



Appeal Decision

Site visit made on 26 November 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

Appeal Ref: APP/A2525/C/23/3329561

Agricultural land to the rear of 6A North Road, Gedney Hill PE12 0NL

- 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 Graham Fagan against an enforcement notice (“the notice”) issued by South Holland District Council.
 - The notice was issued on 19 August 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of laying of hardcore.
 - The requirements of the notice are: (i) Remove the hardcore area from the land (cross-hatched blue) and to ensure that the hardcore is taken to an authorised place for disposal; and (ii) On completion of step (i) to return the land (cross-hatched blue) to its previous condition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Act.
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Decision

1. It is directed that the notice is varied in section 5 (i) by the deletion of the words “and to ensure that the hardcore is taken to an authorised place for disposal.”
2. Subject to the variation, the appeal is dismissed.

Preliminary Matters

3. Regardless of the outcome of an appeal made under section 174 of the Act, it is necessary to ensure that the notice is in order.
4. Although an appeal was not made on ground (f)¹, the notice’s first requirement prescribes that the hardcore is taken to an authorised place for disposal. While it is laudable to seek proper disposal of waste, the breach of planning control would be achieved once the hardcore is removed from the land, so it is excessive to specify where it is taken after that. However, that does not alter or override any other regulatory control over the disposal of waste.
5. The appeal is only made on ground (c), that the matters alleged in the notice are not a breach of planning control. While concern has been expressed about issues including noise and flooding, these could only be considered if an appeal had been made on ground (a) and a deemed planning application were under consideration. While I also note references to a fence enclosing the land, that is not part of the matters alleged in the notice, so it is beyond the scope of the appeal.

¹ That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by (the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

The appeal on ground (c)

6. The appellant claims that “hardcore was always there” but also states, “we have only laid permeable hard core which is now overgrown with grass and weeds.” Considering his submissions and other evidence in the round, it appears that the hardcore may not be new to the land and may have been removed and re-laid. Nevertheless, that would have involved the laying of hardcore, as alleged.
7. The appeal on this ground will therefore succeed if it can be demonstrated that the laying of hardcore was not a breach of planning control. This could be because it is not development or has planning permission. The burden of proof rests with the appellant, to be demonstrated on the balance of probabilities.

Whether the laying of hardcore is not development

8. No evidence that the laying of hardcore is not development has been produced. It may reasonably be considered to fall within “the carrying out of building, engineering, mining or other operations in, on, over or under land” and it is therefore development as defined by section 55(1) of the Act.

Whether the laying of hardcore has planning permission

9. The laying of hardcore may not require an express grant of planning permission in certain circumstances. The only circumstances identified are the following permissions granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the Order”):
 - Any excavation or engineering operations carried out on agricultural land comprised in an agricultural unit with an area of 5 ha or more which are reasonably necessary for the purposes of agriculture within that unit (permitted by Article 3 and Schedule 2, Part 6, Class A of the Order).
 - The provision of a hard surface on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 ha where it is reasonably necessary for the purposes of agriculture within the unit (permitted by Article 3 and Schedule 2, Part 6, Class B of the Order).
 - The provision or replacement in whole or part of a hard surface within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such (permitted by Article 3 and Schedule 2, Part 1, Class F of the Order).
10. While the notice describes the land as agricultural land, there is no evidence that it formed part of an agricultural unit when the hardcore was laid. Even if it did, no evidence that the laying of hardcore is reasonably necessary for the purposes of agriculture within that unit has been produced. It therefore only remains to be considered whether the hardcore has been laid to form or replace a hard surface within the curtilage of the dwellinghouse at 6A North Road.
11. The erection of No. 6A was granted outline planning permission in 2017 but the notice affects land beyond the area of that permission and the subsequent reserved matters approval, marked ‘paddock’ on both sets of approved plans. Accordingly, there is no planning permission for the use of the land affected by the notice as garden or for any other purpose incidental to the dwellinghouse.

12. Section 171B(3) of the Act provides that a change of use of the land to a use in which it might be considered to form part of the curtilage of No. 6A could become lawful after the expiry of 10 years. However, No. 6A has not existed for 10 years, so any relevant change of use of the land could only have occurred more recently and so cannot be lawful yet. This is significant because Article 3(5) of the Order states that any permission it may grant in connection with an existing use does not apply if that use is unlawful.
13. The laying of hardcore is therefore development and does not have the benefit of planning permission, so it is a breach of planning control and the appeal on ground (c) must fail.

Conclusion

14. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control in one respect. I shall vary the notice, uphold it, and dismiss the appeal.

Mark Harbottle

INSPECTOR