



Appeal Decision

Site visit made on 2 December 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 DECEMBER 2025

Appeal Ref: APP/Y1138/C/24/3351332

Land at NGR 316390 114631 (Adjacent to 4 Oakleigh), Battle Street, Clayhidon, Devon

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr D Whitcombe against an enforcement notice issued by Mid Devon District Council.
- The notice was issued on 16 August 2024.
- The breach of planning control as alleged in the notice is the formation of new vehicular access, erection of an access gate and laying of hard surfaced track without the benefit of planning permission and planning permission having been refused under planning application 18/01914/FULL for the formation of agricultural access following removal of 10m hedgerow.
- The requirements of the notice are to:
 1. Permanently cease the use of the newly created access (outlined in blue on the attached Plan), and;
 2. Permanently remove from the Land the access gates (in the area outlined in blue on the attached Plan), and;
 3. Permanently remove from the Land the hard surfacing including all materials comprised of its composition (in the area outlined in blue on the attached Plan), and;
 4. Permanently remove all material resulting from compliance with 1, 2 and 3 above from the Land, and;
 5. Restore the hedgerow (in the area outlined in green on the attached Plan) with a Mixed Native Hedgerow as follows:
 - a. 75% Quickthorn (Hawthorn, May)
 - b. 25% selected from either Blackthorn (Sloe), Bird Cherry, Hazel, Common Dogwood, Guelder Rose, Spindle or Dog Rose 90/120cm in height Double row planting using 7 plants per metre placing them 11inches/28cm apart in each row, with 40cm between the 2 rows.
 - c. If within a period of 5 years plants within the hedgerow fail to establish or die they are to be replaced with a suitable species and of similar size.
- The periods for compliance with the requirements are:
 - (1) In respect of requirements 1, 2, 3 and 4, the time period for compliance shall be a period of 4 months beginning on the day on which the Notice takes effect.
 - (2) In respect of requirement 5 a and b the steps required shall be carried out and completed within the next planting season in 2024.
 - (3) In respect of requirement 5 c compliance will be for a period of 5 years from the date of substantial completion of the works carried out in compliance with 5 a and b.
- The appeal was made on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is allowed, and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990, as amended (the 1990 Act), include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to any party.

2. The allegation contains some unnecessary words that can be deleted without altering the nature of the breach of planning control as alleged or causing any injustice to the appellant or the Council's cases. For instance, the words 'and planning permission having been refused under planning application 18/01914/FULL for the formation of agricultural access following removal of 10m hedgerow' can be deleted. While this may be a reason why the alleged development does not benefit from planning permission, it does not need to be stated in the allegation.
3. The appellant has raised matters concerning the Enforcement Notice (Notice) in his appeal submissions on grounds (f) and (g). The appellant contends that the stipulations to cease using the newly created access, remove the unauthorised gate and hardstanding within four months, and restore a mixed native hedgerow during the next planting season in 2024 are confusing. The assertion is that the timeline is perplexing since, barring this appeal, the Notice would have been set to take effect in September 2024, and the four-month compliance period for the other requirements would preclude hedgerow planting until 2025.
4. These matters are concerning the validity of the Notice in respect of the requirements and the time for compliance, but do not fit neatly into the grounds of appeal made. However, for simplicity, I have had regard to this matter as part of the appeal made on ground (g) below.

The Appeal on Ground (f)

5. An appeal has been made on ground (f), asserting that the requirements outlined in the Notice exceed what is necessary. For this appeal to succeed, I must be convinced that the steps mandated for compliance with the Notice surpass what is necessary to rectify the breach of planning control or to mitigate any amenity impact resulting from that breach.
6. In instances where there is no accompanying ground (a) appeal and the Notice explicitly aims to remedy the breach, my examination is limited to whether the requirements indeed exceed the necessity of remedying the breach. Should I allow the appeal on ground (f), it would be necessary to revise the requirements of the Notice to clearly set out the actions needed for compliance.
7. The appellant has failed to specify, with reference to the requirements, which part they consider excessive. Section 173(4) of the 1990 Act outlines the objectives that an enforcement notice may pursue: either (a) remedying the breach of planning control or (b) addressing any injury to amenity caused by the breach. I find that the requirements specified in paragraph 5 of the Notice, which include the cessation of the use of the access, the removal of the gate and hard surfacing, and the restoration of the mixed native hedgerow to be clear requirements with respect to what the appellant must do to rectify the breach. The requirements also, align with the objective of remedying the breach in accordance with section 173(4)(a) of the 1990 Act.
8. Notwithstanding the above, and while not raised in the appellant's statement, I have a duty to put the Notice in order. In this respect, requirement 5(c) necessitates a replacement hedgerow should it fail to establish within five years. Although I understand why the Council has set out this requirement, these stipulations are more characteristic of a planning condition, whereas the scope of the Notice must adhere to the constraints outlined in section 173(4)(a) of the 1990 Act. When planning permission has not been granted for the development, the authority conferred by the

1990 Act permits restoration of the land to its previous condition, but it does not empower requirements that exceed that restoration.

9. The Council's submission includes evidence regarding the refused planning application, Council reference 18/01914/FULL, for the new vehicle access. This clearly indicates the need to remove 10 metres of hedgerow to facilitate the new vehicle access. Thus, I am satisfied that the previous condition of the land included the continuation of the native hedgerow flanking either side of the opening. However, the requirement for this hedgerow to be replanted if it fails to establish within five years is excessive and goes beyond remedying the breach of planning control.
10. Consequently, I will vary the requirements by deleting requirement 5 (c). In turn, this negates the need for step (3) of the periods of compliance to be adhered to, which can also be deleted. These variations still remedy the breach of planning control alleged and removes an excessive requirement set out in the Notice. These variations will not, therefore, cause any injustice to the appellant or the Council.
11. To this limited extent, the appeal on ground (f) is allowed, and I shall make variations accordingly.

The Appeal on Ground (g)

12. An appeal made on ground (g) raises concerns that the period specified in the Notice falls short of what would reasonably be allowed under the relevant provisions of the 1990 Act. The appellant has requested an extension to 12 months, an 8-month extension beyond the four-month timeframe established in the Notice.
13. Firstly, the appellant has articulated confusion regarding the timeline for compliance with step (2), which involves planting a hedgerow during the 'next planting season in 2024.' It is vital to note that this requirement, as stated in the Notice, involves a planting season that would have extended until the following year, specifically between the issuing of the Notice in August 2024 and the end of the next planting season at the end of February 2025.
14. Moreover, the appellant manages sheep on the site, with lambing anticipated to occur within a portable field shelter on the land. It is indicated that finding a suitable site and relocating the livestock before the lambing season poses practical challenges. While the exact dates of the lambing period are not specified by the appellant, it is commonly understood that lambing typically occurs between February and April each year. Thus, any requirement to relocate sheep before this time and find a suitable site could have implications for the welfare of the animals and complicate management practices.
15. In assessing the validity of the Notice, it is noted that the appellant could have technically achieved compliance with the steps outlined in the Notice within four months and still planted the replacement hedgerow within the next planting season that commenced in 2024 but ended in 2025. I, therefore, concur with the Council's position that the stated timeframe does not render the Notice a nullity or invalid; nonetheless, providing additional time and a specific time frame would facilitate a clearer and more practical approach to compliance. This variation to the time for compliance can be made without causing injustice to the appellant or Council.
16. As such, I will vary the time for compliance with steps 1 to 4 to be undertaken within six months from the effective date of the Notice to cover the lambing season and

provide some time for the appellant to find an alternative site for his animals. Furthermore, to accommodate the planting of the hedgerow, I will extend the timeframe for hedgerow reinstatement to 12 months from the effective date of the Notice. This extension will ensure that the hedgerow can be planted during the forthcoming planting season, following the requirements 1 to 4 being carried out. This will balance animal welfare considerations and best practice for the next planting season with the identified harm.

17. The appeal on ground (g), therefore, succeeds. I will amend the Notice accordingly.

Conclusion

18. For the reasons given above, I conclude that the requirements of the Notice are excessive to remedy the breach of planning control and the period for compliance with the Notice falls short of what is reasonable. The appeal on grounds (f) and (g) succeeds to that extent, and I shall correct and vary the Notice before upholding it.

Formal Decision

19. It is directed that the Notice is corrected and varied by:

In paragraph 3, delete the words ‘and planning permission having been refused under planning application 18/01914/FULL for the formation of agricultural access following removal of 10m hedgerow.’

In paragraph 5, delete step 5 (c) in its entirety.

In paragraph 6, step (1), delete the number ‘4’ and substitute it with the number ‘6’

In paragraph 6, step (2), delete the words in their entirety and substitute it with the words ‘In respect of 5 (a) and (b), the steps required shall be carried out within 12 months from the date the Notice takes effect.’

In paragraph 6, delete step (3) in its entirety.

19. Subject to the correction and variations, the Notice is upheld.

M. P. Howell

INSPECTOR