



Appeal Decision

Site visit made on 13 April 2026

by **Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date 23 April 2026

Appeal Ref: APP/W3005/C/24/3355558

Land at Whiteborough Farm, Chesterfield Road, Huthwaite, Sutton-in Ashfield, NG17 2QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Julie Cook against an enforcement notice issued by Ashfield District Council.
- The notice was issued on 18 October 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised development and engineering works to install containers, black fabricated metal sections, hardstanding and field access track.
- The requirements of the notice are to:
 - 1) Cease the use and remove the unauthorised containers, black fabricated panels, hardstanding as Shown edged blue on the attached plan (see ADC-2) with related items off the land and return the development to its original state.
 - 2) Remove the access track as Shown hatched in blue on the attached plan as shown located in hatched blue in ADC-2 and return it to its original state.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. Section 173 (1) of the Town and Country Planning Act, 1990, as amended (the Act) states that an Enforcement Notice (EN) shall state (a) the matters which appear to the local planning authority to constitute a breach of planning control; and (b) the paragraph of section 171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) of the Act states that a EN complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are. In this case paragraph 3 of the EN alleges:

“Without planning permission, the unauthorised development and engineering works to install containers, black fabricated metal sections, hardstanding and access track.”

However, whilst the EN alleges unauthorised development, having regard to section 55(1) of the Act, it is not clear from the description of the alleged breach what form of unauthorised development is being alleged.

2. Having regard to the Land outlined in red on Plan Ref: ADC-2, it is evident from the planning history of the site, the Council and the appellant’s statement of case, that the unauthorised development is: *“Without planning permission, the*

a) material change of use of the Land to a mixed use of agriculture and for the storage of containers and black fabricated metal sections; and

b) the construction of a hardstanding and access track.”

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Act, or its terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
4. Having regard to the evidence before me, including the planning history and grounds of appeal lodged, both main parties agree that there would be no injustice to them if I were to correct the description of the alleged breach to the wording set out in paragraph 2 above. I shall thus correct the EN and I have dealt with the appeal on that basis.

Appeal on grounds (b) and (c)

5. The appellant's appeal on ground (b) and ground (c) relate solely to the construction of the access track. The issue in the ground (b) appeal is whether as a matter of fact operational development comprising of the construction of an access track has taken place on the Land. If those matters did occur, the ground (c) is that those matters do not constitute a breach of planning control. The burden of proof falls on the appellant to make out their case.
6. There is no dispute between the parties that the access track has been constructed on the Land. It seems that the crux of the appellant's ground (b) appeal is that the track was in place in September 2019 and is therefore immune from enforcement action. This is a ground (d) point, that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters. I shall therefore deal with that issue later in my decision, when I consider the appeal on ground (d).
7. On ground (c), the appellant asserts that the maintenance of the existing access track does not constitute a breach of planning control because it is not operational development. It seems to me that the appellant is arguing that the access track was in existence prior to September 2019 and that the only works undertaken since its construction have been those required to maintain it. However, notwithstanding any subsequent findings I make on ground (d), having regard to S55(1) of the Act, the initial construction of the access track was an act of operational development. I have not been provided with any substantive evidence that would suggest that its construction was granted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended, and no planning permission has been granted for this development by the local planning authority. A breach of planning control has occurred. The appeal on ground (b) and ground (c) fail.

Appeal on ground (d)

8. The appellant's appeal on ground (d) is again solely in relation to the construction of the access track. In relation to a breach of planning control consisting of operational development, no enforcement action may be taken after the end of a

period of four years where substantial completion took place before 25 April 2024, or within 10 years where substantial completion took place on or after 25 April 2024. On this legal ground of appeal, the onus of proof is on the appellant to make out their case, and the test is the balance of probability.

9. In support of her case the appellant has provided two images taken from Google Earth, dated September 2019 and April 2021 which she believes show the access track constructed and substantially completed on those dates. Thus, it is her case that because the access track was constructed prior to September 2019, it is immune from enforcement action, as substantial completion took place prior to 25 April 2024 and four years before the EN was issued.
10. On the other hand, the Council state that in 2016 it is clear from Google Earth and Street View Images that there was a dropped kerb crossing in place, but no access track to the appeal site. It is their case that the September 2019 image only shows tyre tracks across the field, and those tracks subsequently disappeared. The appellant acknowledged in her retrospective 2023 planning application to retain the access track, hardstanding and container storage use that the track had been resurfaced with crushed stone. The Council believe the track was not substantially complete until 2023 and that its completion facilitated the alleged material change of use. Appendix 2 of the Council's statement of case includes Google Earth and Street View Images dated from September 2016 through to 2024.

Google Street View Images

11. **September 2016** - a dropped kerb can be seen at the point of access of the alleged access track onto Chesterfield Road, but there is no track in place. A mature hedgerow existed between the appellant's field and the highway verge.
12. **September 2017** – the roadside hedge has been removed, and a gated and fenced entrance has been created off Chesterfield Road by the laying of hardcore. A hardcore track can be seen running across the fields from the vehicle entrance to the farm.
13. **April 2019** – a stoned track can be seen running from Chesterfield Road to the farm.
14. **September 2020** – a stoned access remains evident, and grass is beginning to grow through the track.
15. **June 2021** - a stoned access remains evident and fencing has been erected along the northwestern side of the track where grass is beginning to grow through the hardcore.
16. **March 2022** – both sides of the track have now been fenced. The stoned access remains in place with gates, and the hardcore on the track is still evident with grass now growing along the centre of the track.
17. **April 2023** – the access and track are clearly visible and it appears that further hardcore, including road planings have been laid along part of its length.

Google Earth Images

18. **2016** – no evidence of access track.

19. **2019** – access track can be seen, appears to have a stoned finish as shown in the 2019 Street View Image.
20. **2021** - access track can be seen, appears to have a stoned finish as shown in the 2021 Street View Image.
21. **2022** - access track can be seen, appears to have a stoned finish as shown in the 2022 Street View Image, which has begun to grass over.
22. **2023** – access and track clearly visible and road planings can be seen which have been laid along part of its length.
23. **2025** - access and track clearly visible.

Analysis of Evidence

24. From the images available, as described in the paragraphs above, it seems evident to me that a stoned vehicular access and track have been constructed on the Land by April 2019. Whilst I appreciate that during the following couple of years grass had begun to grow through the laid stone, the hardcore track remains evident on all the images. There is no dispute that the track was “resurfaced” during 2023 and those works helped to facilitate the unauthorised storage use. Nevertheless, as a matter of fact and degree those 2023 works were ones of maintenance and repair. On the balance of probability, the operational development alleged in the notice as the construction of an access track took place prior to April 2019 and is thus immune from enforcement action.
25. For the reasons set out above, the appeal on ground (d) succeeds to the extent that it relates to the construction of the access track.

Appeal on ground (f)

26. An appeal on ground (f) is made on the basis 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.
27. The purpose of the notice (as corrected) is clearly to remedy the breach of planning control since the use is to cease and the operational development referred to is to be removed in its entirety and the land is to be restored to its previous condition.
28. I have found in favour of the appellant in respect of the ground (d) appeal and I intend to vary requirement 2) by the deletion of the wording *‘Remove the access track as shown hatched in blue on the attached plan as shown located in hatched blue in ADC-2 and return it to its original state.’* The requirements, as varied, of the corrected notice are necessary and sufficient to remedy the breach by returning the land to its former condition prior to the breach taking place. Given that the corrected and varied notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. While the steps required are not excessive, the appeal on ground (f) succeeds as I am varying the steps required by the notice.

Appeal on ground (g)

29. The issue is whether the compliance period of one month is reasonable. The appellant contends that due to the wet weather, the condition of the site and the need to secure a new suitable location for the containers, a period of three months would be more reasonable.
30. I agree that a period of one month is a relatively short period of time to secure a new location for the containers, to cease the use and to undertake the remainder of the works set out in the EN. However, it was clear on my site visit that the use of the site to store containers has ceased and all the containers and black fabricated metal has been removed from the Land, together with the hardcore which had been laid to store them on. Furthermore, given my findings on ground (d), and the access track is lawful, no further works in respect of that development are necessary. Thus, having regard to the works undertaken, an extended time period of three months to comply with the notice is not deemed necessary.
31. The appeal on ground (g) fails

Overall Conclusion

32. For the reasons given above, I conclude that the appeal on ground (b) (c) and (g) should not succeed but the ground (d) and (f) appeal succeeds in respect of the access track. I shall uphold the enforcement notice with a correction and variation.

Formal Decision

33. The appeal is allowed in part, on grounds (d) and (f), and it is directed that the enforcement notice be corrected by:
- deletion of all of the wording of the breach in paragraph 3 and substitution with “Without planning permission:
 - a) the material change of use of the Land to a mixed use of agriculture and for the storage of containers and black fabricated metal sections; and
 - b) the construction of a hardstanding and access track.”
 - deletion of the wording “2) Remove the access track as Shown hatched in blue on the attached plan as shown located in hatched blue in ADC-2 and return it to its original state.” from paragraph 5.
34. Subject to the correction and variation the enforcement notice is upheld.

Elizabeth Pleasant

INSPECTOR