
Appeal Decision

Site visit made on 12 January 2017

by Roger Clews BA MSc DipEd DipTP MRTPI

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

Decision date: 19 January 2017

Appeal Ref: APP/U1620/C/16/3153836

Land at 7 St Alban's Road, Gloucester GL2 5FW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 [hereafter, "the 1990 Act"].
 - The appeal is made by McGurk Holdings Ltd against an enforcement notice issued by Gloucester City Council.
 - The enforcement notice, numbered 15/00009/OPDEV, was issued on 6 June 2016.
 - The breach of planning control as alleged in the notice is *The carrying out of engineering operations without planning permission to remove a substantial earth bund positioned along the boundary between the above land and the Public Open Space fronting Milton Avenue, Gloucester and the erection of an unauthorised enclosure (concrete blocks) to replace it.*
 - The requirements of the notice are: *Reinstate the earth bund along the South-East boundary of the land, within the position indicated on the attached plan marked "A" as it existed on 13 January 2015. Any materials used in reinstating the bund must be inert, uncontaminated earth.*
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c)&(f) of the 1990 Act.
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Decision

1. It is directed that the enforcement notice be varied as follows:

In section 3 (THE MATTERS THAT APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL), replace the words "enclosure (concrete blocks)" with "concrete block wall".

2. Subject to this variation, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the carrying out of engineering operations to remove a substantial earth bund positioned along the boundary between the above land and the public open space fronting Milton Avenue, Gloucester and the erection of a concrete block wall to replace it on land at 7 St Alban's Road, Gloucester GL2 5FW referred to in the enforcement notice, subject to the following conditions:
 - (1) No later than two months from the date of this planning permission, a full landscaping scheme to provide a tree- and shrub-planted landscape buffer between the concrete block wall and the eastern boundary of the appeal land shall be submitted to the Local Planning Authority (LPA) for the LPA's written approval. The scheme shall provide full details of

species, sizes of plants and methods of planting and spacing, together with a detailed programme of maintenance for a five-year period following planting.

- (2) The landscaping scheme approved in accordance with condition (1) shall be carried out in full in the first planting season after its approval and the five-year maintenance programme shall also be carried out as approved.
- (3) Any plants which die within a period of five years following planting shall be replaced by others on a like-for-like basis in the next planting season.
- (4) The height of the concrete block wall shall not be increased beyond its height at the date of this planning permission (2.4m maximum).

Procedural matter

3. The Council did not attend the site visit, but with the agreement of the appellant's agent I carried out an unaccompanied visit during which I was able to see everything necessary to enable me to reach my decision. The Council subsequently confirmed that they had no objection to this way of proceeding.

Reasons

Background

4. The appeal site, which is occupied by a business called Keyway, is located in an industrial area. It contains a large rectangular building and a portakabin, but most of its area is taken up by an uncovered yard. At the time of my site visit a considerable number of vehicles, including lorries, mechanical diggers and other items of construction machinery, were parked on the yard.
5. To the east of the appeal site is a residential area. The site and the neighbouring industrial premises back onto a sizeable area of open space which lies between them and the nearest houses. Part of the open space, directly behind the appeal site, is occupied by a children's playground.
6. The "enclosure (concrete blocks)" to which the enforcement notice refers is in fact a wall made of interlocking concrete blocks that runs across the appeal site about 4m inside its rear (eastern) boundary. Because the notice description is not entirely clear I shall vary the notice to refer instead to a "concrete block wall".

The appeal on ground (c)

7. In order for the appeal to succeed on ground (c) it must be demonstrated that the matters alleged in the enforcement notice were not a breach of planning control. I deal first with the erection of the concrete block wall. I was not able to measure its full height on site but I saw that it is made up of three courses of blocks and that each block is about 750-800mm high. This means that the wall's total height exceeds 2m and so its erection could not have been permitted development by virtue of Part 2, Class A of Schedule 2 to the GPDO¹. No other reasons were advanced by the appellant to show that the erection of the wall was not a breach of planning control.

¹ The *Town and Country Planning (General Permitted Development) Order 1995*, as amended. That was the version of the GPDO in force when the alleged breach of planning control took place.

8. Turning to the other aspect of the alleged breach, there is no dispute that there was previously a substantial earth bund in approximately the position now occupied by the wall and that it has been removed without planning permission. It is unfortunate that the Council are unable to provide any information about the planning history of the site. Nonetheless, the regular shape of the bund, as shown on the Ordnance Survey-based plan that accompanied the enforcement notice, strongly suggests that it was deliberately constructed as a boundary feature. Moreover, its sheer size (over 65m long and over 15m wide according to the enforcement notice plan) means that its removal must have been a very substantial operation.
9. On the balance of probabilities, therefore, I find that the removal of the earth bund was not permitted development by virtue of Part 8, Class C of Schedule 2 to the GPDO¹. It was not an integral part of the work to provide a hard surface as an extension to the existing yard. It was a separate, substantial engineering operation in its own right and as such it was a breach of planning control.
10. For these reasons the appeal on ground (c) fails.

The appeal on ground (a)

11. In contrast to the vegetated earth bund the concrete block wall has a stark, unattractive appearance that detracts from the enjoyment of the open space onto which it faces. It is true that adjacent industrial properties which also back onto the open space are bounded by tall steel or wooden fences. But these have a less imposing visual impact than the solid block wall, and moreover trees and shrubs have grown up in front of them to soften their appearance.
12. I am not persuaded by the Council's claim that the earth bund also provided a noise-screening function. That claim is unsupported by any evidence that it was formed for that purpose, or by any evidence of how effective it would have been in reducing noise. There is a substantial distance between the back of the appeal site and the nearest residential properties which limits the impact of noise emanating from the site in any case.
13. The Council also suggest that the earth bund provided screening from the vehicles and external light sources on the appeal site. However, they have not contradicted the appellant's assertion that the bund was 1.8m high. In addition to the bund itself, trees or shrubs growing on top of it may have provided additional screening, but they could have been removed at any time without the need for planning permission. On the evidence that is before me, my view is that the bund itself is unlikely to have provided any more screening for the appeal site than the concrete block wall that has replaced it.
14. Nonetheless, the harmful visual effects that have been caused by the removal of the earth bund, and its replacement with the concrete block wall, conflict with the requirement in paragraph 17 of the NPPF² that planning should always seek to secure high-quality design and a good standard of amenity. NPPF paragraph 64 advises that permission should be refused for development of poor design.

² The *National Planning Policy Framework*, March 2012

15. However, at paragraph 203 the NPPF also advises that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions. In this case, the Council have proposed conditions requiring a landscaping buffer consisting of trees and shrubs to be planted, and maintained, in the roughly 4m-wide gap between the wall and the eastern boundary of the appeal land, which is marked by a chain-link fence.
16. I consider that the trees and shrubs would soften the appearance of the wall so that it would no longer have a harmful visual impact on the adjacent open space or the residential properties beyond. As such, the Council's proposed conditions would make the unauthorised development that has taken place acceptable, and enable planning permission for it to be granted.
17. There is no need to impose the Council's suggested condition requiring the concrete block wall to be no more than 2m high. It is already more than 2m high and reducing its height would reduce its effectiveness in screening the appeal site. Instead I shall impose a condition prohibiting any further increase in its current height, as any such increase would unacceptably worsen its visual impact.
18. The appeal on ground (a) therefore succeeds and I shall grant planning permission for the development that has been carried out subject to the conditions outlined above.

The appeal on ground (f)

19. With the success of the appeal on ground (a) it is unnecessary for me to consider ground (f).

Roger Clews

Inspector