
Appeal Decision

Site visit made on 2 December 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 15 December 2025

Appeal Ref: APP/N0410/C/24/3340604

Land at Jordans Lane, Jordans, Buckinghamshire HP9 2SW

- 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 Mr David Maurice Norman against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice, numbered ES/23/00387/OPDEV was issued on 2 February 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the formation of a vehicular access.
 - The requirements of the notice are:
 1. Remove from the Land the double width gate as shown by the photograph attached to the notice labelled A and as shown in the approximate position shown by the black X on the plan attached to the notice.
 2. Permanently close the unauthorised access by the erection of a non-opening means of enclosure not exceeding 1 metre in height.
 3. Remove from the land all materials, debris, plant and equipment associated with steps (i) and (ii).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: the appeal is dismissed and subject to variations the enforcement notice is upheld in the terms set out below in the Formal Decision.

Procedural Matters

1. The appellant has submitted a report from Motion to provide highway advice relating to the appeal. The advice from Motion concludes ‘...there is no requirement for the gate to be repositioned further from the highway than the existing position’. However, this would be a matter that would properly fall to be considered under an appeal on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990. There is no ground (a) appeal in this case and therefore there are no planning merits to consider. For that reason, I have had regard to the report produced by Motion only insofar as it relates to the grounds on which the appeal has been made.

The Enforcement Notice

2. The breach of planning control as alleged in the notice is, without planning permission, the formation of a vehicular access. Nothing more, nothing less. The Council could have alleged the erection of the double-width gates as operational development that constituted a breach of planning control in its own right but chose not to do so.

3. It is settled case law that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied. However, the Courts have held that operational development carried out "in its own right" falls outside this principle.
4. The erection of the double-width gate is not ancillary to any material change of use of the Land being enforced against. It is operational development carried out "in its own right". It follows that the notice cannot require the removal of the double-width gate as required by paragraph 5(i).
5. Neither can the notice require the erection of a non-opening means of enclosure not exceeding 1 metre in height. That goes beyond the works required to remedy the breach of planning control that is alleged. All that the notice can require is to close the vehicular access that has been created: that would achieve the purpose of the notice. How the appellant complies with that requirement is entirely a matter for him¹.
6. I will therefore combine and vary the requirements at paragraphs 5(i) and 5(ii) of the notice to simply require that the vehicular access that has been created is closed. In doing so, I shall delete the word 'permanently': Section 181(1) of the Town and Country Planning Act 1990 (the 1990 Act) which states that compliance with an enforcement notice shall not discharge that notice, such that the word 'permanently' is unnecessary.
7. Section 176 of the 1990 Act provides that an enforcement notice may be corrected and/or varied if there is no injustice to the appellant or Local Planning Authority. I am satisfied that no injustice would be caused by varying the notice as described above.

The appeal on ground (c)

8. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
9. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:
...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 building or other land.
10. Section 336(1) of the 1990 Act states that "engineering operations" include the formation or laying out of means of access to highways. The works need not be substantial, but more must be done than merely driving onto land; in other words, something that amounts to the 'formation' or 'laying out' must take place as a matter of fact and degree.

¹ In the event that the appellant's preferred solution constituted development requiring planning permission, that would be a matter for the Local Planning Authority in the first instance.

11. The appellant maintains that no new access has been created. However, photographs embedded within the Council's evidence show that at least until June 2021 there was post & rail fence where the double-width gate now exits. Comparison of the photograph taken in July 2021 with photographs taken in August 2008 and June 2017 does show that part of the fence appears to have been taken down at some point and replaced by a makeshift 'gate'. Vehicle tracks are visible in the field beyond leading to/from the makeshift 'gate' indicating use as a vehicular access. This is consistent with the appellant's evidence that the 'gate' from Jordans Lane (formed, it would appear, by the removal of part of the post & rail fence) has been used as the access point for hay cutting and bale collection by tractors each year between 2017 and 2020².
12. The salient point is that the vehicular access subject to the enforcement notice is considerably wider than the 'gate' used between 2017 and 2020. The widening of the vehicular access would have necessitated the further removal of the sections of the post & rail fence to create the vehicular access subject to the notice. This would, as a matter of fact and degree, have constituted the 'formation' of the vehicular access. It follows that some physical works must have been involved in the formation of the vehicular access, even if that was limited to the removal (in part) of the post & rail fence.
13. The vehicular access subject to the notice is therefore not the same vehicular access created previously by the makeshift 'gate'. It is a separate act of development in the form of an engineering operation. Section 57 of the 1990 Act states that development requires planning permission.
14. Class B, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in that Schedule. As Jordans Lane is a classified road, the vehicular access subject to the notice is not permitted by Class B, Part 2, Schedule 2 of the GPDO.
15. No express planning permission has been granted for the vehicular access. It follows that there is no planning permission in place, deemed or otherwise, for the vehicular access subject to the notice. I therefore conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.
16. The appellant's position is that the new double-width gate is a replacement for a pre-existing single gate which provided access onto Jordans Lane at some time in the distance past. But this misses the point. As indicated above, the breach of planning control alleged in the notice is not the erection of a double-width gate: it is simply the formation of a vehicular access. For present purposes, it therefore matters not whether the new double-width gate is a replacement for a pre-existing makeshift 'gate'. Whether or not that new double-width gate itself constitutes development requiring planning permission is not before me and is a matter for the Local Planning Authority in the first instance.

² If that was indeed the case, the 'gate' must have inserted at some point after June 2017: the photograph taken on that date shows the post & rail fence to be complete.

The appeal on ground (d)

17. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the vehicular access subject to the notice (not the double-width gate) has been substantially complete for a period of four years beginning with the date of the breach. The test in this regard is the balance of probability, and the burden of proof is on the appellant.
18. This ground of appeal may be taken quite briefly. The photograph embedded within the Council's evidence taken in July 2021 clearly shows that the vehicular access subject to the notice did not exist at that time. That photograph was taken less than four years prior to the issue of the notice in February 2024. It follows that the vehicular access subject to the notice could not have been substantially complete for a period of four years at the time the enforcement notice was issued.
19. The appellant's own evidence supports this conclusion. The appellant produces a photograph taken in June 2017 which appears to show a fence in broadly the same position as the vehicular access subject to the notice³. In that photograph, there is no evidence of vehicle tracks in the field beyond to show that it was used by vehicles to access the field beyond and was therefore a gate.
20. The appellant then produces a series of three photographs taken on 24 July 2021 showing the makeshift 'gate' referred to above, plus one photograph taken on the same date showing the field beyond. In all these photographs, there is clear evidence of vehicle tracks leading to and from the makeshift 'gate' and into the field beyond.
21. The next photograph produced by the appellant is dated 1 August 2021 and shows what appears to be a gate in broadly the same position. There is again clear evidence of vehicle tracks leading to and from this gate. It is reasonable to conclude that this gate replaced the earlier makeshift 'gate'. Through comparison with the earlier photographs in appellant's evidence, it is apparent this gate was somewhat wider than the makeshift 'gate' that it replaced. The vehicular access onto from the field beyond and onto the highway was also wider.
22. The appellant indicates that the current pair of metal gates were fitted on 7 August 2023. It is evident from the photograph of the metal gate(s) produced by the appellant that: (a) it is considerably wider than the gate that existed in August 2021 and (b) it is not the same position. It is therefore not a replacement of the gate that existing in August 2021. It is a new gate.
23. This is relevant only because the width and position of the new metal gates erected in August 2023 defines the width and position of the vehicular access subject to the notice. The corollary is that the appellant's own evidence shows that the vehicular access subject to the notice was formed in or around August 2023 and in any event after August 2021. This was considerably less than four years prior to the notice being issued.

³ In this photograph, the fence appears identical to that shown on the photograph of the same day embedded within the Council's evidence.

24. I conclude that, on the balance of probabilities, the vehicular access had not been substantially complete for a period of four years beginning with the date of the breach and as such is not lawful. I therefore conclude that at the date on which the notice was issued, the Council was in a position to take enforcement action in respect of those matters constituting the breach of planning control alleged in the notice. Accordingly, the appeal on ground (d) fails.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice subject to variations.

Formal Decision

26. It is directed that the notice is varied by:

- deleting paragraphs 5(i) and 5(ii) of the notice in their entirety and substituting there the words as a new paragraph 5(i):

Close the vehicular access.

- Deleting paragraph 5(iii) and substituting there a new paragraph 5(ii) to read:

Remove from the land any and all materials, debris, plant and equipment associated with step (i).

27. Subject to those variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR