Planning Inspectorate

Appeal Decision

Site visit made on 2 June 2026

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th June 2026

Appeal Ref: APP/D3125/C/25/3373228
5 Thorpes Field, Alvescot, Bampton, Oxfordshire, OX18 2QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Andy Guy against an enforcement notice issued by West Oxfordshire District Council.
- The enforcement notice was issued on 20 August 2025.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 16/01595/FUL granted on 26 July 2016.
- The development to which the permission relates is: Change of use to garden, retain part as paddock (retrospective).
- The conditions in question are nos 1,2 & 3 which state that:
  1. That the development be carried out in accordance with the approved plans listed below. Approved plans: Site plan 15076.2, Site plan 15076.3R and Elevations – Proposed 15076.4.
  2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no walls, fences, gates, structures or outbuildings shall be erected other than those expressly authorised by this permission.
  3. Within 3 months of the date of this planning permission the means of enclosure to the extended garden area shall be constructed in accordance with approved drawing numbers 15076.3R and 15076.4 and retained thereafter.
- The notice alleges that the conditions have not been complied with in that:
  In respect of Condition 1: The development has not been carried out in accordance with the approved plans in the following respects:
  (i) The post and rail fence shown on the approved plan under the 2016 consent: 15076.3R has not been retained;
  (ii) The agricultural five-bar gate shown on the approved plan 15076.3R has not been retained;
  (iii) The native mix hedge shown on the approved plan 15076.3R has not been planted; and
  (iv) The three silver birch trees shown on the approved plan 15076.3R have not been planted.
  In respect of Condition 2 – The agricultural five-bar gate shown on approved plan 15076.3R has been replaced by a fence that has not been authorised by the 2016 consent nor by any other planning permission.
  In respect of Condition 3 – The means of enclosure to the extended garden area shown on approved plan 15076.3R has either not been constructed, or if constructed has not been retained.
- The requirements of the notice are to:
  i. Reinstate the 'Agricultural 5-bar timber gate' as shown on the approved Planting and Layout Plan reference 15076.3R and retain thereafter;
  ii. Construct the means of enclosure to the Paddock Land in accordance with approved plans reference 15076.3R and retain thereafter; and,
  Between the period of 1 November 2025 and 1 February 2026 (in order to avoid disturbing nesting birds)
  iii. Remove the laurel hedging in the area indicated by purple hatching on the attached plan marked "Enforcement Notice Plan" and plant native hedging along the boundaries as shown on the approved plan reference 15076.3R; and
  iv. Plant the three silver birch trees on the area of land shown on approved plan reference 15076.3R.
- The period for compliance with the requirements is: 3 months for steps i and ii, and until 1 February 2026 in relation to steps iii and iv (equating to 4 months 2 days).

- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Mr Andy Guy against West Oxfordshire District Council. That application is the subject of a separate decision.

Procedural Matters

3. In addition to the enforcement notice subject of this appeal (the Notice), the main parties' evidence refers to another enforcement notice (ref.2025/6). This is said to have been simultaneously issued in relation to an alleged material change of use of the same Land. There is some dispute between the main partes as to whether the service of that notice occurred.

4. According to the Council, some of the requirements in the notices are replicated and, as the 'change of use' enforcement notice was not appealed its requirements stand. However, for the avoidance of doubt, nothing in this Decision can alter the land use status of the appeal site and, in the absence of clear evidence on the status of that notice, I do not rely on it in consideration of the matters in this appeal.

5. The appellant's original submissions included a ground (e) appeal. That is that copies of the enforcement notice were not served as required by s172 of the Town and Country Planning Act 1990 (as amended) (the Act). However, the initial case on that ground related to the standing and validity of the Notice based on its substance. As distinct matters lying outside of ground (e), I deal with those matters in the following section.

6. At the Final Comments stage of the appeal, however, the appellant introduced a contention that some parties with a financial interest in the Land were not duly served with a copy of the Notice. The 'Enforcement Notice Appeals: Procedural Guide England' (22 April 2026) is clear that no new evidence is allowed at the Final Comments stage. This is because, in part, the Council has no opportunity to respond. Nonetheless, I am satisfied that as the appellant has had the opportunity to make an appeal against the Notice, neither he nor the Council have been prejudiced by my exclusion of that late evidence.

Ground (b) and the Notice

7. To succeed on ground (b) the appellant must prove that what is alleged in the Notice had not occurred. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

8. Through submissions made under grounds (e) and (b) the appellant raised several concerns in relation to the standing of the Notice. He highlights that the red and blue edging used in the Notice do not coincide with the land identified in red and blue under planning permission 16/01595/FUL (the 2016 pp) to which the relevant conditions were attached. This is indeed the case. However, as a standalone

document, the Notice need not necessarily replicate the coloured areas submitted with the 2016 application.

9. Through section 2 of the Notice and the plan attached to it, the Land affected by its requirements is clearly defined by red edging. The Notice sets out the relevant planning conditions considered breached by the Council. However, some of the alleged breaches and a requirement of the Notice includes elements which extend beyond, or lie entirely outside of, the identified 'red' Land.

10. In breach of condition cases, if the Notice does not reflect the entirety of the land subject of the conditions, then under-enforcement is likely to arise and the ability to enforce on other parts of the site would be potentially undermined. While I acknowledge that the purpose of the Notice may be primarily concerned with the character and appearance of the 'paddock' area outlined in red in the Notice, the Conditions apply to the whole of the site considered under the 2016 permission which is somewhat larger.

11. Section 173(1)(a) of the Town and Country Planning Act 1990 sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control. Section 173(2) of the Act states that a notice complies with Section 173(1)(a) if it enables any person on whom a copy of it is served to know what those matters are. If an enforcement notice does not comply with section 173(1)(a) of the 1990 Act, it is null and it cannot be saved by the powers of correction available under section 176(1).

12. In the case of *Miller-Mead*[1] it was held that the test is namely whether the enforcement notice tells the recipient fairly what they have done wrong. The enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is.

13. In *Oates*[2] the High Court helpfully set out relevant principles in respect of the matter of nullity. Some degree of uncertainty or other defect in the relevant section of the notice does not mean there is non-compliance with section 173(1). Whether a defect renders the notice null must be viewed in the context of: the importance or otherwise of that particular part of the enforcement notice; whether the defect is bound up with the remainder of that section; and, whether the enforcement notice would be valid in the absence of that defect. It is open to me to conclude that whilst part of the relevant section of the notice is uncertain, the notice as a whole complies with the statutory requirements and the offending part can be deleted without rendering the remainder of the notice null. Finally, *Oates* established that the Inspector should approach the exercise in a way which is not unduly technical or formalistic.

14. On an appeal against an enforcement notice any defect, error, or misdescription in the Notice may be corrected using the powers available in s176(1)(a) of the Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.

15. In respect of the alleged breach of Condition 1 (the approved plans) the requirement for the approved detail and implementation of post and rail fencing and native mix hedge planting extend well beyond the area defined by the Notice –

[1] *Miller-Mead v MHLG* [1963] 2 WLR 225
[2] *Oates v SSCLG v Canterbury CC* [2018] EWCA Civ 2229

particularly along the rear (eastern) boundary of the appellant's site. By not requiring compliance with the approved plans in respect of the approved extended garden area there is a degree of underenforcement. This would affect the consideration of the ground (a) appeal. This is not necessarily an incorrect approach but appears to conflict with the Council's stated aim to ensure the 'the breach is addressed fully'.

16. However, the requirement for implementation of the approved tree planting in part of the original front garden also lies outside of the Land identified by the Notice. It is not open to me to correct the Notice by the enlargement of the land subject to its requirements. This would doubtless cause injustice to the appellant. It would make the Notice more onerous to comply with and would potentially affect his case on the other grounds of appeal submitted. It could also result in the exclusion of others with a potential interest in the additional land.

17. By the limitation of the effective area of the Notice, there is a disaggregation of a landscaping scheme designed and approved as a whole and deemed necessary to make the approved development acceptable in planning terms. Deletion of the requirement for tree planting at section 5iv of the Notice, as suggested as an option by the Council, would further fragment a landscaping scheme requiring physical changes to the land which sought to safeguard the character and appearance of the area and 'preserve the semi-rural edge-of-settlement character and the attractive and open rural appearance of this part of the CA'[3].

18. In effect, that element is 'bound up' in the breach and the stated reasons for issuing the Notice. If that element were simply deleted, it would, again, likely materially affect consideration of the ground (a) appeal and could not achieve the Council's stated aim of fully addressing the breach. It would thereby cause injustice.

19. If the alleged breach in relation to Condition 3 only relates to the dividing fence between the garden and paddock, the allegation does not clearly say so. To proceed on that assumed basis would potentially cause the Council to be hamstrung if an appeal were allowed on ground (a) because it could prevent enforcement on the excluded land in the event the relevant conditions were discharged or amended under that ground of appeal.

20. The appellant also contends that part of the laurel hedging lies outside of the identified Land. However, aside from natural growth and spread, including over areas potentially beyond the site limits on the southern and western boundaries, I am satisfied from observations at the site visit and being mindful of site changes since the 2016 permission, that those hedges are rooted in the area subject of the Notice. Accordingly, no correction of the Notice is necessary in that respect. However, that contention highlights that the plan attached to the Notice is out of date insofar as it does not show the extended footprint of the dwelling.

21. The Council's evidence demonstrates that an extension was added along the eastern elevation such that the hedge line now overlaps with the southern elevation of the dwelling. Although not fatal to the Notice, that shortcoming does not assist interpretation.

22. I note the appellant's other contentions that descriptions in relation to the 5-bar gate are incorrect/inaccurate. However, I have little doubt that these could be corrected

[3] Quote taken from the Council's case referring to the related delegated report

without injustice because it seems to me that both parties understand that what is present on site is not in accordance with the 2016 permission. Furthermore, the Notice is clear as to what it is seeking to achieve in that respect. I find a correction of the allegation and requirements in that regard could be made without injustice.

Conclusion

23. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place.

24. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. While those shortcomings in the Notice do not render it null, the enforcement notice is invalid and will be quashed.

25. In these circumstances, the appeals on the grounds set out in section 174(2) (a) and (f) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

R Hitchcock

INSPECTOR