
Appeal Decision

Site visit made on 29 January 2015

by **Paul Dignan MSc PhD**

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

Decision date: 12 February 2015

Appeal Ref: APP/HGW/14/382

Land at Wrask Farm, Desford Road, Newbold Verdon, Leicestershire.

- 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 made by Mr D Garland against the issuing of the notice by Hinckley and Bosworth Borough Council.
 - The Hedgerow Replacement Notice is dated 18 July 2014.
 - The Hedgerow Replacement Notice indicates that the Council considers that 3 hedgerows have been removed from the land in contravention of Regulation 5(1). The location of the hedgerows is shown on the plan accompanying the Hedgerow Replacement Notice.
 - The Hedgerow Replacement Notice requires that the hedges be reinstated using the following specification:
 - Hawthorn (*Crateagus monogyna*) 80%
 - Field Maple (*Acer campestre*) 5%
 - Hazel (*Corylus avellana*) 5%
 - Dogwood (*Cornus sanguinea*) 5%
 - Holly (*Ilex aquifolium*) 5%
 - A standard English Oak (*Quercus robur*) tree every 20 metres.
 - Time for compliance: Planting to be completed within the next planting season between November 2014 and February 2015.
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Decision

1. I direct that the Hedgerow Replacement Notice be varied by substituting the next planting season of November 2015 to February 2016 for that set out in paragraph 6 of the Notice. Subject to this variation I dismiss the appeal and uphold the Hedgerow Replacement Notice.

Reasons

2. The appeal concerns 3 sections of hedgerow at Wrask Farm, to the north-east of Newbold Verdon. These are a hedge running roughly east-west, which I shall refer to as Hedgerow 1, and 2 hedgerows running roughly north-south. I shall refer to the westernmost as Hedgerow 2 and the other as Hedgerow 3. The hedges were in close proximity and were identified from aerial photography from 2011. A number of other hedges in the vicinity, including some connected with those the subject of this appeal, were removed after notification in accordance with the Regulations, for reasons of farming efficiency. The aerial photograph submitted by the Council in evidence is to the scale of 1:1250 at A4 size. I have used this where measurements are concerned. The appellant

has used an earlier photograph, dated 2001, to the same scale. An extract of an 1885 map, also at 1:1250, was also submitted by the Council.

Hedgerow 1

3. The aerial photo shows a short section of hedge in line with two trees. The tree canopies obscure what is underneath, but all are on the line of a field boundary shown on the 1885 map. There is a small gap between the visible section of hedge and another hedgerow running at right angles. This hedgerow has now been lawfully removed.
4. The appeal in respect of this hedge is that the section of hedge that was present was less than 20m in length and not therefore covered by the Regulations. However, that was not necessarily all there was to the hedgerow. The trees were in the line of the historic field boundary and would therefore potentially have been part of the hedge, and the length of a hedge includes any gap not exceeding 20m. Across the 70m of historic field boundary there is no discernible gap of 20m on the aerial photo, so that for the purposes of the Regulations the hedgerow would have extended to the junctions with the hedgerows on either side. The actual extent of the hedge cannot be clearly discerned from the aerial photograph, but there is sufficient in that and the historic map to indicate that the Regulations may well have applied.

Hedgerow 2

5. This is a section of hedge running south from a still existing hedge and terminating at what appears from the aerial photograph as a field gate at a junction with 2 other hedges, both now lawfully removed. The appellant maintains that this section of hedge was only 16.5m in length, and hence not covered by the Regulations. However, a hedge which has a continuous length of less than 20m and meets another hedgerow at each end is a hedge to which the Regulations apply [Reg. 3(1)(b)]. The gap for the field gate is to be treated as part of the hedgerow. Until the removal of the linking hedgerows to the south, Hedgerow 2 would have been covered by the Regulations for this reason alone. I do not know the timing of the removal of the various hedgerows. If undertaken at the same time then the Regulations would have applied even if Hedgerow 2 was in fact less than 20m long, but in any case my own estimate of the length of the hedgerow, measured from the 2011 photo and excluding the field gate, indicates a hedge length of more than 20m, hence the Regulations would have applied regardless of the lawful removal of the linked hedgerows.

Hedgerow 3

6. This is a roughly 140m hedge which contained 4 ash trees along its length. The appellant maintains that it was destroyed by a tornado which hit the area in June 2012. He says 2 of the ash trees were uprooted, damaging part of the hedge and the other 2 left standing but severely damaged. Photos taken at the time show considerable damage, but they do not show the destruction of 140m of hedgerow. A submission by a local recalls that the damage was not as great as claimed.
7. All I can say on this matter is that a storm damaged hedge of this length is still a hedgerow to which the Regulations apply.

Appraisal

8. I find, on the balance of probability, that all 3 hedgerows were covered by the Regulations and would have required notification before any removal. Where hedgerows have been removed without notification, the Council is deprived of the opportunity to assess them, and can only assume that they were important, in the absence of good evidence to the contrary. In this instance it is relevant that the hedgerows would have had value in landscape terms due to the presence of a public footpath alongside Hedgerows 1 and 3 and through Hedgerow 2, but it is not necessary to establish whether or not the hedgerows were important, since the power to require replanting applies whether the hedgerow was important or not.
9. No specific justification is put forward for their removal, or for not replacing them, but I assume that farm efficiency lies at the root of the removals, notwithstanding that the hedge-owner may not have appreciated that they were hedges to which the Regulations applied. The replanted hedgerows would make some of the land more awkward to manage and less suited to modern agricultural machinery, but the Hedgerow Regulations seek to retain important hedgerows. In this context the national guidance¹ is that the circumstances in which their removal might be justified are likely to be exceptional. The advantages that would be gained in terms of convenience and farming practice more generally, do not, in my view, amount to exceptional circumstances in this case.
10. In conclusion, I find that the hedgerows have been removed in contravention of Regulation 5(1), without adequate justification. In the circumstances I conclude that it is reasonable to require their 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 in the period November 2014 to February 2015. This is no longer possible and accordingly I shall vary the notice to enable planting in the next available planting season.

Paul Dignan

INSPECTOR

¹ *The Hedgerow Regulations 1997: A Guide to the Law and Good Practice*

