



## Appeal Decision

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by Mr A Thickett BA (Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 19/12/2023

Appeal reference: CAS-02339-V3R7W8

Site address: Land opposite Rose Cottage, Llanbadoc, Usk, Monmouthshire, NP15 1PR

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- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991. The appeal is made by Mr I Lewis against an enforcement notice issued by Monmouthshire County Council.
  - The enforcement notice, numbered E20/104, was issued on 17 October 2022.
  - The breach of planning control as alleged in the notice is without planning permission, engineering works to raise ground levels and fill a ditch adjacent to public highway.
  - The requirements of the notice are to return the land edged red to its former condition and levels before the breach of planning control occurred as illustrated in Appendix A and Appendix B.
  - The period for compliance with the requirements is 3 months from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)[a] of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 7 December 2023.
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### Decision

1. The appeal is dismissed.

### Background

2. The appeal is made under ground (a) only, that being planning permission should be granted for the works subject to the Enforcement Notice.
3. The appeal site lies about half a mile to the west of Llanbadoc and comprises part of a field on the opposite side of a lane to Rose Cottage. The works to which the Notice relates is the filling in of a ditch or former roadway which ran parallel to the lane.
4. The field rises from the lane to the south. The ditch has been filled to follow the natural contours of the field and has been grassed over. To the west of the gate into the field and adjoining the lane, I saw a pile of vegetation. From the submitted photographs, this is presumably the remains of trees and shrubs cleared from the ditch before it was filled.

## **Main Issues**

5. The main issues are:

- whether raising ground levels and filling in the ditch has increased the risk of flooding,
- the impact of the works on the character and appearance of the area,
- the effect of the engineering operations on biodiversity.

## **Reasons**

### **Flooding**

6. I see no reason to doubt the ditch drained run off from the field away from the road. The road lies above the bottom of the field. At the time of my visit it was raining heavily. Water was puddling at the entrance to the field and I saw no evidence of run off from the field washing on to the highway at any point. Water was running from the west down the road along both edges of the carriageway but was not overflowing the road drains. However, my visit was one point in time and I note the Council's Senior Engineer's report that filling in the ditch has led to several impacts on flood risk.
7. The Council does not dispute the appellant's claim that he installed a 225mm twin wall plastic pipe in the bottom of the ditch which carries surface water from the road gully and land drains connected to it. However, I agree with the Council that in the absence of an assessment by a specialist chartered hydrogeologist detailing the impacts on, amongst other things, ground water levels, it is not possible to conclude that the works carried out by the appellant do not lead to an increased risk of flooding.
8. I note the appellant's offer to install a soak away at the entrance to the field but again, without any technical details and an assessment by a suitably qualified person, I cannot be certain this would be effective. Therefore, from the evidence before me, I cannot conclude that the works do not increase the risk of flooding and find that they conflict with Policy SD3 of the Monmouthshire County Council Local Development Plan 2011-2021, adopted 2014 (LDP).

### **Character and appearance**

9. As stated above, the filled area has grassed over to match the field and the levels follow the natural contours of the land. The loss of the trees shown on the submitted photographs is unfortunate but, subject to a condition requiring new planting, I do not consider the works to have a detrimental impact on the character and appearance of the area. I conclude, therefore, that, subject to the imposition of a condition, the works would comply with Policy LC5 of the LDP.

### **Biodiversity**

10. The field is likely to constitute improved grassland which tends not to be of high ecological value. The former roadway/ditch with its trees and shrubs is likely to have been a far better ecological resource. Having said that, I have neither seen nor read anything to suggest that a condition requiring the implementation of a biodiversity enhancement scheme could not restore the site to its former ecological value. I conclude, therefore, that, subject to the imposition of a condition, the works would comply with Policy S13 of the LDP.

**Conclusion**

11. Notwithstanding my findings with regard to the impact of the works on the character and appearance of the area and biodiversity, for the reasons given above and having regard to all matters raised, I cannot conclude that filling in the ditch would not increase the risk of flooding and the appeal is dismissed.

12. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives.

*A Thickett*

Inspector