

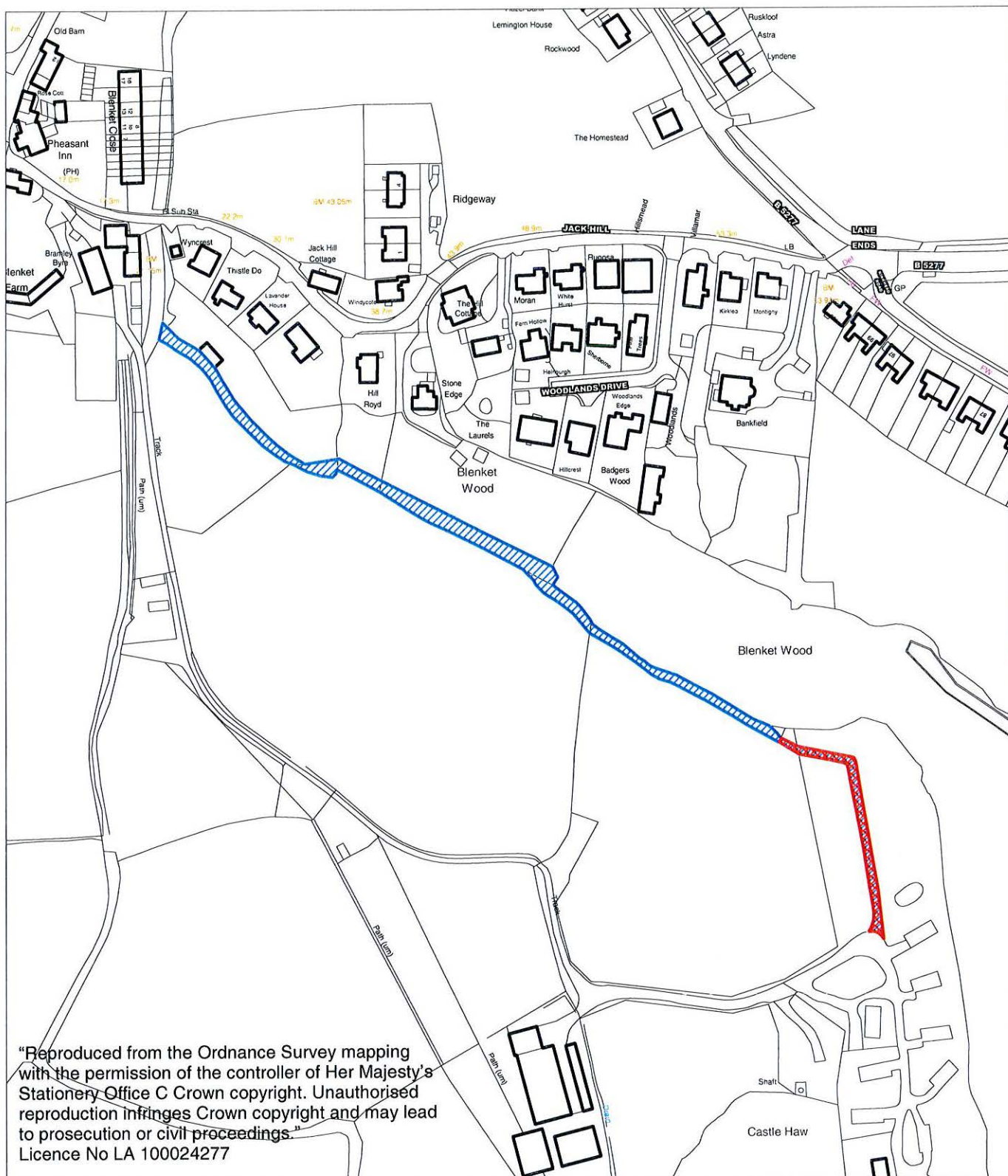
IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE
PLANNING AND COMPENSATION ACT 1991)**

ENFORCEMENT NOTICE-OPERATIONAL DEVELOPMENT

ISSUED BY: SOUTH LAKELAND DISTRICT COUNCIL

1. **THIS NOTICE** is issued by the South Lakeland District Council ("the Council") because it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
2. **THE LAND TO WHICH THE NOTICE RELATES:-**
Land at Blenkett Farm, Jack Hill, Allithwaite, Cumbria LA11 7RL as shown edged blue on attached plan ("the Blue Land") and land at Blenkett Wood Lodge Park, Allithwaite, Cumbria LA11 7RL as shown edged red on the attached plan ("the Red Land").
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**
Without planning permission, operational development consisting of the excavation, infilling, grading and laying of hard core on the Red Land to form an access road between Jack Hill and Blenkett Wood Lodge Park and the associated use of the road on the Blue Land and the Red Land for the purpose of vehicular access to and egress from Blenkett Wood Lodge Park.
4. **REASONS FOR ISSUING THIS NOTICE**
It appears to the Council that the above breach of planning control has occurred within the last four years.
It is considered expedient to issue this notice in the interests of the amenity of the area. The scale, position and materials result in an access road which has a harsh and unsightly appearance, adversely affecting the character of this open rural, agricultural and woodland landscape.
The development is contrary to the Cumbria and Lake District Joint Structure Plan, Saved Policy E37 and the South Lakeland Local Development Framework, Core Strategy CS 8.2
The Council do not consider that planning permission should be given because planning conditions could not overcome these objections.
5. **WHAT YOU ARE REQUIRED TO DO**
 - (1) Cease using the road along the Blue Land and the Red Land for vehicular traffic for access to and egress from Blenkett Wood Lodge Park ; and
 - (2) Remove all the stone and hard core from the section of the road that is within the Red Land; and



No Window

David Sykes
Interim Corporate Director
Communities
South Lakeland District Council
South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4UQ

Extract OS Plan
NOT TO BE REPRODUCED
Scale: 1:2500 post PAI Mastermap
GRID REF: E 338805 N 475995 (SD3875)
Address:
Blenkett Farm and
Blenkett Wood Lodge Park
Jack Hill
Allithwaite
LA11 7RL

DATE: 18/08/2011 Enforcement ref: 10208

- (3) Re-instate the Red Land by the introduction of top soil so as to restore the Red Land to the levels and surfacing that were in existence prior to the works taking place.

6. **TIME FOR COMPLIANCE**

3 calendar months after this Notice takes effect.

7. **WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect on 2 November 2011 unless an appeal is made against it beforehand.

Dated 21 September 2011

Signed 

Matthew Neal

Solicitor to the Council

On behalf of:-

South Lakeland District Council
South Lakeland House
Lowther Street
KENDAL
Cumbria
LA9 4UQ

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice.

You must submit to the Secretary of State either when giving notice of appeal or within 14 days of the Secretary of State giving notice so requiring a written statement specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts on which you are proposing to rely in support of each of those grounds.

FEES PAYABLE ON APPEAL

Pursuant to Regulation 10 of the Town and Country Planning Act (Fees for Applications and Deemed Applications) Regulations 1989 the following fees must be paid to the local planning authority and the planning Inspectorate respectively upon submission of an appeal;

Local Planning Authority	£170.00
Planning Inspectorate	£170.00

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, and for which you may be held responsible are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

PERSONS TO WHOM THIS ENFORCEMENT NOTICE HAS BEEN SERVED

In accordance with the legislation this enforcement notice has been served on the following individual;

1. Mr Richard Whitton, Blenkett Farm, Jack Hill, Allithwaite, Cumbria LA11 7RL
2. David Khan, The Pastures, Templand Lane, Allithwaite, Cumbria LA11 7QY
3. Helen Khan, The Pastures, Templand Lane, Allithwaite, Cumbria LA11 7QY
4. Barclays Bank PLC (Co registration Number 1026167) 1, Churchill Place, London E14 5HP
5. Barclays Business Banking Centre, Highgate, Kendal, LA9 4DA

RELEVANT STATUTORY PROVISIONS RELATING TO THIS ENFORCEMENT NOTICE
PLEASE READ THESE NOTES CAREFULLY

171A - Expressions used in connection with enforcement

- (1) For the purposes of this Act –
- (a) carrying out development without the required planning permission or;
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
- constitutes a breach of planning control.
- (2) For the Purposes of this Act –
- (a) the issue of an enforcement notice (defined in section 172); or
 - (b) the service of a breach of condition notice (defined in section 187A),
- constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

171B – Time Limits

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent –
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
 - (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take action in respect of that breach.

172 – Issue of enforcement notice

- (1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them-
 - (a) that there has been a breach of planning control; and
 - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served –
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

- (d) 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 those matters;
- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) 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;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made either-

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section "relevant occupier" means a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence in writing; and
- (b) continues so to occupy the land when the appeal is brought.

175 – Appeals: supplementary provisions

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—

- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- (b) specify the matters to be included in such a statement;
- (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;
- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local

planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the enforcement notice shall be subject to any order under section 289(4A) be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

(7) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under section 174 as if those proceedings were an inquiry held by the Secretary of State under section 250.

176 – General provisions relating to determination of appeals

(1) On an appeal under section 174, the Secretary of State may—

- (a) correct any defect, error or misdescription in the enforcement notice; or
- (b) vary the terms of the enforcement notice

if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and
- (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a), (b), or (d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

177 – Grant or modification of planning permission on appeals against enforcement notices

(1) On the determination of an appeal under section 174, the Secretary of State may—

- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 191, but as if-

- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- (b) references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: sections 191(5) to (7), 193(4) (so far as it relates to the form of the certificate), (6) and (7) and 194.

- (2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.
- (3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.
- (4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.
- (5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(5A) Where-

- (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if the fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.