

Appeal Decision

Site visit made on 21 November 2023

by **C. Beeby, BA (Hons), MIPROW**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Reference: APP/HGW/520

Dedham Hall Farm Cottage, Dedham Hall, Brook Street, Dedham, Colchester, CO7 6AD

- The appeal is made under Regulation 9 of the Hedgerows Regulations 1997 against a Hedgerow Replacement Notice (HRN).
 - The appeal is made by Anne Fletcher against the issuing of the notice by Colchester Borough Council.
 - The HRN is dated 8 July 2019.
 - The HRN indicates that the Council considers that a hedgerow has been removed in contravention of Regulation 5. The location of the hedgerow is shown marked on the plan attached to the HRN.
 - The HRN requires the owner/tenant to plant another hedgerow.
-

Decision

1. The appeal is dismissed in part and the HRN is modified as set out in Appendix 1 to this decision.

Background and Main Issue

2. The Hedgerows Regulations 1997 (the Regulations) seek to address the ongoing loss of hedgerows from the countryside, as they can make a positive contribution to the character and appearance of the landscape and may have historic and biodiversity value.
3. The purpose of the legislation contained in the Regulations is to protect hedgerows which are considered to be important, allowing their removal only in certain exceptional circumstances. Where it appears to a local planning authority that a hedgerow has been removed in contravention of Regulation 5 (1) or 5 (9) of the Regulations, the authority may issue an HRN, under Regulation 8 of those Regulations, requiring the owner of the land to plant another hedgerow.
4. In this case the Council alleges that a hedge (the alleged hedgerow) was removed without prior consent during vegetation removal works in the field concerned which were carried out in October 2018. The appellant, who owns the land, considers that a hedgerow did not exist along the suggested line at that time.
5. As such the main issue is whether the HRN was legitimately issued.

Reasons

6. The power to issue a HRN applies whether the alleged hedgerow was important or not. The Regulations apply to any hedgerow growing in, or adjacent to, particular types of land, including land used for agriculture. The Regulations provide a definition of “agriculture” which includes fruit growing, the keeping of livestock, the use of land as grazing land, and meadow land. The hedgerow must have a continuous length of, or exceeding, 20 metres, or must meet another hedgerow where its length is less than this.
7. The alleged hedgerow lies between a grassed field and an overgrown area. The appellant stated in 2019 that, during the 16 years she had known the land, it had not been used for any purpose other than parking for village events. She stated that there were approximately ten fruit trees on land on one side of the hedge, but that any fruit from these was not picked.
8. Whilst fruit was not harvested from the trees on the land, it was grown. Furthermore, the grassed field has the appearance of a “meadow” and this appears to have been the case at the time of the works in the field. These considerations suggest some conformity with the definition of agriculture within the Regulations. Moreover, evidence from the Rural Payments Agency shows that the land in question was included on claims made under the Basic Payment Scheme from 2015-2017. It is undisputed that such payments are made in respect of agricultural land. Thus, it is most likely that the land or adjacent land was used for agriculture at the time of the works in the field. It is undisputed that the alleged hedgerow was at least 20 metres long. The available evidence consequently indicates that the Regulations apply to the alleged hedgerow.
9. An Ordnance Survey map of 1880 shows a boundary following the line of the alleged hedgerow at that time, but does not confirm what form the boundary takes, so that it attracts only limited weight in support of the HRN. A photograph from 2017 shows a line of mature vegetation with a dense appearance, however from the distance at which the photograph was taken it is not possible to ascertain whether this line shows the alleged hedgerow or vegetation to the north of it.
10. Aerial photographs of 2000, 2006 and 2012 show a line of generally continuous vegetation. The feature on the 2000 aerial photograph is likely to appear somewhat exaggerated due to the presence of long shadows and hence the document does not clearly show the extent of any hedgerow. However, the presence of mature vegetation along the alleged hedgerow is more clearly visible on the 2006 photograph. At least two bushes which are not currently present cast a noticeable shadow, indicating some height and hence maturity. Features on an aerial photograph of 2018 are too indistinct to be able to draw any conclusions from it.
11. Some vegetation is visible on an extract of undated aerial photograph taken in May, including apparent flowering hawthorn bushes which approximately correspond to the five or six which I saw at my site visit. Although the photograph is not particularly clear, one convex feature at the centre of the alleged hedge evidently represents a mature bush, which is not currently present.
12. The person who carried out the works in the field states that they did not remove any live plants that would constitute hedging. They state that the hawthorn bushes were left. They recall that mainly brambles and ivy were present, with “a couple of

dead elders”. However, there is no evidence that the vegetation which was removed was wholly incapable of regeneration. Even if it appeared to be in a deteriorated state at the time of the works, the Regulations do not exclude such vegetation from protection.

13. Hawthorn and elder are included in the list of woody species which can contribute to the identification of an “important hedgerow”, according to the Regulations. Both are consequently species which can form part of a hedgerow. It is submitted in support that the alleged hedgerow also contained other woody species such as elm, ash and field maple, although no evidence of this is provided.
14. Approximately eight hedgerow bushes or trees, including hawthorns, currently form a sporadic line of vegetation with large gaps along the route of the alleged hedgerow. Intervening bushes which are visible on the aerial photography are not present, and there are no signs that they have been coppiced or cut to ground level. Thus, it is most likely that they have been uprooted or otherwise destroyed.
15. Accordingly, even if most of the hawthorn plants were retained and solely elders and potentially other woody species were removed, together they evidently formed a length of hedgerow. Such works would have comprised the removal of part of that hedgerow. The lack of a continuous line of hawthorn blossom in one aerial photograph consequently does not establish that a hedgerow was not present.
16. Submissions from members of the public, who had taken the track past the field for 14 and 60 years respectively, state that they could not recall a hedgerow at the location. Nevertheless, the latter person remembers several “large thorn trees” with intervening vegetation, suggesting that they recall the existence of a line of vegetation. Whilst I note this evidence, the lack of recollection of a hedgerow in any form is somewhat inconsistent with the aerial photograph evidence and consequently attracts only minimal weight.
17. Any lack of response to a newspaper article on the issue similarly attracts only minimal weight in my decision because it shows only an absence of comment and it is not overt evidence against or in favour of the HRN.
18. There are now significant gaps in the thicker hedgerow which appears in the aerial photography. In particular, the extent of the mature vegetation visible on the east side of the 2006 aerial photograph is inconsistent with the two modest hawthorn bushes, with a substantial intervening gap, which are now present on that side. The aerial photography consequently shows a considerably greater density of mature hedgerow vegetation than the sporadic plants currently present at the site.
19. I accept that some of the vegetation removed is likely to have been low undergrowth which did not necessarily contribute to a hedgerow, and that a small number of bushes or trees remain. However, on the available evidence, it is most likely that a number of mature hedgerow bushes were removed in 2018, and that the feature formed a hedgerow to which the Regulations apply.
20. The HRN requires the planting of a new hedge along the entire line of the removed hedge. As approximately eight mature hedgerow trees remain growing along its line, I have amended the HRN to clarify that they should be retained. I have additionally amended the period required for compliance in order to update the time frame referred to, and to allow a reasonable period for the appellant to arrange the necessary works. Finally, I have added a clause requiring the approval by the

Council of an establishment/maintenance and beating up phase, in order to ensure that any failures in the replacement planting are addressed.

Conclusion

21. In light of the above, I conclude that some sections of the hedgerow have been removed and the HRN has been legitimately issued having regard to the provisions of Regulation 8. As such, the appeal is dismissed in part and the HRN is modified as set out in Appendix 1.

C Beeby

INSPECTOR

APPENDIX 1

I direct that the Hedgerow Replacement Notice (HRN) be modified as shown below:

Amendments to HRN

First bullet point:

Amend "Plant a new hedge" to "Plant a new hedge, except at the locations where there are existing hedgerow bushes or trees, such as hawthorn and elder".

Third and fourth bullet points (period required for compliance):

Third bullet point: Delete "2019/20" and replace it with "2024/25".

Fourth bullet point: Delete "by the end of the current planting season i.e. end of November 2019 to start of March 2020" and replace it with "by the end of the next planting season i.e. end of November 2024 to start of March 2025".

Fifth bullet point (to be added):

Obtain the approval of the Council of an establishment/maintenance and beating up phase, in order to ensure that failures are addressed.