

Appeal Decision

Site visit made on 18 September 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 October 2019

Appeal Ref: APP/G2245/C/18/3205644

Land to the south-west of Warren Court Farm, Knockholt Road, Halstead, Kent TN14 7ER

- The appeal is made by Ian Butler under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 17/00369/MCU) issued by Sevenoaks District Council on 23 May 2018.
 - The breaches of planning control alleged in the notice are "the erection of bunds over two metres in height and the change of use of land for the storage of vehicles".
 - The requirements of the notice are as follows: -
 - The removal of bunds shown with red lines marked A on the attached plan.
 - Cease the use of land indicated with a blue line for storage of vehicles and return the land to its previous condition, including the removal of all vehicles on the land marked B."
 - The period for compliance with these requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f).
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Decision

1. It is directed that the enforcement notice be varied by replacing "The removal of bunds shown with red lines marked A on the attached plan" by "Reduce the height of the bunds shown with red lines marked A on the attached plan so that the height of none of them exceeds 2 metres above ground level".
2. Subject to this direction, the appeal is dismissed and the enforcement notice is upheld as varied.

Reasons for the decision

The change of use of land for the storage of vehicles

3. The appellant accepts that the land marked B on the plan attached to the enforcement notice was used for a period of time for the storage of vehicles in breach of planning control. However, he maintains that the notice should be amended by deleting this element from it, since the vehicles had been removed by the time the appeal was submitted.
 4. I accept that the vehicles had been removed by this time and that no vehicles were being stored on the land marked B at the time of my visit. The land also appears to have been returned to its previous condition, as required by the notice. I have, however, decided to leave this element of the notice unchanged since, by virtue of section 181, compliance with the notice has not discharged it
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and the notice will operate as a requirement to permanently discontinue the use of the land for the storage of vehicles, so that any resumption of that use will be a contravention of the notice.

5. The appeal has therefore failed in so far as it relates to the storage of vehicles.

The erection of bunds over two metres in height

6. The bunds have been treated by the Council as means of enclosure. None of them is adjacent to a highway and their construction is therefore permitted development, provided their height does not exceed 2m above ground level. The appellant maintains that the height of some of the bunds does not exceed this limit and that the appeal should therefore succeed under ground (c) in respect of these bunds.
7. There are two distinct sets of bunds. The height of those in the north-western corner of the site plainly exceeds 2m above ground level. The height of those in the north-eastern part of the site varies between slightly below 2m above ground level to appreciably above 2m above ground level. However, these bunds appear to have been constructed in a single operation and, since the height of some of them exceeds the 2m limit, these bunds as a whole are in my opinion unauthorised.
8. I have therefore concluded that planning permission is required for the construction of all the bunds. Since it has not been obtained, the appeal on ground (c) has failed.
9. Under ground (f), the appellant maintains that the requirement in the notice to remove all the bunds exceeds what is necessary to remedy the breach of planning control and that the requirement should be altered so as to require their height to be reduced to 2m or less. The Council state in response that their removal is considered to be appropriate in order to retain the openness of the Green Belt.
10. The permitted development right to construct means of enclosure is not restricted in the Green Belt and the appropriate requirement of the notice, therefore, to accord with section 173(4)(a), is to reduce the height of the bunds to the permitted limit. The requirement has been varied accordingly and the appeal has succeeded on ground (f) to this extent.

D.A.Hainsworth

INSPECTOR