



Appeal Decision

Site visit made on 23 November 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/H3700/C/21/3276408

Land lying to the west of Watling Street, Clifton Upon Dunsmore, Rugby, CV23 0AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Christopher Reilly against an enforcement notice issued by Warwickshire County Council.
 - The enforcement notice was issued on 26 April 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of operational development in relation to the increase in height of the screening bund.
 - The requirements of the notice are to: i) reduce the height of the bund in accordance with approved drawing reference BR/TF/RF4 of planning permission reference RBC/13CM022; ii) remove all waste from the Land resulting from compliance with Step (i) to a licensed waste management facility; iii) alter the bund so that it strictly accords with approved drawing BR/TF/RF4 of planning permission RBC/13CM022; iv) remove all the resultant materials from compliance with Step (iii) to a licensed waste management facility; and v) implement the previously approved landscaping scheme as approved under drawing reference BR/TF/RF8 of planning permission RBC/13CM022.
 - The periods for compliance with the requirements are: Steps i) and ii) 6 months; Steps iii) 9 months and iv) 9 months; and Step v) 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. 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 as amended for the development already carried out, namely operational development in relation to the increase in height of the screening bund on Land lying to the west of Watling Street, Clifton Upon Dunsmore, Rugby, CV23 0AJ as shown on the plan attached to the notice, subject to the following conditions:
 - 1) All planting or seeding comprised in the approved details of landscaping as shown on the Landscape Plan dated June 2021 ref. SHF.0135.004.LA.D.001 shall be carried out within 12 months of the date of this decision.
 - 2) Any trees or plants which within a period of 5 years from the completion of the landscaping die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 3) The landscaping shown on Landscape Plan dated June 2021 ref. SHF.0135.004.LA.D.001 shall be retained for the duration of the use permitted by permission RBC/13CM022.

The appeal on ground (a) and the deemed planning application

Main Issue

2. This is the visual effect of the development on the landscape.

Reasons

3. Also known as The Fisheries, the appeal site has planning consent¹ (the 2014 permission) for the use of the land for the processing and storage of waste construction materials. The appeal site extends to 2.8 hectares and is located off the A5 dual carriageway and is 550m south of the M6 motorway. The site contains several small industrial buildings, and the central area of the site is surfaced with concrete hard standing.
4. The site sits alongside commercial/industrial premises along the A5 corridor to the north, south and directly to the east. Residential properties in the immediate surroundings are limited in number to around 10 dwellings located on higher ground to the east and southeast of the site. The nearest properties are located around 200m to the southeast of the main working area of the site and two residential properties are situated opposite the site entrance on the opposite side of the A5.
5. The wider surrounding area is semi-rural with the village of Newton approximately 0.8km to the west beyond gently undulating agricultural land. To the southwest are two properties which are approximately 0.6km and 0.4km from the site. A public right of way² (PROW) abuts the northern boundary of the site and runs around its perimeter along the outer side of the bund.
6. The creation of the bund was a condition of the 2014 permission to screen the waste development. A landscaping scheme was designed to soften its impact and help incorporate it into the landscape. Since that landscaping scheme was implemented, the Council considers that the bund has been increased in height by approximately 3.5m to 5m. This, it argues, has led to the loss of much of the previous planting and, along with the height increase, has resulted in an incongruous feature in the landscape which is said to have a severely detrimental effect on the visual amenity of the area. Although not forming part of the reason for issuing the enforcement notice, I note that the Council's report refers to concerns about perceived instability of the slopes of the bund where it adjoins the PROW.
7. The appellant has provided a copy of a letter from the Council dated 10 January 2018 which discharges the pre-commencement conditions 2, 3 and 7 relating to the bund. The discharge of the conditions refers to plan ref. BR/TF/RF4 which has not been provided with the appeal documents. Nevertheless, there seems to be no disagreement between the parties that the bund is higher than approved and I shall consider the appeal based on the Council's reason for issuing the notice.

¹ RBC/13CM022 granted by notice dated 27 October 2014 Use of land for processing and storage of waste construction materials to produce aggregates.

² 234 R107/1

8. From close up when walking the PROW, the bund has a scrubland-like appearance that contrasts with the natural landscape which extends the agricultural land beyond. This has a negative impact on its immediate setting. Longer views towards the bund from the west take in undulating farmland with fields divided by hedgerows and bands of mature trees. The bund is undoubtedly a large structure but from a distance it does not appear unduly unnatural in its surroundings.
9. Furthermore, the site is located within an area that is subject to a variety of land uses which have experienced and will likely see significant change with growth in industrial and commercial investment in an area within a prime transport network. The visual impact on the landscape of the increase in the height of the bund in these circumstances is limited. The bund screens the appellant's commercial activities from the wider landscape, particularly when viewed from the village of Newton. Where many of the significant sized commercial buildings are clearly visible from long distances, the bund melds into its background.
10. The appellant has provided a proposed detailed landscape scheme³ which illustrates the present location and volume of the bund. The scheme aims to improve the appearance and ensure the safety of the bund. The proposed landscaping includes the planting of trees such as Oak, Alder and Chestnut, with lengths of native hedgerows lining the lower slope of the bund adjacent to the PROW and on the western boundary with the site wrapping around to partially enclose the south side. Furthermore, it is proposed to deliver wildflower meadow planting and copses of native woodland mix and subcanopy woodland mix consisting of Field Maples, Hawthorn, Cherry, Silver Birch.
11. Overall, I find that the increase in the height of the bund has limited effects on the visual amenity of the wider landscape especially in the context of neighbouring large scale commercial development. However, there is harm to the immediate landscape, and this would likely have a negative effect on localised views, particularly those by users of the PROW.
12. As part of the appeal on ground (a), the proposed landscaping scheme, once implemented, would help to mitigate against its scrub-like appearance and assimilate the bund into the immediate landscape whilst providing a screen for the commercial waste operations on site. In this respect, I consider that the appeal proposal does not conflict with Policy CS16 of the Local Development Framework Core Strategy June 2011 which requires that proposals are of a scale, density and design that would not cause material harm to the amenity of the area. Furthermore, the proposal is also considered to be compliant with Policies DM1 and DM4 of the Warwickshire Waste Core Strategy Adopted Local Plan 2013-2028 which requires, amongst other matters, new waste development to conserve and where possible retain and enhance the natural environment by ensuring that there are no unacceptable adverse impacts upon the quality and character of the landscape.
13. The ground (a) appeal therefore succeeds.

The appeal on ground (g)

14. The appeal on ground (g) no longer needs to be considered.

³ SHF.0135.004.LA.D.001 dated 21 June 2021

Conditions

15. The conditions are imposed to ensure that the landscaping scheme is implemented so as to make the development acceptable in the interests of character and appearance.

Overall Conclusion

16. For the reasons given above, I conclude that the appeal on ground (a) and the deemed application for planning permission succeeds. Consequently, the enforcement notice is quashed, and planning permission is granted on the deemed application subject to conditions.

S A Hanson

INSPECTOR