravan site for no more than three caravans, with occupancy restricted to persons who meet the Government’s definition of Gypsies and Travellers. Area 1, which adjoins the southern boundary of Area 2, is not covered by the 2010 grant of planning permission or any of the subsequent amendments.
6. On 21 April 2021 the Council issued an enforcement notice (“The Previous Notice”) to take effect on 25 May 2021. This addressed an alleged breach of planning control described as “Without planning permission, the laying of hardstanding and raising of ground levels in the area shown shaded in brown on the attached plan.” The Council formally withdrew this Previous Notice on 21 May 2021.
7. On 27 February 2025 the Appellants applied for a Certificate of Lawfulness for “engineering works carried out to raise the level of land from 59.5m to 61.3m and provision of hardstanding”, which was refused by the Council on 13 May 2025.³ To date, no appeal has been made against that refusal.

The appeals on ground (b)

8. The ground of appeal is that the matters alleged by the notice have not, as a matter of fact, occurred. The Appellants accept that the second of the three breaches alleged by the Current Notice – that is, the carrying out of operations to raise land levels, erect a retaining structure and create hardstanding – has taken place; their case in respect of this breach is made solely on ground (d), which I shall deal with later. The

¹ Ref 10/0813/P/FP

² Ref 12/0483/P/S73 and Ref 13/0190/P/S73

³ Ref 25/00563/CLE

appeals on ground (b) concern the first and third alleged breaches, those being the material change of use and the erection of timber fencing. I shall consider each in turn.

The alleged material change of use

9. The Current Notice alleges a material change of Area 1 to “use for the stationing of caravans for residential purposes”. The Appellants’ case is that no caravans have been stationed on Area 1 for residential purposes: a Showman’s van was stored there temporarily before being scrapped, but while it was there it was not at any time being lived in. The Council’s case is that this is an overly simplistic reading of the allegation, because what is meant is that Area 1 has been incorporated within the existing planning unit at Little Willow and put to the same primary use, or use for purposes ancillary or incidental to that primary use.

10. The 1990 Act requires enforcement notices to state the matters which appear to the local planning authority to constitute the breach of planning control, and explains that a Notice will comply with this requirement if it enables any person on whom a copy of it is served to know what those matters are.⁴ Put another way, does the notice tell its recipients, fairly, what they have done wrong?

11. I am not convinced that it does. I understand that the Council’s intention, in framing the allegation as it did, was to ensure the Current Notice identified and addressed the primary use of the correct planning unit. However, the concept of the “planning unit”, with primary and ancillary or incidental uses, has evolved from caselaw as a means of determining the most appropriate physical area against which to assess the materiality of any change in use: while helpful for that purpose it is by no means a straightforward concept, and is unlikely to be familiar to anyone outside the planning profession.

12. In the absence of any explanatory detail as to what is meant by “residential purposes”, it seems to me entirely reasonable to interpret the allegation as referring only to the stationing of caravans that either were being lived in, or were intended for and capable of being lived in. If the intention was to include other “ancillary” activities (the Council’s Expediency Report contends, for example, that Area 1 was being used for the storage of commercial and other vehicles used by the occupiers of Area 2), these could have been cited as part of the alleged breach of planning control. That would have helped to make it clear that the purpose of the Current Notice was not simply to allege that people were living in caravans on Area 1, but rather that various activities were taking place there in connection with (and as an extension of) the existing lawful use of Area 2.

13. As discussed at the Inquiry, an Inspector has a duty to put the notice in order if they can; there is statutory provision to correct any misdescription in the notice, or to vary its terms, provided that this will not cause injustice to either party.

14. I have given careful consideration to the possibility of amending the allegation to remove the ambiguity and clarify its scope. It is worth noting that the Appellants had the benefit of professional representation in the course of the appeal and at the Inquiry, such that if it were simply a matter of ensuring they had a fair opportunity to address the implications of the Council’s interpretation of the allegation rather than their own, that could have been achieved. But it is also necessary to consider potential injustice in terms of the Appellants’ ability to apply for planning permission through an appeal on

⁴ S.173(1) and (2) of the Town and Country Planning Act 1990

ground (a): that is, that planning permission ought to be granted for any breach of planning control which may be constituted by the matters stated in the notice.

15. The appeals were lodged in May 2025, and did not include ground (a). This is unsurprising, since the Appellants' case is that there has never been any use of, or any intention to use, Area 1 for the stationing of caravans for what they interpret the phrase "residential purposes" to mean. Their evidence was that the intended use of Area 1 was to provide a safe refuge for their horses in times of flood, and the Council's response was that this could reasonably be regarded as an "ancillary" use to a Gypsy site. If the wording of the Current Notice had made sufficiently clear the Council's intention that this (and any other) "ancillary" use was at issue, rather than just the stationing of caravans, the Appellants could have considered making a deemed planning application under ground (a) for their specific intended use.⁵ The deadline for lodging an appeal on ground (a) has now passed, and there is no provision, discretionary or otherwise, to extend it. This means that amending the wording of the allegation to make it clear that it was intended to include uses "ancillary" to the existing lawful use of Area 2 would cause injustice to the Appellant, in that they would be deprived of the opportunity they should have had – if the allegation had been clear when the Current Notice was issued – to seek planning permission through an appeal on ground (a).

16. However, that is not to say that the wording of the Current Notice is so unclear as to render it a nullity. The paragraph headed "The alleged breaches of planning control" itemises three breaches which, while related, are separate and distinct. In my judgment the most appropriate course of action, to get the notice in order, is simply to delete the first of the three allegations and thereby remove all reference to any alleged material change of use. The two remaining allegations then relate solely to operational development, which I note was the approach taken by the Previous Notice. I am satisfied that correcting the notice in this way would cause no injustice to either party.

The alleged erection of timber fencing

17. An appeal on ground (b) is simply that the matters stated in the notice have not occurred. It is important to be clear that this statutory provision is drafted in the past tense: "have not occurred" rather than "are not occurring".⁶ The notice may not be issued until some time after the breach is detected, and in the meantime, the Appellant may make changes on site and cease unauthorised activities. But the terms of a ground (b) appeal are such that it makes no difference whether or not the unauthorised activities or works have genuinely ceased or been removed, because what matters is whether the alleged breach **had** occurred by the **date of issue** of the enforcement notice. If the alleged activities or structures had been on site prior to the issue of the notice, an appeal on ground (b) cannot succeed simply on the basis that those activities or structures have now been removed.

18. In this case, the Appellants accept that timber fencing has been erected on the raised land within Area 1, as alleged by the Current Notice. Their evidence is that a timber fence was put up in 2021, and removed shortly afterwards; more recently, the current timber fence was constructed on the boundary between Areas 1 and 2. In other words, the Appellants acknowledge that the matters stated in the third allegation of the

⁵ S.177 of the 1990 Act provides that on the determination of an appeal against an Enforcement Notice, an Inspector may "grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of* those matters or in relation to the whole *or any part of* the land to which the notice relates" [my emphases].

⁶ S.174(2)(b) of the 1990 Act

Current Notice have, as a matter of fact, taken place. This means that an appeal on ground (b) against that allegation cannot succeed.

19. I note the Appellants' contention that none of the existing or previous fencing in this area exceeded 2 metres in height, and so would be lawful as Permitted Development. While this is not relevant to the question of whether or not timber fencing was ever erected, it is relevant to the question of whether it is excessive for the Current Notice to require its removal. If necessary, I shall return to this when I consider the appeal on ground (f).

Conclusions on the appeals on ground (b)

20. It is a matter of fact that timber fencing has been erected on the raised area within Area 1, and so the appeal on ground (b) against the third allegation fails.

21. As to the first allegation, I have found that its wording suffers from ambiguity, and for the reasons set out above have concluded that its terms cannot be altered to clarify its scope without causing injustice. I am, however, satisfied that deleting the first allegation in its entirety would serve to get the notice in order without causing injustice to either the Council or the Appellants. I shall correct the notice accordingly, and the appeals on ground (b) succeed to this limited extent.

The appeals on ground (d)

22. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. In this case, the appeals on ground (d) concern only the second allegation. It is common ground that the alleged operational development has taken place, and was substantially completed by the end of 2020. This means that the statutory time limit for taking enforcement action against it is four years, counting from the end of 2020. However, the statute also provides that in situations where a Council has "taken or purported to take enforcement action" against a breach of planning control, they then have another four years in which to take further enforcement action.⁷ This is commonly known as the 'second bite' provision.

23. The difference between the parties is whether the Previous Notice, issued by the Council on 21 April 2021, amounted to enforcement action that engaged the second bite provision, such that the Current Notice - issued on 4 April 2025 – falls within the additional four years permitted by that provision.

24. Mr Chattoe has acted as planning consultant to both the former and the current owners of the Appeal Site. His undisputed evidence is that the Previous Notice was incorrectly served on the former owners in April 2021, because the Appeal Site had been sold to the current owners earlier that month. Mr Chattoe advised the Council of this in a letter dated 12 May 2021, which also recorded his "grave misgivings about the accuracy of the requirements in respect of the extent and exact location of the alleged breach of planning control." On 21 May 2021 the Council wrote to the former owners, notifying them of its decision to formally withdraw the notice served on them. The explanation given was "it has come to light that the notice may not have been served upon all parties with an interest on the land and the plan served alongside it may not covered the entirety of the breach of planning control. It is therefore our intension to re-serve an amended form of the notice...".

⁷ S.171B(4) of the 1990 Act

25. The Appellants contend that because the Previous Notice was served on the wrong parties, and misdescribed the affected land, it was a nullity and cannot be relied upon for the purposes of the second bite provision. However, the second bite provision relates not only to enforcement action taken by the Council, but also to enforcement action that the Council has *purported* to take: the purpose of this provision being to stop the clock where a Council has issued a faulty notice, or needs to issue another in order to protect its position. The Council may have “purported” to act, for example, where they issued a defective notice which was withdrawn or found null or invalid on appeal, or where the notice was quashed on ground (e).

26. In this case there is no dispute that the Previous Notice was properly authorised, and was issued within the relevant time limit for taking action against the breach it alleged. I am satisfied that even if it were a nullity, and even though it was withdrawn by the Council before it took effect, it still constitutes the taking of “purported” action.

27. The Appellants further contend that even if the Previous Notice is regarded as “purported” enforcement action, the second bite provision cannot apply here because the breaches alleged in the Current Notice are wider in substance than the totality of breaches alleged in the Previous Notice. In this context they drew my attention to the judgment of the High Court in *Fidler v FSS*.⁸

28. The leading case on the second bite provisions (which is referred to, and applied in, the *Fidler* judgments) is *Jarmain v SSETR*.⁹ In *Jarmain* the Court of Appeal held that the proper interpretation of s.171B(4) was that it cannot be used to cover two different physical developments or two different changes of use, but it can be used to cover the same actual breach of development control which is described in different ways. So it is the physical reality of the breach that matters: the second notice must relate to the same facts as constitute the breach to which the first notice related. In *Fidler*, the High Court held that the reasoning in *Jarmain* does not apply where the breach of planning control alleged in the new notice goes wider in substance than the totality of breaches alleged in the earlier notices.

29. In this case, the Previous Notice described the alleged breach of planning control as *Without planning permission, the laying of hardstanding and raising of ground levels in the area shown shaded in brown on the attached plan*. For the reasons set out above I shall correct the Current Notice by deleting the first of its three allegations. This means that, as corrected, it alleges two breaches of planning control: *The carrying out of operations on the blue land to raise land levels, the erection of a retaining structure and creation of an area of hardstanding on the blue land and the erection of timber fencing on the raised area within the blue land*.

30. Looking at the first of these two allegations, it is plain that it relates to the same facts that constituted the breach alleged by the Previous Notice. What has actually taken place on the Appeal Site is the raising of an area of land to bring it up to the level of the adjoining caravan site, and the laying of hardstanding on that raised area. This is the breach of planning control that is described in both notices: there are differences in their wording, but the important point is that the physical reality of the breach is the same.

31. I recognise that the Current Notice includes within its allegation a specific reference to “the erection of a retaining structure” whereas the Previous Notice did not.

⁸ *Fidler v FSS & Reigate and Banstead BC* [2003] EWHC 2003 (Admin), [2004] EWCA Civ 1295; [2005] JPL 510

⁹ *Jarmain v SSETR* [2000] 2 PLR 126

However, the Previous Notice did include a specific requirement (no. iii) to “Remove from the land the supporting retaining wall”, which makes it clear that it attacked not only the breach of planning control described in the allegation, but also (as enforcement notices are entitled to do) the works that were part and parcel of carrying out that breach. The Current Notice also requires (no. v) the removal of “structures... that have been used to retain the raised land”. In my view, the inclusion of a reference to the retaining structure in the breach alleged by the Current Notice serves simply to clarify its terms: it does not widen its substance.

32. Turning to the second of the two remaining allegations, this concerns the erection of timber fencing “on the raised area”. The Previous Notice made no reference to any fencing in this area, either in its description of the alleged breach, or in its list of four requirements. It is common ground that timber fences *have* been constructed on the raised area, but the undisputed evidence before me is that they were built by the current Appellants for the purposes of protecting children living at the caravan site, rather than having been built by the former owners as part and parcel of the works they carried out to raise the level of the land.

33. The Current Notice’s allegation concerning timber fencing, then, does not relate to the same physical facts as the Previous Notice. Rather than being an integral component of the unauthorised works carried out to raise the land, the erection of fencing was a separate operation that took place some time later. This means that including the alleged erection of timber fencing in the Current Notice does not simply describe more accurately the factual basis that informed the Previous Notice, but extends the scope of the allegation to include a further breach. Put another way, the allegations contained in the Current Notice (as corrected) go wider in substance than the breach alleged in the Previous Notice.

34. I appreciate that it may have been the Council’s aim, in itemising three separate alleged breaches of planning control, to distinguish between those which it considered to fall within the second bite provisions and those it did not. However, the notice itself does not include any such distinction or explanation. In any event, I am not convinced that a notice which is intended to constitute enforcement action against the same breach as was attacked by an earlier notice, in reliance upon the second bite provisions, can get round the problem identified in *Fidler* by including additional and different breaches but itemising them separately.

35. In my judgment, it will be appropriate in the circumstances for me to correct the notice by deleting the allegation concerning the erection of timber fencing. This will leave only the alleged breach that is materially the same as, and no wider than, the breach alleged by the Previous Notice. No injustice will be caused to the Council, since the notice will still achieve its intended purpose of taking enforcement action against the breach involved in raising the land levels: if the Council considers it necessary (and expedient) to take enforcement action against the existing timber fence, it still has time to do so. Nor will any injustice be caused to the Appellants, since they have had a full and fair opportunity to make their case on the appropriate time limit for taking enforcement action, and to submit all relevant supporting evidence.

36. In summary, I shall correct the notice by deleting the allegation concerning the erection of timber fencing, and the corrected notice then constitutes a valid “second bite” notice in that it addresses materially the same breach as was the subject of the Previous Notice. I have found that in issuing that Previous Notice on 21 April 2021 the Council took “purported” enforcement action in the terms of s.171B(4) of the 1990 Act.

The Current Notice was then issued on 4 April 2025, so fell within the additional four year period for taking enforcement action provided by that section of the Act. The time available to the Council for taking enforcement action had not expired by the date the Current Notice was issued, and so the appeal on ground (d) must fail.

The appeals on ground (f)

37. As agreed at the Inquiry, correcting the notice by deleting the first allegation will also entail deleting the requirements that related to that allegation, numbered (i), (ii) and (iii). Since I have determined that the third allegation must also be deleted, it is necessary too to delete requirement number (iv) which required the removal of the timber fencing. Of the requirements that remain, the Appellants appeals on ground (f) are limited to the restoration of a former hedge on the “pink land”, at the boundary between Areas 1 and 2.

38. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy the breach of planning control. The Appellants contend that there was not a hedge in this location, and it is unreasonable to require a non-existent hedge to be “restored”. The position of the Appellants, summarised in the Statement of Common Ground submitted at the Inquiry, is that the former boundary treatment on the “pink land” was a wooden fence. They contend that the area of land immediately to the south east of this boundary fence was an embankment, which contained self-seeded shrubs, plants and trees, and did not constitute a hedge in the plain meaning of the word.

39. A large number of photographs, including aerial images, were submitted by the parties and scrutinised at the Inquiry. I found this evidence inconclusive. Trees and shrubs are clearly visible on the “pink land” but in the overhead views provided by the aerial images, and in the glimpsed views provided by the photographs taken at ground level, it is not possible to discern whether this vegetation might best be described as a “hedge”, or some less formal arrangement. Given his longstanding involvement with the Appeal Site, Mr Chattoe’s recollections of it are more helpful. In his oral evidence to the Inquiry, he characterised the planted embankment as a “thicket”.

40. It seems to me that “boundary planting” might have been a more apposite description for the former state of this area than “boundary hedge”. However, correct terminology is not really the issue here. It is common ground that there were previously trees and shrubs on the “pink land”, and there is no dispute that they were removed as part of the unauthorised operational development that took place. It is therefore entirely in order for the Notice to seek the restoration of this planting, for the purpose of restoring the land to its condition before the breach took place¹⁰. Given the lack of evidence as to the species and density of the original plants, the Council has taken the approach of requiring replacement boundary planting of evergreen trees and shrubs, of at least 50cm in height and at a density of 4 per metre. I consider that a reasonable approach, which does not involve any “improvement” (for example, limiting replacement planting to native species only) or unduly onerous expense (for example, requiring mature plants of established height).

41. I find that the requirements of the notice, as corrected, do not exceed what is necessary to remedy the breach of planning control. The appeals on ground (f) fail.

¹⁰ S.173(4)(a)

Conclusions

42. For the reasons set out above, I conclude that the appeals on ground (b) should succeed in part, but the appeals on grounds (d) and (f) should not succeed. I shall uphold the Enforcement Notice with corrections.

Formal Decisions

43. It is directed that the enforcement notice is corrected by:

- At section 3, deleting in their entirety the first allegation numbered (i) and the third allegation numbered (iii); and
- At section 5, deleting in their entirety the requirements numbered (i), (ii), (iii) and (iv).

44. Subject to the corrections set out at paragraph 43 above, **Appeal A** is dismissed and the enforcement notice is upheld.

45. Subject to the corrections set out at paragraph 43 above, **Appeal B** is dismissed and the enforcement notice is upheld.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Martin Maughan, Appellant

Mr Mark Chattoe, Planning Consultant

Mr Richard Smith, of Limestone Law

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Wood, Senior Planning Appeals Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Statement of Common Ground, signed and dated by both parties
2. Finalised version of Core Documents List
3. Set of five A3 Google Earth Images submitted by the Council, dated from 9 April 2020 to 13 June 2025, with red line added by Mr Wood
4. Addendum to Mr Chattoe's Proof of Evidence
5. Written copy of the closing submissions made on behalf of the Council
6. Written copy of the closing submissions made on behalf of the Appellants