



---

## Appeal Decision

Site visit made on 17 August 2015

by **G D Grindey MSc MRTPI. Tech.Cert.Arb.**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 August 2015

---

**Appeal Ref: APP/HGW/14/384**

**Brockey Farm, Kirkby Road, Barwell, Hinkley, Leicester, LE9 8FT.**

- The appeal is made under Regulation 9 of The Hedgerow Regulations 1997.
  - The appeal is made by Mr J Woodward, F Woodward & Sons against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref 14/00989/HEDGE, dated 7 October 2014, was refused by notice dated 19 November 2014.
  - The development proposed is removal of 3 lengths of hedgerow (totalling 350m approx).
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The criteria cited in the Retention Notice indicated that the hedgerows were considered to be 'important' under the terms of the Regulations by virtue of **Criterion 1**: the hedgerow marks the boundary, or part of the boundary, of at least one historic parish or township; and for this purpose "historic" means existing before 1850; **Criterion 4(a)** the hedgerow marks the boundary of a pre-1600 AD Estate or manor recorded at the relevant date in a Sites and Monuments Record or in a document held at that date at a Record Office; and **Criterion 5(a)**: the hedgerow is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts.
3. In their written statement of 30 January 2015, paragraphs 6.4 and 6.7, the Council stated they had referred to Criterion 1 and 4(a) on the Retention Notice in error. Accordingly, I deal with the appeal solely on the basis of the remaining **Criterion 5(a)** point.

### Importance

4. To qualify as "important" under the Hedgerow Regulations 1997, 2 tests are set out in paragraph 4 of the Regulations. Firstly, a hedgerow has to have existed for 30 years or more. Secondly, it must satisfy at least 1 criterion listed in Part II of Schedule 1. Of these, one relates to a hedgerow that is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts (5(a)). The Council shows that the hedgerows appear on the 1841 Barwell Tithe Map.

5. The 'Inclosure Acts' is a collective title applied to a number of Acts and is so named by the Short Titles Act of 1896. The earliest of the Acts known by the collective title dates from 1845. This means that the Barwell Tithe Map of 1841 is sufficiently old for the purposes of meeting the test set by the Regulations. Field boundaries corresponding to each of the 3 appeal hedgerows are shown on the Barwell Tithe Map and I am therefore satisfied that this evidence is sufficient to establish that these hedgerows are an integral part of a field system pre-dating the Inclosure Acts.
6. I note that the appellants argue that the Council has, on another application (relating to other hedgerows – Ref no 13/01043) judged that those hedgerows did not qualify under the Regulations and that their subsequent removal would render the 'hedgerow system even more incomplete.'<sup>1</sup> However, the Courts have held that a hedgerow can be considered important under paragraph 5(a) regardless of the current completeness of the historical field pattern<sup>2</sup>.
7. Having established that the 3 lengths of hedgerow are "important" in terms of the Regulations there is a presumption in favour of their retention<sup>3</sup>. The reasons given for removal are the need for the fields to have as few headlands as possible to reduce soil compaction; the need to cultivate across the slopes to reduce soil erosion and the need for square fields to reduce overlapping and thus over-dosing which might lead to water pollution when applying herbicides and fertiliser.
8. Notwithstanding these submissions, the Regulations were introduced specifically to provide protection for hedgerows of particular interest in the face of pressures (such as are argued) related to increasing farm efficiency. The circumstances in which their removal might be allowed are "likely to be exceptional."<sup>4</sup> I appreciate that the removal of these would have some advantages in terms of farming efficiently but the national guidance states that the impact on a farming business would have to be "extremely serious" to justify the removal of an important hedgerow<sup>5</sup>.
9. At the time of my site inspection all of the fields had been cropped and recently harvested; there did not appear to be any appreciable areas of farmland that could not be cultivated because of the presence of the 3 hedgerows. It was also clear that there were sufficient access points to allow large machinery to move between fields. Hence although it might be more convenient and marginally quicker to work the fields if the hedgerows were to be removed it is clearly not impossible given the present state of cultivation. It has not been demonstrated that the hedgerows in question prejudice the viability of the appellants' business to any such extent.
10. The grounds of appeal do not add up to the *exceptional* circumstances which would justify the removals sought and as referred to in the *Good Practice Guide*.
11. I have taken account of all other matters raised, including the Council's decisions on other hedgerow applications at other farms nearby to which the appellants refer. I do not have all the evidence they had concerning those

---

<sup>1</sup> Letter from Messrs D and J Woodward dated 10 February 2015.

<sup>2</sup> See the Judicial Review of *Flintshire County Council v NAW & Mr J T Morris*

<sup>3</sup> Paragraph 1.6 of *The Hedgerow Regulations 1997: A Guide to the Law & Good Practice*

<sup>4</sup> Paragraph 8.16 of *The Hedgerow Regulations 1997: A Guide to the Law & Good Practice*

<sup>5</sup> Paragraph 8.19 of *The Hedgerow Regulations 1997: A Guide to the Law & Good Practice*

hedgerows but, in any event, I can only deal with the application before me. I am also aware of the new hedgerow planting carried out and indeed saw some during my site inspection. The appellants' wish to rationalise their fields is a factor to which I have given serious thought and with which I have sympathy. I have seen nothing, however, that changes my decision on this appeal. While I note that the appellants query the method of delivery of the Retention Notice, it appears to me that they were informed of the Council's decision 'before the expiry of the 42 day period', as set out in the Regulations. This date (19 November 2014) was set out in the Council's letter of 14 October 2014.

12. For the reasons stated, I believe it would not be in accordance with Government policy to allow the appeal.

*Gillian D Grindey*

Inspector

