



Appeal Decisions

Site visit made on 18 November 2019

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 06 January 2020

Appeal A: APP/K0235/C/19/3223058

Monoworld Business Park, Rushden Road, Sharnbrook, Bedfordshire MK44 1NB

- 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 Monoworld Limited against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice, referenced 15/00339/MINENF/1, was issued on 21 January 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the enlargement of earth bunds on the Land, in the area shown coloured yellow and by cross hatched lines on the attached plan (Reference **Plan LPA1**)".
 - The requirements of the notice are:
 - (a) Cease and do not resume the deposition of soils on either of the southern or western bunds, as shown coloured yellow and cross hatched on the attached Plan **LPA1** (known thereafter as "the bunds")
 - (b) Reduce the vertical height of all the southern bund (Bund 'S' on Plan LPA1) to a maximum of 3 metres above the adjacent ground level without increasing the horizontal spread of the bund by the removal of materials from the Land;
 - (c) Reduce the vertical height of all the western bund (Bund 'W' on Plan LPA1) to a maximum of 1.5 metres above the adjacent ground level without increasing the horizontal spread of the bund by the removal of materials from the Land;
 - (d) Revise the gradient of all the sides of the bunds, to a gradient of no less than 1:3 (1 in 3) and remove all surplus materials from the Land.
 - (e) Landscape the bunds in strict accordance with the planting schedule set out in attached document **LPA2**. Thereafter maintain the planting for a period of five years from the date of the first planting and replace any dead or dying specimens within each planting season (October – March).
 - The period for compliance with the requirements is, from after the notice takes effect:
 - a. For step (a) One day
 - b. For step (b) Three (3) months
 - c. For step (c) Three (3) months
 - d. For step (d) Three (3) months
 - e. For step (e) following the full compliance with requirements (a) to (d) inclusive all the planting on the bunds to be carried out within a period of 10 months from the date this Notice takes effect and thereafter to carry out a bi-annual maintenance of the bunds and the immediate replacement of all dead plants with the same species of plants for a period of five years from the date of the latest planting..
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/K0235/C/19/3223060

Monoworld Business Park, Rushden Road, Sharnbrook, Bedfordshire MK44 1NB

- 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 Monoworld Limited against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice, referenced 15/00339/MINENF/2, was issued on 21 January 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the construction of an open sided, steel framed pitched roof structure shown coloured red and marked as Building 'A' on the attached plan (Reference Plan **LPA1**)".
 - The requirements of the notice are:
 - (i) To carry out the installation of dark green metal cladding to match the dark green colour of the cladding on the existing industrial buildings on the Land on all the elevations of the building coloured red and marked Building 'A' on Plan **LPA1**; in accordance with the elevation details as shown on the attached plan reference Plan **LPA2** (Drawing 13 17152/02 Revision F), and thereafter retain the dark green metal cladding on all the elevations.
 - (ii) Landscape the part of the north boundary between points 'B' and 'C' and marked yellow 'Proposed Planting 'B' – 'C' on Plan **LPA1** in strict accordance with the planting schedule set out in attached document **LPA3**. Thereafter maintain the planting for a period of five years from the date of the first planting and replace any dead or dying specimens within each planting season (October – March).
 - The period for compliance with the requirements is:
 - (i) For step (i), two calendar months after the date the Notice takes effect;
 - (ii) For step (ii), within a period of 10 months after the date the Notice takes effect and thereafter to carry out a bi-annual maintenance of the planting and the immediate replacement of all dead plants within the same species of plants for a period of five years from the date of the latest planting.
 - The appeal is proceeding on the grounds set out in section 174(2)(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) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld with variations.

Preliminary Matters

Appeal A

3. Appeal A concerns the enlargement of bunds on the southern and western site boundaries, and the notice seeks to impose a landscaping, planting and maintenance scheme. The maintenance requirements are insufficiently precise to amount to 'steps' to be taken within a 'period' as the legislation requires (subsections 173(3) and 173(9) of the Act) and there are some minor discrepancies within the notice that require varying.

4. Paragraph 5(a) is directed towards a potential future breach of planning control, rather than the past breach of control alleged by the notice, and so I shall delete that requirement, and its corresponding period for compliance in paragraph 6(a).
5. There appears to be an error in the reference to the required gradient at paragraph 5(d), which contradicts the reference to a 'maximum' gradient of 1:3 in document LPA2 and the Council's case more generally. I shall delete "less" and replace it with "steeper".
6. The requirement to "maintain the planting" in paragraph 5(e) is, as mentioned above, insufficiently precise to amount to a step, and so I shall delete the second sentence of paragraph 5(e). The corollary of that change is to delete "and thereafter" and the ensuing words from paragraph 6(e).

Appeal B

7. Appeal B concerns the erection of a building. The Council do not require its removal, but require cladding and some landscaping of the northern site boundary. Again, the notice seeks to impose ongoing maintenance requirements of the planting that I find to be insufficiently precise, and so I make similar changes to this notice.
8. I shall delete the second sentence of paragraph 5(ii), and again, the corollary is to delete "and thereafter" and the ensuing words from paragraph 6(ii).
9. Additionally, paragraph 5(i) of the notice contains a requirement to retain the cladding once installed. No period for compliance is (or could be) given for this requirement, and it is unnecessary because of the provisions of section 181 of the Act, giving the enforcement notice a continuing effect. I shall therefore vary the notice to remove this requirement, by deleting "and thereafter" and the ensuing words from paragraph 5(i).
10. I am satisfied that none of the above variations will cause injustice to either party.

Appeal A, ground (a)

Main Issue

11. The main issue is the effect of the bunds, together with any landscaping scheme that might be achievable, on the character and appearance of the area.

Reasons

12. The site has a recent planning history of use as a waste recycling facility, established by the grant of a planning permission in 2006. It lies on an exposed hilltop site amidst farmland, and is prominent in views from the A6 main road, from a public footpath that passes the site adjacent to its western boundary, and from wider views in the area. The land falls away to the south and east, but is fairly level to the A6 passing to the north and to an established area of woodland to the west. The site presently contains three principal buildings to the northern, eastern and western sides. The latter building is the subject of Appeal B.
13. Permission for the eastern building was granted in 2012 with a planning condition (No 14) requiring the submission and approval, and subsequent

- implementation and aftercare of, a planting scheme at the site boundary, which included soil bunds to the southern and western sides. The bund to the south was then approximately 3 metres high, and to the west approximately 1.5 metre high. The planting scheme was subsequently approved and carried out towards the end of 2013.
14. Subsequently a permission was granted in 2014 for a building at the western end of the site, including a condition (again No 14) requiring a planting scheme, this time to the northern boundary. The permission included other elements, and the parties disagree as to whether it has been implemented, although it is common ground that the western building that has been erected does not comply with the plans approved by that permission.
 15. The construction of the western building involved further earthworks, with the deposition of soils atop the existing bunds to the site's southern and western boundaries. As a result the bunds have each increased in height to around 4m. At the time of my site visit I saw that they were steep sided and largely covered with grass and weeds. Any tree or shrub planting established under the 2012 permission (or previously) has been destroyed.
 16. Policy BE30 of the Bedford Borough Local Plan 2002 ('the BLP') requires consideration to be given to the visual impact of new developments when determining applications. Policy CP24 of the Borough's Core Strategy and Rural Issues Plan of 2008 ('the CS') requires new development to protect and where appropriate enhance landscape character, and that the nature and scale of development should be appropriate within the landscape. Policy GE1 of the Bedfordshire Minerals and Waste Local Plan of 2005 ('the MWLP') requires consideration to be given to the effects of development on the public rights of way network and on countryside access and enhancement. Policy GE9 of the MWLP requires development proposals to be sympathetic to the local landscape character, and where appropriate to include landscaping schemes. Policy GE10 of the MWLP requires proposals to seek to retain tree and hedgerow cover.
 17. The Council is concerned by what it perceives to be the adverse landscape impacts of the enlarged bunds, not only because they are unsympathetic in themselves but because their steep gradients have resulted in soil slippage and are not capable of the routine maintenance that any replacement planting scheme would require. In the Council's view, the bunds are unreasonably prominent in the rural landscape and are unable to be suitably landscaped or maintained. It appears to me that a tree planting scheme would be unlikely to successfully take hold on the bunds as they are now constructed.
 18. The appellant has stated a willingness to implement some planting on the existing bunds in order to soften their appearance, and suggests that a landscaping scheme may be achievable by the imposition of a planning condition. No detailed scheme is before me. The appellant suggests that a planting scheme of the existing bunds would be likely to include suitable low-level shrubs, plants or grasses.
 19. Even if such low-level shrubs, plants or grasses could take hold on the existing bunds, I do not consider that they would result in an effective landscaping solution to what has occurred. At present, the bunds are large and uniform, in marked contrast to the rolling topography of the surrounding landscape. Low-level planting would not disguise the shape or form of the bunds.

20. By contrast the proposed reduction in the height and especially the gradient of the bunds sought by the notice would enable a planting scheme to take effect that would integrate the site into the landscape much more naturally and successfully. The contrasting landform would be considerably reduced, and the resulting heights and gradients of the bunds would allow more significant tree planting to become established, that in the long term would integrate the retained bunds into the landscape, rather than the low-level planting suggested by the appellant which would not be capable of successfully disguising or integrating the forms of the bunds.
21. The appellant encloses correspondence from 'Green Landscapes' suggesting that the former planting scheme under the 2013 permission was not successfully established, because of the height of the bunds and the difficulty of planting and maintenance. However the Council's appeal documents include site photographs from 2013 and 2014 that appear to show the former tree planting becoming secure. I therefore consider that, if the bunds are reduced to the heights and gradients sought by the notice, the planting proposals put forward by the Council are likely to succeed.
22. The appellant points out that, as well as the various buildings on the site, waste bales are stored on the site to a height of 4m. It is contended that the bunds provide an operational and visual barrier to the site's buildings and waste management operations.
23. The bunds do not entirely occlude the bales of waste, and less so the buildings that are on the site, but they do provide a significant visual barrier. They may also have some usefulness in preventing the deposit of wind-blown waste onto the farmland outside the site. However, these advantages do not in themselves overcome the significant visual harm resulting from the appearance of the bunds. The screening advantages that the bunds provide can be achieved in a different way, by reducing their heights and gradients and establishing a successful planting scheme around the relevant site boundaries.
24. The steps required to be taken by the notice in Appeal A essentially seek to remove the unauthorised development and to impose a planting scheme rather similar to that approved under the 2012 permission. The Council explain that the purpose of the notice is to remedy the harm to amenity that has been caused by the breach of planning control. That harm has included the destruction of the previous planting as an inevitable consequence of the breach. I therefore consider the Council's reference to policy GE10 to be apposite, and further that the works that have been carried out have not complied with the requirement of that policy to seek to retain tree cover. I also find that the works, even if the type of landscaping scheme suggested by the appellant could be established, are alien to the landscape and are not supported by any other relevant policies.
25. As the works that have been carried out are harmful to the character and appearance of the area, and are contrary to the development plan for the area, I conclude that the ground (a) appeal and deemed planning application should not succeed.
26. Although there is no express appeal on ground (f) (that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control or injury to amenity) I have considered whether the

requirements of the notice should be varied. I have set out above why I have removed the 'maintenance' requirements.

Appeal B, ground (f)

27. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, any injury to amenity.
28. Although a planning permission exists for a building in approximately the same location, this is not what has been built, and the Council alleges development without planning permission. They have chosen to under-enforce, by requiring cladding and landscaping rather than the removal of the building. From this it is clear that the purpose of the notice is to remedy the injury to amenity that has been caused by the breach of planning control, rather than to remedy the breach itself. The harm identified by the notice is that of visual amenity, because without cladding and landscaping there is no visual obstruction to the industrial storage activities that take place within the frame of the building.
29. The appellant proposes cladding the northern elevation of the building, with the inclusion of a roller shutter door, and additional landscaping as an acceptable compromise. However, although the majority of views of the building are obtained from the A6 passing the site to the north, cladding only the northern elevation, even with additional landscaping, would not remove the objection raised that the industrial storage activities within the building are visible from outside the site. I do not consider that the amenity objection raised by the Council would be overcome by the limited steps proposed by the appellant.
30. The appellant explains that the reason for not cladding the building relates to fire safety concerns, and has submitted a review of fire safety guidance and advice from the local Fire and Rescue Service's Fire Safety Inspecting Officer. Retaining the open sides to the building is evidently preferable on fire safety grounds. It is unclear from the documents before me whether an approved Fire Prevention Plan, required under environmental permitting rules, for the site is achievable consistently with the requirements of the enforcement notice, although, as the Council point out, there is no evidence to show that it is not. I am unable therefore to conclude that the steps required by the notice are excessive on fire safety grounds, which in any event would be a matter for consideration of the planning balance on an application rather than the present appeal under ground (f). The ground (f) appeal therefore fails, although I shall vary certain requirements of the notice as set out in my preliminary matters paragraphs above.

Appeal B, ground (g)

31. The ground of appeal is that the period specified in the notice for compliance with its requirements falls short of what should reasonably be allowed.
32. The appellant indicates an intention to proceed with a planning application for the proposed 'compromise' solution, and requests a period of four months in which to comply with the cladding requirements of the notice. It appears from the appeal documents that a revised Fire Prevention Plan may also be necessary. In order to give time for these matters to be progressed I shall extend the time for compliance with the notice's first requirement in paragraph 6(i) to four months, as sought.

33. To this limited extent, the appeal succeeds on ground (g).

Formal Decisions

Appeal A

34. It is directed that the enforcement notice be corrected and varied as follows:

- Delete paragraph 5(a)
- Delete the word 'less' from paragraph 5(d) and replace it with 'steeper'
- Delete the second sentence of paragraph 5(e)
- Delete paragraph 6(a)
- Delete from paragraph 6 (e) "requirements a) to d) inclusive" and replace with "requirements b) to d) inclusive"
- Delete from paragraph 6(e) 'and thereafter to carry out a bi-annual maintenance of the bunds and the immediate replacement of all dead plants with the same species of plants for a period of five years from the date of the latest planting'

35. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

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

- Delete from paragraph 5(i) ', and thereafter retain the dark green metal cladding on all the elevations'
- Delete the second sentence of paragraph 5(ii)
- Delete from paragraph 6(i) 'two calendar months' and replace it with 'four calendar months'

Delete from paragraph 6(ii) 'and thereafter to carry out a bi-annual maintenance of the planting and the immediate replacement of all dead plants with the same species of plants for a period of five years from the date of the latest planting'

37. Subject to those variations, the appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR