

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: OLDHAM BOROUGH COUNCIL ("the Council")

TO: JOHN LEWIS TETLOW – 154 CHEW VALLEY ROAD, GREENFIELD, OLDHAM

1. THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there has been a breach of planning control, under section 171A(1)(a) 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.

2. THE LAND AFFECTED

Land off Tetley Bye road, Diggle, Oldham shown edged red and blue on the attached plan ("the land").

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, namely the land edged red on the plan has been excavated and the excavated materials have been deposited on land which now forms a hard standing, marked blue on the enclosed plan, situated to the south east of the derelict house. The excavated area edged red, has been in-filled and formed into a wide track with imported demolition materials. This area lies directly to the east of the derelict house, and once formed in part a narrow track leading from the Tetley Bye road down to the derelict house, the former Intake Farm.

4. REASONS FOR ISSUING THIS NOTICE

The land is within an area designated as Green Belt and also within an area designated as being of Special Landscape Value. It appears to the Council that the above breach of planning control has occurred within the last four years. Operations and alterations to the levels of the land were initially reported to the Council on 22nd August 2005. Inspection on 25th August 2005 revealed that excavation works had, in fact, started. This in spite of planning application number PA/025895/S being refused and planning appeal number T/APP/W4223/A/91/191634/P5 relating to planning application number PA/027030/91/S being dismissed on 5th March 1992.

5. WHAT YOU ARE REQUIRED TO DO

1. Remove all of the demolition materials and tarmac scrapings from the area of land edged red on the enforcement notice plan to a properly licensed land-fill site by prior arrangement with the Environment Agency at Appleton House, Birchwood, Boulevard, Birchwood, Warrington WA3 7WD
2. Restore the original levels of the land edged blue and red by removing the materials from the area edged blue (excavated from the land edged red) and placing those materials back onto the land edged red.

3. Remove any imported hardcore from the land and place the original soil evenly over the surface areas of the land, edged blue and red on the plan and leave to self-seed.

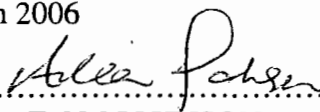
Time for Compliance:

1. Within one month from the date on which the notice takes effect.
2. Within two months from the date on which the notice takes effect.
3. Within three months from the date on which the notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on Monday 10th April 2006 unless and appeal is made against it beforehand.

Dated: 10th March 2006

Signed : 

AILEEN M JOHNSON
SOLICITOR TO THE COUNCIL
Council's authorised officer

on behalf of OLDHAM BOROUGH COUNCIL
CIVIC CENTRE
WEST STREET
OLDHAM OL1 1UL

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 10th April 2006. The enclosed booklet "Making your enforcement appeal" sets out your rights, the grounds of appeal and the procedure to be followed. Read it carefully. You may use the enclosed appeal forms. One is for you to send to the Secretary of State if you decide to appeal, one is for you to keep as a duplicate for your own records, and one is to be forwarded to the Local Authority. You should also send the Secretary of State the spare copy of this enforcement notice which is enclosed.

WHAT HAPPENS IF YOU DO NOT APPEAL

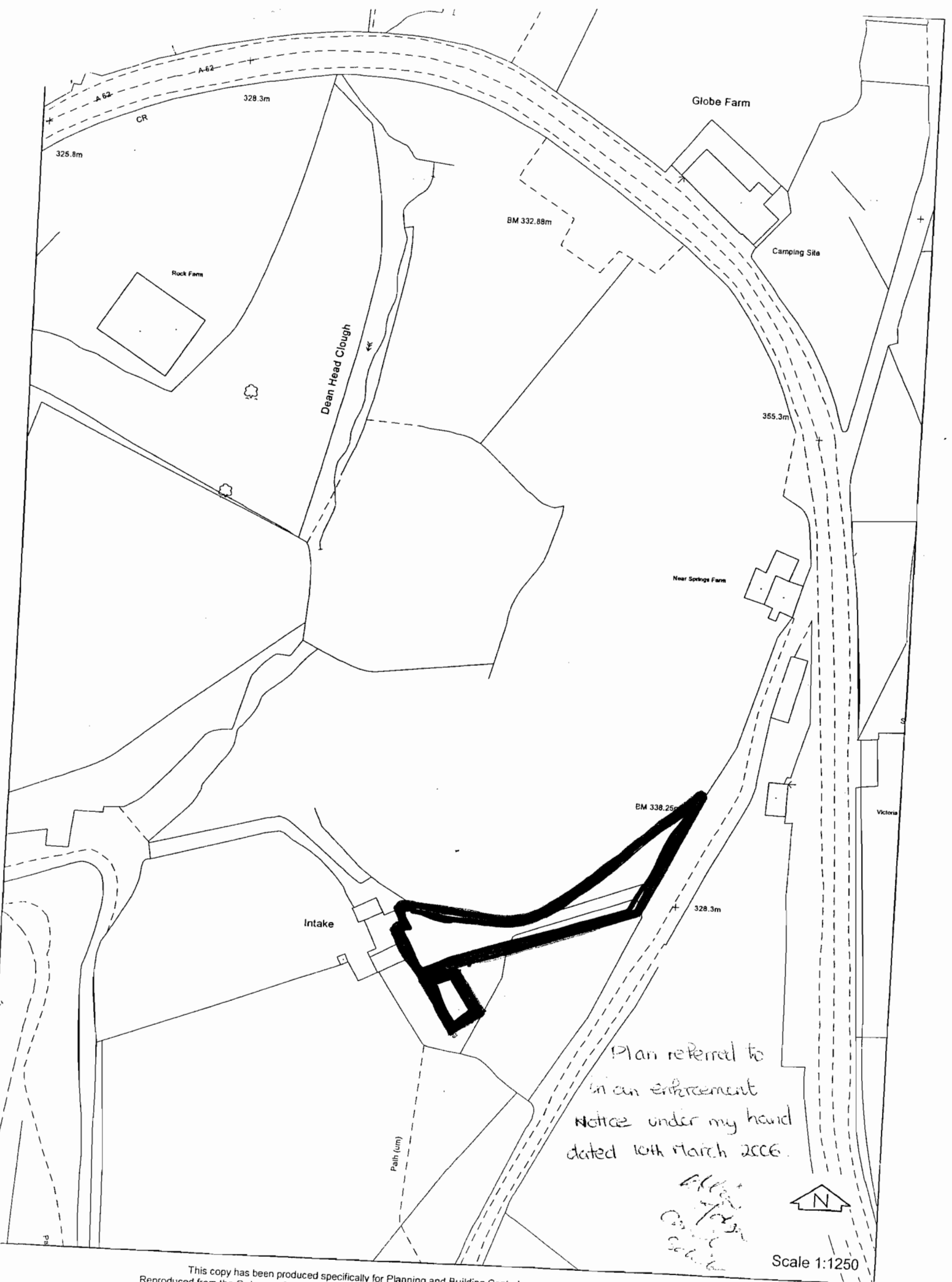
If you do not appeal against this enforcement notice, it will take effect on the 10th April 2006 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

IMPORTANT ADDITIONAL INFORMATION

The fee for the deemed planning application is £440 half of which is payable to the Council and half to the Office of the Deputy Prime Minister. There is no fee for the appeal itself.

A copy of this Enforcement Notice has been served on the following persons:-

1. Intake Farm, Off Tetley Bye Road, Huddersfield Road, Diggle
2. John Lewis Tetlow, 154 Chew Valley Road, Greenfield, Oldham OL3 7DD



***Internal
Memorandum***

Your reference:
Our reference: SH PE/473
Please ask for: Saiqa Hussain
Extension No: 4812
Date: 15th November 2006

FROM: STRATEGY & RESOURCES DIRECTORATE

TO: LAND CHARGES
FAO WENDY LONSDALE

RE: LAND OFF TETLEY BYE ROAD

I write following my memo dated 10th March 2006 and confirm that the enforcement notice attached to that memorandum has been the subject of an appeal.

The inspector appointed by the Secretary of State has amended the Enforcement Notice dated 10th March 2006 as follows:-

Paragraph 3 should now read " Without planning permission, the carrying out of engineering or other works for the widening and reconstruction of the access track to Intake Farm on the land edged red on the plan attached to the notice and for the provision of a hard standing on the land edged blue on the plan attached to the notice".

Paragraph 5 should now read:-

- "i) excavate and cart away all imported materials deposited on the land edged red on the plan attached to the notice for the purposes of widening and reconstructing the access track to Intake Farm;
- ii) restore the land edged red and blue on the plan attached to the notice to its condition and appearance before the unauthorised development took place by restoration of the original levels, spreading of topsoil evenly over the land and thereafter allowing the land to revegetate naturally by self-seeding".

Further the time for compliance shall now be 6 months.

Please ensure that the previous notice and these amendments remain on the register indefinitely.

If you require any further information please contact me.

AJ



Appeal Decision

Inquiry held and site visit made on 11 October 2006

David C Pinner BSc(Hons) DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date

30 OCT 2006

Appeal Ref: APP/W4223/C/06/2013004

Intake Farm, off Tetley Bye Road, Huddersfield Road, Diggle

- 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 John Lewis Tetlow against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The notice was issued on 10 March 2006.
- The breach of planning control as alleged in the notice is without planning permission namely the land edged red on the plan has been excavated and the excavated materials have been deposited on the land which now forms a hard standing, marked blue on the enclosed plan, situated to the south east of the derelict house. The excavated area edged red, has been infilled and formed into a wide track with imported demolition materials. This area lies directly to the east of the derelict house, and once formed in part a narrow track leading from the Tetley Bye Road down to the derelict house, the former Intake Farm.
- The requirements of the notice are to (i) remove all of the demolition materials and tarmac scrapings from the area of land edged red on the enforcement notice plan to a properly licensed land-fill site by prior arrangement with the Environment Agency at Appleton House, Birchwood Boulevard, Birchwood, Warrington WA3 7WD and; (ii) restore the original levels of the land edged blue and red by removing the materials from the area edged blue (excavated from the area edged red) and placing those materials back onto the land edged red and; (iii) remove any imported hardcore from the land and place the original soil evenly over the surface areas of the land, edged blue and red on the plan and leave to self seed.
- The periods for compliance with the requirements are (i) within one month from the date when the enforcement notice takes effect; (ii) within two months from the date when the enforcement notice takes effect and (iii) within three month from the date when the enforcement notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) has lapsed and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Procedural Matters

1. The enforcement notice includes extraneous information that is unnecessary to describe the alleged breach and which may be inaccurate in part. Furthermore, the first requirement goes too far in that it attempts to cover matters that are the subject of non-planning legislation. Nevertheless, the appellant understands which works the notice is directed against and what he is required to do to remedy the situation. I am therefore satisfied that I can vary the notice as necessary without prejudice to the interests of either party.

road, especially Roman, or a road lined with houses. The latter clearly does not apply. The appellant said that the track was over 200 years old and had originally been finished with a sett-paved surface with a width of 3 metres (10ft). Over time, land erosion had caused the width of the track to be reduced and the surface had become buried. The Council's evidence was that the track had been designated a public bridleway in 1964 and the relevant records showed that, at the time of designation, the width of the track varied between 1.2 and 2.4 metres.

10. From this evidence, it is possible that the track to Intake Farm can no longer be regarded as a private way for the purposes of Part 9 because of its designation as a public bridleway in 1964. Whether or not it could ever have been described as a street is a matter of conjecture because there is no remaining evidence of the sett-paved surface. However, those matters are of little importance because there is no dispute that the track has been widened even beyond the 3m claimed width of the original road to Intake Farm. Furthermore, the works that have been undertaken effectively amount to the reconstruction of the track and, as a matter of fact and degree, exceed what can properly be regarded as the improvement of the existing track. For these reasons, the development that has been undertaken is not permitted by Part 9 of the GPDO. In the absence of any planning permission for any of the engineering or other works that have been undertaken, I conclude that the development represents a breach of planning control. The appeal on ground (c) therefore fails.

Ground (f)

11. At the inquiry, it was accepted that, if I were to find that Part 9 of the GPDO applied to the old track to Intake Farm, there would be a fall-back position that would permit the track to be improved within its existing boundaries. The appellant's case was that this would permit the track to be improved within the 3 metre width of the original track. The Council's view was that it could only be improved within the 1.2 to 2.4 metres variable widths of the designated public bridleway.
12. The burden of proof in planning enforcement cases lies with the developer. I have no doubt at all that there has been an access track to Intake Farm for a very long time. It may indeed have once been 3 metres wide with a sett-paved surface, but there is insufficient evidence to suggest that this was a situation that lasted into modern times. By this, I mean before the introduction of the present system of planning control by the Town and Country Planning Act 1947. The only reliable evidence of the width of the track is that described when it was designated as a public bridleway in 1964. However, I am not convinced that the track can fairly be described as either a street or a private way, in which case Part 9 of the GPDO would not apply. Under these circumstances, I conclude that there is no viable fall-back position and that the only remedy to the breach of control would be to revert back to the situation that existed before the unauthorised works took place. Except to the extent I have already mentioned, the enforcement notice requires no more than that. The appeal on ground (f) therefore fails.

Ground (g)

13. The Council agreed at the inquiry that it would not now be practical to undertake the remedial work within the time allowed, bearing in mind the time of year. They suggested that the period for compliance should be extended to 6 months. They also undertook to meet the appellant in the hope of finding a solution that would enable him to provide a

APPEARANCES

FOR THE APPELLANT:

John Tetlow	Appellant
Linda Lyon	Appellant's partner
Stuart Mitchell	Queen Victoria House, Standedge Green, Diggle, OLDHAM OL3 5LU
Alan Rhodes	Newbarn, Harrop Green Farm, Diggle, OLDHAM OL3 5LW
Christopher Ruddy	Oakdene Farm, Deanhead, Saddleworth, OLDHAM OL3 5LU

FOR THE LOCAL PLANNING AUTHORITY:

Saiqua Hussain	Solicitor, Oldham MBC
David MacArtney	Principal Planning Officer, Oldham MBC
David Winterbottom	Planning Enforcement Officer, Oldham MBC
Andrew Wood	Planning Officer (Enforcement), Oldham MBC

INTERESTED PERSONS:

Wilfred Theakstone	Knowl Farm, Standedge, Delph, OLDHAM, OL3 5LU
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DOCUMENTS

Document 1	List of persons present at the inquiry
Document 2	Council's letter of notification of the inquiry and list of those notified
Document 3	Appendices 1 to 10 to Mr MacArtney's Proof of Evidence
Document 4	Appendices 1 to 8 to Mr Tetlow's Proof of Evidence
Document 5	Letters from Mrs Tweed and Mrs France confirming agricultural use of the land

PHOTOGRAPHS

Photo 1	Council's bundle of photographs of the appeal site
Photo 2	Aerial photograph provided by the Council
Photo 3	Appellant's photograph annotated "flat area adjacent to Intake Farm".