



Appeal Decisions

Site visit made on 18 June 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 July 2026

Appeal A Ref: APP/U1430/C/24/3350405 and APP/U1430/24/3350417

Chestnut Wood, Udimore Road, Broad Oak, Rye, East Sussex, TN31 6BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr J Wilson and Mrs Z Wilson against an enforcement notice issued by Rother District Council.
- The notice was issued on 9 August 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the formation and laying out of a means of access ("the Access") including the removal of hedgerow, and the installation of a timber field gate and posts, and the laying of gravel and aggregate in the approximate position shown coloured green on the attached plan. .
- The requirements of the notice are:
 - a) Break up and remove all gravel, aggregate and materials imported on to the Land to create the access;
 - b) Demolish, dismantle and remove the timber field gate and posts, including postbox, dustbins, solar lighting, and other associated paraphernalia from the Land;
 - c) Permanently stop up the Access to vehicular use by reinstating the grass, woodland and vegetation previously located on the Land, to a depth from the highway of not less than 1.5 metres at any point and a width adjacent to the highway of 20 metres;
 - d) Cover with top soil and seed with grass seed the areas where the imported materials have been removed and the grass, woodland and vegetation has been reinstated, to marry in with the contours of adjacent undisturbed land;
 - e) Remove from the Land all rubble, rubbish, debris, materials, tools and equipment arising from compliance with requirements a) to d) above
 - f) Reinstatement the hedgerows along the original boundary to the Land by planting a 6 plants per linear metre of approximately:
 - 60% Hawthorn (*Crataegus monogyna*) – 17
 - 15% Blackthorn (*Prunus spinosa*) – 4
 - 5% Hazel (*Corylus avellana*) – 4
 - 5% Field Maple (*Acer campestre*) – 4
 - 5% Hornbeam (*Carpinus betula*) – 4
 - 5% Holly (*Ilex Aquifolium*); shade tolerant so good under hedgerow trees – 3Using transplants 45-60cm tall or whips 60-90cm tall as appropriate to the species, evenly spaced at a density of double staggered row notch planted 0.33 metres apart at 0.33 metre centres, and using individual Tubex tree shelters of an appropriate size, stacked and secured or stock fencing around all new trees, incorporating rabbit proof wire at the base to protect against deer or rabbit damage, and all whips to be young trees with feathered growth, 0.6-1.2m high conforming to BS3936: Part 1:1992 and to be less than 2 years old and all clearly labelled with botanical name.
- The period for compliance with the requirements is six months after this notice takes effect.
- The appeal is proceeding on the ground[s] set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice be varied by extending the period for compliance from six to eight months from the date of this decision. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Background

2. The alleged breach of planning control refers to the formation and laying out of a vehicular access to land off a classified road, the B2089. This involved the removal of a section of hedgerow. The appellants say that the access had previously existed but had become overgrown. In 2024 UK Power Network (UKPN), using its maintenance powers as a Statutory Undertaker, entered the land to repair a pole termination. The appellants say that it is written into their deeds that UKPN have rights of access over the land.

Preliminary Matters

3. Under Section 173 of the 1990 Act, as amended, a local planning authority has the power to issue an enforcement notice requiring the recipient to remedy the breach by restoring the land to its condition before the unauthorised development took place. If a traditional or species-rich countryside hedgerow was removed to build the vehicle access, the Council can specify exactly how that boundary should be reconstructed.
4. Councils, therefore, have wide discretion to dictate the steps needed to reverse the damage, which includes replanting hedges to close an unauthorised gap. To preserve local biodiversity and rural character, councils routinely mandate a 'mixed native hedgerow'. They can explicitly name species such as Hawthorn, Blackthorn, Hazel, Field Maple, and Holly in order to ensure the reinstated hedgerow matches the surrounding rural landscape and ecological profile.

The appeal on ground (b)

5. An appeal under ground (b) is that the matters, either in part or full, that comprise the allegation have not occurred as a matter of fact.
6. During the appeal process the Council contacted UKPN as to the company's involvement in the works carried out. In response, an e-mail sent to the Council, dated 3 January 2025, said that their workers did attend the site in June 2024 but indicates that they were not responsible for any of the matters specified in the enforcement notice. In other words, UKPN say that their staff/contractors were not responsible for the works carried out, namely the formation and laying out of the means of access, the installation of a wooden gate and the laying of gravel or aggregate.
7. An appeal under legal grounds such as this requires that precise and unambiguous evidence be put forward to substantiate the appeal; the onus for which is on the appellant(s). Here, the appellants are less than specific about their part in the operational development carried out at the site which caused the Council to take formal enforcement action. Although their representations indicate that the access already existed and that UKPN removed trees and undergrowth to facilitate entry to the land, neither their assertions nor the said, brief e-mail from UKPN, give a definitive account of who exactly did what. Accordingly, I am not convinced that the representations made have the precision and unambiguity required.
8. Under planning law, if a vehicular access exists, albeit unused due to it being overgrown, it is generally not lost or extinguished. However, reactivating it, which would likely require modification with the installation of a new gate and the laying of hardcore – this being a case in point – would likely mean that planning permission

will be required for such works. Accordingly, given the circumstances here, and from my site visit observations, I am satisfied that the breaches, as set out in the allegation, have occurred as a matter of fact.

9. The appeal on ground (b) does not succeed.

The appeal on ground (g)

10. An appeal under ground (g) is that the period for compliance is considered unreasonably short.

11. Hedgerow planting must occur during the dormant winter planting season (typically October to March). In this particular instance the enforcement notice requires that its requirements be carried out within six months and, as this will run from the date of this decision, it would mean that the stipulated planting can take place during the winter season. However, as the notice also requires that the gravel be removed and the land grassed over, I consider it reasonable to extend the compliance period by two months ie until March 2027.

12. The appeal, therefore, succeeds to this extent.

Timothy C King

INSPECTOR