



Appeal Decision

Site visit made on 17 January 2012

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **29 FEB 2012**

Appeal Ref: APP/HGW/11/352

Land at Braeslacks, Casterton, Carnforth, Lancashire, LA6 2SE.

- The appeal is made under The Environment Act 1995, Section 97 and The Hedgerows Regulations 1997 (the Regulations), Regulation 9 against a Hedgerow Replacement Notice (HRN).
- The appeal is brought by Mr T S Wilman against South Lakeland District Council.
- The Hedgerow Replacement Notice is dated 12 July 2011.
- The Hedgerow Replacement Notice indicates that the Council considers that a hedgerow has been removed from the land in contravention of Regulation 5(1). The location of the hedgerow is shown on the plan accompanying the Hedgerow Replacement Notice.
- The Hedgerow Replacement Notice requires that the hedge be reinstated using the following specification:

Tree species to be reinstated:

- a) Hawthorn 50%
- b) Blackthorn 30%
- c) Ash 10%
- d) Elder 10%
- e) Sycamore 10%

Tree size should be 40-60cm whips (bare rooted or plugs)

Planting should be at a density of 4-6 plants per metre in staggered double rows 40-60cm apart.

The period within which planting is to be carried out is between 1 November 2011 and 31 January 2012.

Decision

1. I direct that the Hedgerow Replacement Notice be modified by:
 - Deleting the word "Noise" in the title and replacing it with the word "Notice";
 - Replacing the plan attached to the notice with the plan attached to this decision;
 - At "Section 6. Time for Compliance", replacing the requirement with the words "The trees to be planted between 1 November 2012 and 31 January 2013."
2. Subject to these modifications I dismiss the appeal and uphold the Hedgerow Replacement Notice.

Reasons

3. The Hedgerow Retention Notice seeks the replacement of a roadside hedgerow. The hedgerow was growing on the eastern side of Chapelhouse Lane, a single track laneway running north from the A65.

4. The appeal is made on a number of grounds, principally that the vegetation removed was not a hedge, that the reasons given for issuing the notice are incorrect, and that the requirements of the notice are faulty.
5. On the first point, the appellant submits that the vegetation removed not a hedgerow but scrub, which is required by other agricultural legislation to be cut at least every five years. The word hedgerow is not defined in the 1995 Act or in the 1997 Regulations. However, *The Hedgerow Regulations 1997 – a Guide to the Law and Good Practice* suggests that the Oxford English Dictionary may be used as a guide, that is “a row of bushes forming a hedge, with the trees etc growing in it; a line of hedge”. It states that the essential feature of a hedge is a row of bushes. DEFRA’s Hedgerow Survey Handbook defines hedgerows as “any boundary line of trees or shrubs over 20m long and less than 5m wide at the base, provided that at one time the trees or shrubs were more or less continuous. It includes an earth bank or wall only where such a feature occurs in association with the line of trees or shrubs. This includes ‘classic’ shrubby hedgerows, lines of trees, shrubby hedgerows with trees and very gappy hedgerows (where each shrubby section may be less than 20m long but the gaps are less than 20m.” I note that the appellant has referred to other definitions which imply that an essential feature of a hedge is that it has been planted. However, in my view it is the disposition of trees and shrubs, rather than their origin, that determines whether they comprise a hedgerow for the purposes of the Regulations. That a row of bushes or trees was not purposely planted or actively managed as, for example, a stock barrier, would not, in my view, place it outside the scope of the Regulations.
6. Numerous photographs have been provided in evidence, some relatively recent and others dating from about the 1980’s and earlier. These include an aerial image of the site taken from Google Imagery mapping and various StreetviewTM images. The more recent images show clearly that there is a row of trees or bushes present, albeit thin in places. The appellant has commented that the images demonstrate that the bushes or trees have clearly never been laid, but I do not consider that management practices such as laying are an essential attribute of a hedgerow. Older images suggest the presence of a hedgerow, but are not conclusive. However, none of the photographs or images provided weigh significantly in favour of the appellant’s view that there was no hedgerow. I consider that the vegetation removed had the appearance and basic attributes of a field hedge, that is a row of trees or bushes growing along a field boundary, in this case a roadside boundary. On the balance of probability, therefore, I conclude that what was removed was a hedgerow. It was more than 20m in length and growing on land used for agriculture, thus, in accordance with Regulation 3(1), the Regulations apply.
7. In general terms, Regulation 5(1) prohibits the removal of hedgerows to which the Regulations apply without the written consent of the local planning authority. A HRN can be issued where it appears to the local planning authority that a hedgerow has been removed in contravention of Regulation 5(1). I can appreciate that when the appellant removed the hedge he did not consider it to be a hedge, but the facts of the matter cannot now be established and I am satisfied that the evidence indicates that, on the balance of probability, a hedgerow to which the Regulations applied was removed from the site, in contravention of the Regulations.
8. Turning to the Council’s reasons for issuing the notice. Briefly, it considered that the removal of the hedge altered the rural outlook, causing harm to amenity, and the hedgerow had value for wildlife. Further, it considered that the hedgerow was likely to have been an important hedgerow and its removal would not have been

sanctioned. The appellant has challenged these reasons, and has provided statements of locals who support his view that what vegetation was present did not comprise a hedge and was not over 30 years old, and hence not an important hedgerow for the purposes of the Regulations.

9. I have already found that the hedgerow was removed in contravention of the Regulations. Whether or not the removal of the hedgerow altered the rural outlook and thereby caused harm to amenity is a matter of judgement. However, it is not a matter that I need to address, nor do I need to establish whether or not the hedge was important, since the power to require replanting applies whether the hedgerow was important or not.
10. On the notice and its requirements, I agree with the appellant that the length of hedgerow removed is shorter than that shown on the plan attached to the notice. I shall modify the notice accordingly. The appellant also suggests that the notice plan requires him to plant a hedge across a lay-by. That is an unnecessarily literal interpretation. It has also been suggested that the planting schedule should reflect what was removed, in terms of both density and species. It is not a requirement of the Regulations that the replacement hedge be closely based on that removed, but in any case the composition of the hedge removed cannot be accurately determined at this stage. In the circumstances I consider that the requirements of the notice in terms of species and spacing are reasonable.
11. In conclusion, I find that the hedgerow has been removed in contravention of Regulation 5(1) without adequate justification, and I conclude that it is reasonable to require its replacement. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed. The Notice required planting by 31 January 2012. This date has now passed, and accordingly I shall modify the notice to change the period for compliance to be between 1 November 2012 and 31 January 2013. I shall also correct a misspelling in the title of the notice and substitute the notice plan as set out above.

Paul Dignan

INSPECTOR

Hedgerow Replacement Notice Map attached to decision ref.
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