
Appeal Decision

Site visit made on 16 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: 12 January 2026

Appeal Ref: APP/A0665/C/25/3368843

Land at Grid Ref 351142 370510, Church Road, Ashton Hayes, Chester, Cheshire

- 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 Mrs Olga Booth against an enforcement notice issued by Cheshire West and Chester Borough Council.
 - The enforcement notice, numbered 23/00491/EOPDEV was issued on 10 June 2025.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of alterations to an existing access, construction of hardstanding, new fencing, a lean-to and a storage container.
 - The requirements of the notice are:
 - (i) Fully remove the hardstanding, remove all resulting materials away from the Land and restore the Land to its previous condition before the unauthorised development occurred.
 - (ii) Reduce the fence to 1m in height, remove all resulting materials away from the Land.
 - (iii) Fully remove the lean-to structure, remove all resulting materials away from the Land and restore the Land to its previous condition before the unauthorised development occurred.
 - (iv) Fully remove the storage container, remove all resulting materials away from the Land and restore the Land to its previous condition before the unauthorised development occurred. 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 (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and subject to a correction and a variation the enforcement notice is upheld in the terms set out below in the Formal Decision

Procedural Matters

1. On the appeal form, the appellant indicated that an appeal was being made on ground (d) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act) namely 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. Very brief comments were stated on the appeal form in support of that ground of appeal. Apart from a brief reference to hardstanding existing at the entrance and into the field since at least 2019, no reference was made to ground (d) in the supporting statement, which states in terms that the appeal was made only on grounds (c) and (f).

2. In a letter from the Planning Inspectorate dated 9 July 2025, the appellant was asked to confirm whether she wished to pursue the appeal on ground (d) as stated on the Appeal Form. The letter made it clear that if the appellant wished to continue with the appeal on ground (d) she would have to provide evidence to support that ground at Statement stage. No response was received to that letter, and no further evidence was provided at Statement stage. I have accordingly not considered the appeal on ground (d) further.
3. The breach of planning control as alleged in the notice is, without planning permission, the construction of alterations to an existing access, construction of hardstanding, new fencing, a lean-to and a storage container. None of these structures/developments are shown on the plan attached to the Enforcement Notice, which simply shows the whole site edged in red.
4. I noted at my site visit that there were, in addition to the matters stated in the notice, several other structures on the land. I understand that these structures are movable but at the time of my site visit one was located on higher ground just to the north of the vehicular access (Structure 1) and one was located on higher ground further back, towards the north-east corner of the site (Structure 2). One structure was located to the south of the vehicular access, close to the brook (Structure 3), and there also appeared to be a further structure located on the west boundary of the site to the north of the vehicular access (Structure 4).
5. In addition, there was a second lean-to structure on the south side of the vehicular access currently used as a hen coop (Structure 5) and a metal-framed, mesh-covered structure adjacent to the vehicular access currently used for keeping cats (Structure 6).
6. The salient point is that none of the above structures (Structures 1 to 6 inclusive) are subject to the current Enforcement Notice, which only relates to the alterations to an existing access, construction of hardstanding, new fencing, the first lean-to structure and the storage container. The appellant maintains that the original stable and all subsequent animal shelters have been recognised by the Council as being permitted moveable structures, but I have no confirmation to that effect from the Council. In any case, it is a matter for the Local Planning Authority in the first instance whether these additional structures constitute development requiring planning permission and, if so, whether it is expedient to initiate enforcement action in relation to them.
7. One representation has been received in relation to this appeal. In that representation, reference is made (amongst other things) to matters 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 (the 1990 Act): namely that planning permission ought to be granted for those matters. For example, reference is made the issue of highway safety resulting from the alterations to the vehicular access. 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 that representation only insofar as it relates to the grounds on which the appeal has been made.

The Enforcement Notice

8. The breach of planning control as alleged in the notice includes the construction of alterations to an existing access and (the erection) of new fencing. In such

situations, it is usual to make specific reference to the entrance gates that form part of the vehicular access. However, in this case the notice is entirely silent about the entrance gates.

9. On my reading of the reasons for issuing the notice, the Council's objection to the development centres on the impact on the openness of the Green Belt and the effect on the landscape character of the area. Both are affected by the entrance gates. It also seems unlikely that the Council would draft the notice to only require the reduction in height the fence but the not integral entrance gates. Consequently, reading the notice as a whole, it seems to me that the notice is directed at the entrance gates as an integral part of the fencing cited as matters to which the notice relates. I will correct and vary the notice to make that clear.
10. The notice refers to "new fencing" in the breach of planning control alleged in paragraph 3 of the notice but to simply a "fence" in the attendant requirement at paragraph 5(ii) of the notice. It is apparent that the appellant has understood what the notice is directed at. Nevertheless, it is essential that the breach of planning control alleged and the requirements to comply with the notice are consistent. I will vary the notice accordingly.
11. 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 correcting and varying the notice as described above.

The appeal on ground (c)

12. 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.
13. 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.
14. 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.
15. The appeal site is agricultural land with an area of approximately 1 hectare. The carrying out of specific development on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area that is reasonably necessary for the purposes of agriculture within an agricultural unit is permitted by Class B, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The provision of a hard surface is permitted by Class B(e) but not the formation of a vehicular access.

16. Class B, Part 2, Schedule 2 of the 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 Church Road is a classified road, the vehicular access subject to the notice is not permitted by Class B, Part 2, Schedule 2 of the GPDO.
17. In principle, the construction of the hardstanding subject to the notice would be permitted by Class B, Part 6, Schedule 2 of the GPDO. Development is permitted by Class B only where it is reasonably necessary for the purposes of agriculture within an agricultural unit.
18. The Oxford English Dictionary (OED) defines 'necessary' as meaning required to be done, achieved or needed. I fully understand that the hard surface creates a firm, safe access for tractors and trailers. However, there is no evidence before me that the hard surface subject to the notice is reasonably necessary for the purposes of agriculture within the agricultural unit. For example, I have not been provided with a Business Plan or Business Model to show that the hard surface is required for the purposes of the agricultural unit (as opposed to simply making the use of it easier or more convenient). In the absence of that evidence, I am not persuaded that the hard surface is reasonably necessary for the purposes of the agricultural unit. As such, the hard surface is not permitted by Class B, Part 6, Schedule 2 of the GPDO.
19. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted by Class A, Part 2, Schedule 2 of the GPDO, subject to the limitations at Class A.1. The limitation at Class A.1. (a) (ii) is that the height of any gate, fence, wall or means of enclosure erected or constructed *adjacent* to a highway used by vehicular traffic would exceed 1 metre above ground level (emphasis added).
20. There is no definition of 'adjacent' in the GPDO itself. The OED defines 'adjacent' as being near or next to something else. Moreover, there is nothing in the GPDO or the OED definition to support the view that provided a fence is positioned a minimum distance from the highway, it would cease to be regarded as being 'adjacent' to that highway for the purposes of the GPDO.
21. In this case, the fence (including the integral entrance gates) comfortably exceeds 1 metre above ground level. The fence is set back from the highway (Church Road) behind the vehicular access. There are no intervening structures and no intervening vegetation. Consequently, as a matter of fact and degree, the fence and the integral entrance gates are adjacent to a highway used by vehicular traffic. It follows that the fence (including the integral entrance gates) does not accord with the limitation at Class A.1. (a) (ii) and consequently is not permitted by Class A, Part 2, Schedule 2 of the GPDO.
22. Turning now to the lean-to structure subject to the notice, the approach of the courts in construing the definitions in section 55(1) of the 1990 Act has been to ask first whether what has been done has resulted in the erection of a 'building': if so, the court should want a great deal of persuading that the erection of it had not amounted to a building or other operations. The courts have identified three primary factors as decisive of what was a building: (a) size (b) permanence and (c) physical attachment.

23. The lean-to is a substantial structure, capable of accommodating tractors and other farm machinery. It clearly has a degree of permanence to it. It is not entirely clear if the lean-to is physically attached to the ground and/or the adjoining fence, but logic would suggest that it probably is. Consequently, I conclude that as a matter of fact and degree the lean-to is a building. The erection of it therefore constituted a building operation for the purposes of section 55(1) of the 1990 Act.
24. The extension or alteration of an agricultural building on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area is permitted by Class B(a), Part 6, Schedule 2 of the GPDO. Again, that development is only permitted where it is reasonably necessary for the purposes of agriculture within an agricultural unit.
25. The lean-to structure is used to accommodate tractors and other farm machinery. It is reasonable to conclude that these vehicles and machinery are used on the agricultural unit. On the evidence before me, including at the site visit, the use of the agricultural unit is somewhat limited. The appellant explains that the land supports a diverse range of livestock, including pigs, goats, donkeys, guinea pigs, chickens, hens and sheep, the majority of the latter grazing freely across the agricultural unit. In addition, at the time of my site visit the metal-framed, mesh-covered structure was being used for keeping cats, which I would regard as a domestic pet. In any event, I observed that the number(s) of livestock on the land was comparatively low, with many being accommodated in the various structures on the site.
26. I recognise that the agricultural unit comprises of undulating terrain and that using a tractor to transport feed, etc, might be useful. However, for reasons stated above (including the absence of a Business Plan for agricultural unit) I am not persuaded that the lean-to structure is reasonably necessary for the purposes of the agricultural unit. It follows that the lean-to structure is not permitted by Class B, Part 6, Schedule 2 of the GPDO.
27. In relation to the storage container, the placing of a portable building on land may in some cases be part and parcel of a use of land. The setting up of such structures is generally regarded as a building operation for the purposes of section 55(1) of the 1990 Act. Given the size and obvious degree of permanence to the container, whilst it is not physically attached to the ground (relying on its weight for stability) I see no reason to take different view in this case.
28. I therefore conclude that, as a matter of fact and degree, that the storage container does constitute a building. For the same reasons set out above, there is no evidence before me that the container is reasonably necessary for the purposes of the agricultural unit. It follows that the storage container is not permitted by Class B, Part 6, Schedule 2 of the GPDO.
29. In the context of the above, the appellant points out that comparable agricultural holdings across Cheshire West and Chester routinely benefit from containers, sheds, fences, hard standings and altered gates under permitted development. The appellant therefore considers that singling out this site is inconsistent and unreasonable. However, my conclusions on this ground of appeal have all been reached on the evidence that is before me or, to put it another way, the absence of evidence in support of the appellant's position.

30. Section 57 of the 1990 Act states that development requires planning permission. There is no planning permission in place, deemed or otherwise, for the construction of alterations to the existing access, the construction of hardstanding, the new fencing, the lean-to and the storage container 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

The appeal on ground (f)

31. The appeal on ground (f) is 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control 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.
32. In this case, the situation is more complex. The requirements of notice include the removal of the hardstanding, the lean-to structure and storage container. The purpose of the notice in those respects must therefore be to remedy the breach of planning control that has occurred.
33. The requirements of notice (as I propose to vary them) also include to reduce the new fencing and entrance gates to 1m in height. The purpose of the notice in that respect is therefore to rectify an injury to amenity.
34. However, requirements of the notice are entirely silent in respect of the construction of alterations to the existing access. The Council clearly had the opportunity to address this aspect of the breach of planning control when drafting the requirements of the notice but chose not to do so. The Council has therefore underenforced (intentionally or otherwise) in that respect.
35. The grounds of appeal relied on by the appellant (as set out in the statement accompanying the appeal form in her Final Comments) all relate to the planning merits of the development(s). As such, these are all matters that would properly fall to be considered under an appeal on ground (a) as set out in section 174(2) of the 1990 Act. Where an appeal is not brought on ground (a) and the requisite fee has not been paid, it is not appropriate for appellants to introduce arguments on the merits in the context of an appeal on ground (f). I am therefore not able to take those comments into account.
36. The appellant has not advanced any lesser steps or requirements that would achieve the purpose(s) of the notice.
37. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

Conclusion

38. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice subject to a correction and a variation.

Formal Decision

39. It is directed that the notice is corrected by:

- in paragraph 3 of the notice, inserting the words 'and entrance gates' after the words 'new fencing'

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

- in paragraph 5(ii) of the notice, deleting the word 'fence' and substituting there the words 'new fencing and entrance gates'

41. Subject to that correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR