



Appeal Decision

Site visit made on 2 June 2026

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2026

Appeal Ref: APP/Q3115/C/25/3374155

Land at Town Farm Cottage, Brook Street, Kingston Blount OX39 4RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Theresa Caroline Clark (Kingston Blount Farms) against an enforcement notice issued by South Oxfordshire District Council.
- The notice was issued on 26 September 2025.
- The breach of planning control as alleged in the notice is Without planning permission, the formation of an access onto a classified road in the approximate location shown between points A and B on the Land ("the Access") by the infilling of an existing drainage ditch, the removal of a section of existing hedge row and erection of a five-bar gate.
- The requirements of the notice are to:
 - (i) Remove from the Land the five-bar gate and post and rail fence facilitating the Access.
 - (ii) Remove from the Land the earth used to fill in the ditch that facilitated the creation of the Access. The finished levels should be of a depth consistent with the ditch that runs either side of the Access.
 - (iii) Reinstatement any areas of the Land disturbed arising from compliance with paragraphs 5(i) and 5(ii) of this notice by reseeding that disturbed Land with grass.
 - (iv) Reinstatement the section of hedge which was removed to enable the Access. The hedge should be a Rural Hedgerow Species Mix consisting of 70% main matrix such as Hawthorn, Crataegus monogyna, Blackthorn, Prunus spinosa and 30% interplant such as Hazel, Corylus avellan, Holly, Ilex aquifolium, Dog Rose, Rosa canina, Field Maple, Acer campestre, Dogwood, Cornus sanguinea, Spindle, Euonymus europaeus, Wild Privet or Ligustrum vulgare. The hedge planting should be carried out in accordance with BS4428: 1989, Code of Practice for general landscape operations. The hedge should only be planted between the months of November and March, while plants are still dormant and avoid planting in very cold or wet weather. Hedging should be planted in two, staggered rows at a density of not less than 5 per metre, with approximately 450mm between plants in the same row, and 300-400mm between rows. The interplant whips / transplants should be planted within this pattern in groups of 2 / 3.
- The periods for compliance with the requirements are:

In relation to paragraphs 5(i) and 5(ii): 3 months from the date the notice takes effect.

In relation to paragraph 5(iii): By the end of the next planting season after the notice takes effect. The planting season for the purposes of this paragraph means 1 March 2026 – 31 May 2026.

In relation to paragraph 5(iv): By the end of the next planting season after compliance with paragraph 5(iii) of this notice. The planting season for the purpose of this paragraph means the period between 1 November 2026 and 31 March 2027.

- The appeal is proceeding on the grounds set out in sections 174(2)(a) 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.

Formal Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the formation of an access onto a classified road in the approximate location shown between points A and B on the Land ("the Access") by

the infilling of an existing drainage ditch, the removal of a section of existing hedge row and erection of a five-bar gate at land at Town Farm Cottage, Brook Street, Kingston Blount OX39 4RZ as shown on the plan attached to the notice and subject to the condition set out in the attached Schedule of Conditions.

Preliminary Matters

2. The Council has advised that a Joint Local Plan for South Oxfordshire and Vale of White Horse (the JLP) has been prepared and will, once adopted, replace the existing local plans, of which the South Oxfordshire Local Plan 2011-2035¹ (the LP) is one. The timeline of the JLP's preparation is set out in the Council's statement but I have no further evidence before me to indicate that it has proceeded any further towards formal adoption than indicated therein or further reference to any relevant policies. The emerging JLP carries very limited weight as a consequence.
3. A new National Planning Policy Framework (the Framework 2026) was published on 17 August 2026. The views of both main parties have been sought as to the relevance of the introduction of the Framework 2026 to their respective cases and I have taken any responses into account in my consideration of the appeal, below.

The appeal on ground (a)

Background and Main Issue

4. An application for planning permission was refused² and a subsequent appeal dismissed³ in 2019 (the 2019 scheme) for the formation of a new access and driveway from Brook Street (between the points A and B as shown on the plan that now accompanies the enforcement notice). Whilst that scheme was refused on grounds relating to its effect on character and appearance and landscape setting, the reasons for issuing this enforcement notice, as stated on the notice, make no reference to matters of character and appearance. The main issues in relation to this appeal arising from the reasons for issuing the notice, as stated on the notice, are set out below.
5. The appellant however subsequently applied for a Hedgerow Removal Notice⁴ (HRN) in 2020 for the removal of a length of hedgerow that broadly equates to the land between points A and B. The HRN application resulted in confirmation from the Council that the hedgerow through which the access would be created was not 'important'. A Hedgerow Retention Notice was not issued.
6. In response to the appellant's Statement of Case⁵ (SofC) and Land Drainage Consent documentation⁶ the Council has confirmed that the information submitted therein satisfactorily addressed reason 4(c) of the stated reasons for issuing the notice, and that there was no conflict with LP Policy EP4 as a result. As such, the Council has stated that this particular reason for issuing the notice 'can be removed'. I have not been provided with any further compelling evidence that would lead me to reach a different conclusion.

¹ Adopted December 2020

² LPA Ref No: P19/S2062/FUL

³ APP/Q3115/W/19/3243590

⁴ LPA Ref No: PE/S0176/20

⁵ Paragraphs 8.3.1 to 8.3.6

⁶ SofC Appendix 12

7. It has also been confirmed by the Council that the Council's Ecology Officer raised no objection to the appeal scheme, subject to the imposition of a suitably worded condition regarding mitigation planting and seeding works. No further defence of the relevant reason for issuing the notice⁷ has been provided by the Council and I have not been provided with any further compelling evidence that would lead me to reach a different conclusion. The matter of the suggested condition is considered below.
8. Thus, having regard to the above and the reasons for issuing the notice as originally stated on the notice, the main issue is whether or not the alleged works the subject of the notice and this appeal provide a suitable and satisfactory access to a classified road, with particular regard to highway safety and the character and appearance of the appeal site and surrounding area.

Reasons

Whether a suitable and satisfactory access - highway safety

9. LP Policy TRANS5 sets out a range of highways and highways-related matters relevant to the consideration of development proposals. It is this policy that is cited in reason 4(b) of the reasons for issuing the notice. The notice alleges that what has been created does not comply with the relevant highway standards of Oxfordshire County Council (the local highway authority). Whilst LP Policy TRANS5 is cited, no specific sub-section is quoted.
10. LP Policy TRANS5 1.i) states that, where appropriate, proposals will provide for a safe and convenient access for all users to the highway network whilst sub-section 1.vi) states that proposals will be served by an adequate road network which can accommodate traffic without creating traffic hazards or damage to the environment. In this instance, the field access has been created on the outside of a slight bend in the road and it is agreed by the main parties that the visibility in both directions is adequate. So too, the position of the field gates, which are set back a considerable distance from the carriageway edge and sufficient to allow vehicles to be able to pull clear of the carriageway upon entry and exit. Again, the adequacy of this arrangement is not a matter at dispute. In these respects, I too find no harm, absent the submission of any further compelling evidence. As a consequence, there is no conflict with LP Policy TRANS5 with particular regard to these aspects of highway safety.

Whether a suitable and satisfactory access - character and appearance

11. There was no reference within the reasons for issuing the notice to the effect of the field access upon the character and appearance of the appeal site's immediate surrounds, or upon that of the wider surrounding area. However, the Council's Statement of Case⁸ seeks to introduce the matter of character and appearance, relying upon the implied effects of surfacing the field access to the County Council's 'highway standards'. My attention has also been drawn to the outcome of the 2019 application and its dismissal at appeal, for which a copy of the appeal decision has been provided. The main issue in that instance was the effect of the formation of a new access and driveway upon character and appearance of the surrounding area.

⁷ Reason for Issuing This Notice - reason 4(d)

⁸ Comprised of the Council's enforcement report and letter dated 19 December 2025

12. At the time of my visit to the site the surface of the access 'as created', between metalled carriageway and a set back field gate, was grass. There was no obvious evidence of a hard surface present or of an otherwise bound surface. The Council's concern is that the materials required for the creation of a bound surface would be incongruous within the landscape, those materials considered 'most likely' to be tarmac. In reaching the conclusion set out in the appeal decision, the access and driveway proposed at that time in the 2019 application was described by the Inspector as being formed from 'tarmac and gravel, with some granite setts'.
13. The local highway authority's consultation responses refer to the matter now in hand required surfacing of the access to be of a bound surface. An example of this, given in parentheses, being tarmac. Further reference is also made to non-loose surfaces as being 'generally a tarmac construction'. However, I have not been provided with the detail of those standards. Nor, by virtue of the wording and nature of the local highway authority's comments is it clear that tarmac would be the only 'bound' surface material that could suffice.
14. The nature of the appeal site, lying detached from the main body of the village, is rural in its character and its appearance. The dense roadside hedges on either side of the entrance, and in places on the opposite side of the road, reinforce the rural character and nature of the site as distinct from that of the Kingston Blount, only a short distance away. An access to an agricultural field is consistent with the prevailing rural nature and character of the appeal site and its surroundings. I agree with the Council that, had it been the case that a tarmac entrance surface had been laid or was what the appellant proposes now in the alternative, it is possible that it could have been detrimental to the rural character and appearance of this stretch of Brook Street.
15. However, that is not what the appellant has constructed. Nor does the evidence before me require or confirm the use of only tarmac as a bound surface for the field entrance. Rather, from the evidence, it seems to me that the use of tarmac is cited as an example and not an absolute. Other options for a bound surface finish exist, not least of which could be a concrete surface, which is typically found in rural and agricultural contexts at field and agricultural yard entrances. As such, I am satisfied that reasonable and suitable alternatives to that upon which the Council has focused exist that, with regard to the effects of the appeal scheme upon the character and appearance of the site and surrounding area, would avoid the harm suggested by the Council, even if those matters were not expressly cited as a reason for issuing the notice. A suitably worded condition in the event that the appeal under ground (a) should succeed would be sufficient to ensure an appropriate surface finish to the access that would maintain both highway safety and avoid harm to the prevailing rural character and appearance of the appeal site and Brook Street more widely.

Other Matters

16. The publication of the Framework 2026 introduced Policy DM8 regarding 'Unauthorised development and enforcement' and whether the evidence could lead to a conclusion that the unauthorised development in question was intentional. If it was concluded that unauthorised development was intentional, Framework 2026 Policy DM8 states that that fact should be given substantial weight in considering whether to grant planning permission.

17. Despite the previous refusal of an application for planning permission (and subsequent dismissal at appeal) for the formation of a new access and driveway at the appeal site, the appellant nevertheless proceeded to create the access that is now the subject of this appeal. This, the Council argues, constitutes deliberate unauthorised development as described in Framework 2026 Policy DM8 and, as such should be afforded substantial weight.
18. The appellant has not addressed the matter of intentional unauthorised development in the wake of the publication of the Framework 2026 Policy DM8. Nor does it strike me as particularly unreasonable to believe that having expended time and effort progressing a planning application and a planning appeal in relation to the creation of a new access and driveway, the appellant would not have been at least in some way aware of the planning requirements regarding the access point as created, and now the subject matter of this appeal.
19. However, the appeal scheme before me is materially different to that which preceded it to the planning appeal stage and is absent the extent of tarmac, gravel and granite setts, together with the length of driveway extending across the grassed paddock / field previously proposed. I also have some sympathy with the appellant's position that, having applied for a hedgerow removal notice⁹, the Council's conclusion that the hedge was 'not important' assessed against the Schedule 1 criteria of the Regulations¹⁰ and could thus be removed to facilitate the now revised scheme, made the carrying out of the appeal scheme not wholly intentional. Whilst mindful of the provisions of Framework 2026 Policy DM8, I am not persuaded that the appellant's actions amount to the degree of intentional unauthorised development envisaged by the Framework 2026.

Conditions

20. I have carefully considered the conditions suggested by the Council, and the advice and guidance set out in the Framework 2026 and the Planning Practice Guidance. The suggested condition that seeks to secure a 'site development scheme' (SDS) is reasonable and necessary in order to ensure the appropriate surface finish for the field access. However, given the outcome of the previous HRN it would not be reasonable to insist upon the reinstatement of a length of hedgerow in the event that the condition's other requirements are not met within the specified time period. I have amended the wording accordingly.
21. So too, with regard to the subsequent implementation of the SDS and, specifically, the retention and maintenance of the established habitat for a period of 30 years. A period of 5 years would in my experience be more typically imposed, and the justification for a significantly longer period has not been adequately demonstrated or explained.

Conclusion on the ground (a) appeal

22. The Council has confirmed that since the issue of the enforcement notice and during the subsequent appeal process, that matters relating to drainage and biodiversity had been satisfactorily resolved. I have no further compelling evidence before me to lead me to a different conclusion and, as such, these reasons for

⁹ LPA Ref No: PE/S0199/23

¹⁰ Hedgerow Regulations 1997

issuing the notice have fallen away and it has not been necessary for me to consider them further.

23. For the reasons set out, I am not persuaded that the access point causes harm to the character or appearance of the appeal site or the surrounding area. The access, opening in the hedgerow and location of the gates and fencing are all such that what has been created is consistent with a field entrance in a rural setting and an agricultural context. It does not follow that it should only be surfaced with tarmacadam in order to secure a sealed surface to the satisfaction of the local highways standards and such a matter could adequately and reasonably be dealt with by a suitably worded planning condition. Parallels with a previously refused (and dismissed) scheme for an access and driveway in this location are limited and the schemes materially differ. It has not been satisfactorily or sufficiently demonstrated that the appellant's actions in carrying out the unauthorised development were intentional. There is no harm to character and appearance for the reasons set out and I am not led to conclude that the ground (a) appeal should fail or that deemed application for planning permission should be refused.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed on ground (a), and I shall grant planning permission for the development as described in the notice and the application deemed to have been made under ground (a). The notice will be quashed and it follows that the appeal on ground (f) does not fall to be considered.

G Robbie

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved, including the erection of a five bar gate and post and rail fence, the removal of a section of hedgerow in order to form the access and the engineering works undertaken in order to create a culvert within the existing ditch shall, with the exception of the removal of a section of hedgerow, be reinstated to the condition that existed prior to formation of the access, within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within 3 months of the date of this decision a 'site development scheme' (SDS) shall have been submitted for the written approval of the local planning authority. This scheme shall include:

(a) The submission of details for the surfacing of the access for it to be improved, laid out and constructed strictly in accordance with the local highway authority's specifications.

(b) a timetable for its implementation.

(ii) If within 6 months of the date of this decision the local planning authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved SDS specified in this condition, the created habitat shall be retained and maintained in accordance with the approved details for a minimum of 5 years from the point of completion of establishing planting / seeding works. Upon implementation of the approved SDS specified in this condition that scheme shall thereafter be retained.

**** end of schedule ****