



Appeal Decision

Site visit made on 30 August 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal Ref: APP/Y3940/C/22/3300268

Land west of Park Place, Bradford Road, Corsham, Wiltshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tom O'Connor of Redcliffe Homes Limited against an enforcement notice issued by Wiltshire Council.
- The notice, numbered ENF/2021/00417, was issued on 5 May 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, operational development comprising the profiling of the land.
- The requirements of the notice are to: Profile the Land so that its levels are that shown on Sheet 2 of 3 of the attached plan entitled "Topographical Survey" (Drawing No. 12731-500-001)¹ and remove all resulting excess material from the Land. For the avoidance of doubt and for clarity the attached plan entitled "Topographical Survey" (Drawing No. 12731-500-001) covers the land shown edged in blue and edged in red on the attached plan entitled "Location Plan" (Drawing No. 3657/203) and includes within it the Land on Sheet 2 of 3.
- The period for compliance with the requirement is four months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out in the Formal Decision.

General Preliminary Matters

1. The appeal was linked to another appeal made under section 174 of The Town and Country Planning Act 1990 as amended (the 1990 Act) against an enforcement notice issued in respect of a material change of use of the same site². The enforcement notice subject of that appeal was, however, withdrawn and the corresponding appeal has fallen away.

The Notice

2. Before I consider the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers of correction or variation are set out in sections 176(1)(a) and (b) of the 1990 Act. The only test is whether or not injustice would be caused by any correction or variation.

¹ Reference here and elsewhere in the header to attached plans is to plans attached to the enforcement notices to which this appeal relates.

² Appeal reference APP/Y3940/C/22/3300265.

3. The notice makes an allegation of 'operational development comprising the **profiling** of the Land'. It is agreed that there has been a change to the profile of the land, which includes the raising of the ground levels resulting from the deposit of material on the land. Profiling is not a word that accurately describes this. I also find the use of the word 'profile' inaccurate as a description of what must be done to the land in the requirements of the notice. What is required is the alteration of the profile of the land so that its levels comply with those shown on the levels plans attached to the notice.
4. A correction to the notice to allege a change to the profile of the land, as well as a requirement to alter the profile would make the notice more precise. Such a correction would not cause injustice in this case as I can see that the appellant has understood what has been done and what he must do to remedy it.
5. I will further consider the matter of the requirements of the notice in so far as they relate to the attenuation basin later in this decision, under the ground (f) appeal.

Ground (a) and the deemed application for planning permission

Preliminary matters relevant to the ground (a) appeal

6. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Section 177(1)(a) of the 1990 Act informs that, on the determination of an appeal under section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole **or any part** of those matters.
7. I have highlighted the text above as it is particularly relevant in this case. The matter stated in the notice, as I intend to correct it, relates to an operation comprising a change to the profile of the land and includes the raising of ground levels. However, in making his ground (a) appeal, the appellant has referred to a planning application for the development of the appeal site (Council reference PL/2021/07736). The development proposed in that case was described in the decision notice as 'operational development comprising the re-profiling of land with associated landscaping to create an amenity and wildlife buffer area adjacent to Park Place (part retrospective)'. The appellant's case has been put in such a way that this is the description of development he intends to be the subject of the deemed planning application that has been made under ground (a). Indeed, in making his case under ground (a), he has addressed the reasons for refusal of the 2021 planning application.
8. If there is an appeal against the refusal of planning application PL/2021/07736, that is not before me. What is before me is the deemed planning application for the whole or any part of the matter alleged in the enforcement notice, once corrected. I can consider the deemed planning application on the basis of the appellant's proposal only if it is part of the matter alleged.
9. There is no dispute that the lawful use of the land is for the purpose of agriculture. In making his case under ground (a), the appellant suggests that the land would be an amenity area providing space for habitat creation and increased biodiversity. The term 'amenity land' has been used in the draft

unilateral undertaking. The appellant's description is of landscaped open space that would act as a visual buffer between the public right of way and the housing development.

10. Having regard to the above, it is apparent that permission is sought for a material change of use of the land from agriculture to a use for open amenity land and as a wildlife area. This scheme of development would include the proposed landscaping scheme, as well as measures for its maintenance. However, a material change of use of land from its lawful agricultural use is not alleged in the notice. The matter alleged in the notice comprises only operations. I cannot, therefore, regard the material change of use proposed by the appellant as part of the matter alleged. For this reason, I cannot determine the deemed planning application on the basis of the use of the land for the purpose proposed.
11. Accordingly, I will determine the appeal on the basis of the matter alleged in the notice, as I intend to correct it. That is an operation comprising a change to the profile of the land, including the raising of ground levels.

Main Issues

12. The substantive reasons for issuing the enforcement notice refer only to development plan policies and do not set out in any great detail why the development subject of the notice does not comply with these policies. For this, I have had regard to the Council's appeal statement in which it says that it provides an 'assessment of the planning merits and application of policy to the unlawful development'. In addition to this, the Council refers to its report prepared in respect of the PL/2021/07736 planning application. As for the appellant, as I note above, his case has been prepared seeking approval for the development that was the subject of the PL/2021/07736 planning application.
13. I have, however, concluded that I am unable to consider the deemed planning application on this basis, and that the ground (a) appeal will be determined on the basis of the development that is the subject of the enforcement notice. For this reason, some of the main considerations that would have been relevant to a proposal for the use of the land as an amenity and wildlife buffer are not relevant to the case before me.
14. These include such matters as whether the deposited material would support a landscaping scheme; whether there are sufficient measures in place to secure the management and maintenance of the amenity and wildlife buffer in the future; the effect of the use of the land as an amenity and wildlife buffer on the character and appearance of the area; whether the use of the land as an amenity and wildlife buffer would have an adverse effect on the living conditions of nearby residents; and whether there would be benefits resulting from the use of the land as amenity space for local residents and for wildlife.
15. In addition to the above, I have already noted that the appeal against the enforcement notice alleging a material change of use³ is no longer before me. Accordingly, the matter of whether or not the site has been used for the deposit of waste and whether such a use is acceptable are also not main considerations in this case.

³ This notice alleged a material change of use of the land from agriculture to a mixed use for agriculture and waste deposit (sui generis)

16. Having regard to the above, and the evidence that is relevant to the development subject of the deemed planning application, I have identified the following main issues:
- The effect of the development on the character and appearance of the site and the area;
 - The effect of the development on flood risk on adjoining land; and
 - The effect of the development on the living conditions of nearby residents.
17. In its evidence the Council mention 'the principle' of the development. However, it refers to the need for the operation and any benefit it may have. This is a material consideration that I will consider along with other such matters later in the decision.

Reasons

- Policies and Guidance

18. The development plan for the appeal site includes the Wiltshire Core Strategy Adopted January 2015 (WCS) and the Corsham Neighbourhood Plan 2016-2026 adopted November 2019 (CNP). Although a number of policies of both plans have been listed by the parties in their statements, only some of these have been relied upon by the parties in making their respective cases.
19. These include WCS Policy CP51 (Landscape), which states that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character. It informs that negative impacts must be mitigated as far as possible through sensitive design and landscape measures. Similarly, CNP Policy E3 requires development to protect, conserve and where possible enhance the distinctive characteristics of the Landscape Setting of the Corsham Rolling Lowlands.
20. Policy CP52 (Green Infrastructure) of the WCS refers to the retention and enhancement of Wiltshire's green infrastructure network. Its requirements include the retention and enhancement of existing on site green infrastructure. WCS Policy CP57 (Ensuring high quality design and place shaping) is a general design policy. It requires development to demonstrate, amongst other matters, that it enhances local distinctiveness; retains and enhances existing important landscaping and natural features; and has regard to the impact on the amenities of existing occupants.
21. Both parties refer to WCS Policy CP67 (Flood Risk), which requires all new development to include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable. Relevant to this, the Council refer in particular to criterion b) of Policy E2 of the CNP, which requires development to adopt best practice in sustainable urban drainage.
22. The appellant also relies in his case to CMP Policy E5, which imposes a restriction of development within the defined Rural Green Buffer.
23. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material

consideration which should be taken into account from the date of its publication. The revision to the Framework has had no effect on the sections of the previous Framework that have been brought to my attention and which I have had regard. I have not, therefore, sought the parties view on the implications of the revision to the Framework to their case.

- Character and Appearance

24. The appeal site is a field parcel that adjoins a new housing development along its varied north east boundary. This boundary adjoins some of the highway network and open space on the estate, as well as a number of the housing plots. There is a public right of way (PROW) to the south west, beyond which the land appears to be in agricultural use for growing crops. There are highways broadly to the north and south of the site.
25. The southernmost part of the site is occupied by an attenuation basin, which appears to be connected to the highway drainage on the adjoining development. Having viewed the site from the PROW and the estate, I saw that the land is gently undulating, and its levels gently increase from the attenuation basin, from the adjoining estate and from the PROW.
26. Levels plans have been attached to the enforcement notice, which I understand show the ground levels of the appeal site and adjoining land prior to the development subject of this appeal and prior to the construction of the housing estate. The appellant does not dispute that material has been brought onto the site, which has resulted in an alteration to the ground levels. The appellant has attempted to demonstrate how the land levels have changed by providing two plans⁴.
27. The first shows how ground levels have change, but only demonstrate this along the boundary of the site with the housing estate. For the most part this shows a decrease in ground levels along this shared boundary.
28. The second plan shows details of previous ground levels, which has been overlaid with the details of existing ground levels. It also shows the areas of the site where there has been a decrease as well as an increase in ground levels. These are not disputed by the Council.
29. Despite the volume of material deposited on the land and the resultant undisputed change to the ground levels, the evidence suggests that this change has not been dramatic. I exclude from this the obvious change to ground levels necessary to create the attenuation basin in the southern part of the site. Save for this area, the undulating site levels at present do not appear to be discordant with the site levels prior to the works taking place. I find as such, having viewed the site from both the PROW and from vantage points on the adjoining housing estate.
30. The site has a different appearance when compared to land to the west and land on the opposite sides of the adjoining highways. This difference does not, however, result from the change to the site levels. Rather, it results from the lack of use of the site. It has become overgrown and, therefore, appears different in character to other nearby field parcels that have an active agricultural use. I cannot, however, attribute the overgrown appearance of the site to the development that is the subject of this appeal. Indeed, even

⁴ C1 and C2 of the appellant's appendices.

without the development alleged in the enforcement notice, the site is likely to become overgrown if not used for its lawful purpose.

31. For the reasons given above, I do not find the change of levels on the site to have had an adverse effect on the character and appearance of the site or the surrounding area. Neither can I find any conflict with relevant requirements of WCS Policies CP51 and CP57, CNP Policy E3 or the relevant chapters of the Framework.

- Flood Risk

32. The Council suggest that the deposit of material and the compaction of soil, together with the change in the profile of the land, has changed the way in which the land drains. The Council refer to an increased likelihood of surface water run off, including silt run off, onto adjoining land. It suggests that this may have an adverse effect on adjoining land, in particular the adjoining housing development and the drainage design for this site, including the attenuation basin.
33. The appellant points to the flood risk assessment prepared for the PL/2021/07736 planning application. He suggests that this demonstrates that the potential for surface water flooding could be mitigated by a number of measures, including the further reprofiling of the land, the installation of a French drain, perimeter soft landscaping and natural vegetation. Whilst this is noted, I have not been provided with the assessment.
34. There is no dispute that the change in ground levels on the site has had an effect on surface water run off. Indeed, whilst the appellant suggests there has been a limited change to the surface water flows, there is agreement that certain measures are necessary to mitigate the effect of this on adjoining land. There was some agreement with regard to the potential efficacy of the proposed measures to mitigate these effects, which includes new planting that would provide greater interception of overland flows and temporary silt barriers along the boundary of the site. However, there remains a dispute between the parties with regard to such matters as the ability of the soil to support a new landscaping scheme and whether there would be sufficient measures in place for the long term management of the site.
35. Notwithstanding the above, both the flood risk assessment and any agreement of matters between the parties are based on a proposed use of the site as amenity space and a wildlife buffer, which includes proposals for further changes to the ground levels on the site, a comprehensive landscaping scheme, drainage mitigation measures and proposals for the ongoing maintenance of the landscaping and drainage measures. Indeed, the draft unilateral undertaking defines the development to which it relates as 'amenity land'. All of this relates to a scheme of development that is not before me.
36. I have considered whether I could impose conditions requiring mitigation measures of the sort mentioned above. However, I have insufficient information before me to be satisfied that a landscaping scheme and drainage measures are likely to sufficiently mitigate the risk of flooding on adjoining land, were I to grant permission for the existing ground levels on the site, which is the development subject of this appeal.

37. For the reasons given above, I am unable to conclude that the effect of the development on flood risk on adjoining land is acceptable and that it accords with WCS Policy CP67, CNP Policy E2 and chapter 14 of the Framework.

- Living Conditions

38. I note the concerns, particularly those of local residents, with regard to the suggested loss of residential amenity brought about by the development. Whilst a small number of local residents refer to a loss of privacy, there is little detail with regard to how the development might otherwise affect the living conditions of nearby residents. Nevertheless, the development has resulted in an increase in ground levels on certain parts of the site that might allow elevated views into the properties adjoining the site.

39. The lawful use of the land is for the purposes of agriculture. If I were to allow the appeal, this would not permit the material change to the use of the land to any other purpose. The appeal site is private land to which the public have no right of access. Even if the land were in an active agricultural use, it is unlikely that this would result in a regular presence on the site. Any incidents of overlooking from the site are, therefore, likely to be limited.

40. For these reasons, I cannot conclude that the change of ground levels results in the loss of privacy of nearby residents, such that permission should not be granted. Neither have I been given any reason to find that the development otherwise has an unacceptable effect on the living conditions of nearby residents. Accordingly, I find no conflict with the relevant criteria of WCS Policy CP57 and the relevant chapters of the Framework.

Other Matters

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have concluded that the development fails to accord with the development plan and its policies that relate to the matter of flood risk. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.

42. The appellant does not suggest that there is a need for the development, such that, for example, it facilitates the use of the land for its lawful purpose or that the raised ground levels provide some other form of benefit that would weigh in favour of the development. I do not, however, find this to be a matter that weighs against the grant of planning permission. Indeed, there is no suggestion that the development prevents the use of the land for the purposes of agriculture. Whilst the Council suggest that the development is unacceptable in principle, it does not expand on what is meant by this, neither does it rely on any policies of the development plan to support this contention.

43. The appellant suggests that there are benefits to wildlife and I can agree that such benefits are likely to arise from the use of the land for the purposes of amenity space and as a wildlife buffer. I also agree that such a use would accord with WCS policy CP52. However, were I to allow the appeal, permission would not be granted for such a use of the land and I have no mechanism

within the remit of this appeal to secure such a use. The development in this case is the change of ground levels on the site and I have no reason to conclude that this operation results in a benefit to wildlife.

44. The appellant points to compliance with Policy E5 of the CNP, which prevents the construction of new buildings in the Rural Green Buffer that would, individually or cumulatively, lead to the coalescence of settlements. As the development subject of this appeal does not comprise the construction of a new building, I can identify no conflict with this policy. This, however, has a neutral effect in the planning balance.
45. Whilst it is suggested that the development reduces the extent of overlooking from the PROW into properties in the housing estate, I can give this matter only limited weight in the planning balance. I note that there is some distance between the PROW and the closest dwellings. I am also mindful that, in granting planning permission for the housing development, the Council were satisfied that any views from the PROW towards housing on the estate would be acceptable.
46. I have had regard to the draft unilateral undertaking submitted with this appeal, but as I have already stated, this relates to development that is not the subject of this appeal. This does not provide me with a reason to grant permission for development that is otherwise unacceptable. Neither have any conditions been suggested that would overcome my reasons for finding harm and conflict with the development plan.
47. On a final matter, I note the concerns of interested parties with regard to the content of the material deposited on the land and the possibility that the material could be contaminated. The appellant suggests that the material is inert sub soil. This is not disputed by the Council⁵ and I have no reason to find otherwise. I note that the Council's concerns relate more to the compaction of the material and the ability of the land to support a new planting scheme. This is a matter that is relevant to the development that was the subject of the PL/2021/07736 planning application, but is not material to my determination of this appeal for the reasons I have already given.

Planning Balance and Conclusion

48. I have found the development to be in conflict with the development plan, when read as a whole. All things considered, I have no reason to conclude that my determination of the appeal should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted and that the ground (a) appeal should fail.

Ground (f)

49. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control, which the Council has confirmed is the purpose of the enforcement notice.
50. Despite the removal of some material prior to the issue of the enforcement notice, the appellant acknowledges that around 7,500 cubic metres of deposited material remain on the site. The notice requires the return of the

⁵ Paragraph 7.9 of the Council's appeal statement.

land to the levels shown on the levels plan attached to the notice and the removal of any excess material. There is no dispute that the plans attached to the notice show the levels of the site prior to the development taking place.

51. Notwithstanding this, both parties refer to the attenuation basin located in the southernmost part of the site, which serves the adjoining housing development. It is agreed that this is permitted. However, as drafted, the notice would see the removal (infilling) of the attenuation basin. Accordingly, it is agreed that the requirements of the notice are unreasonable in this respect and that the land occupied by the attenuation basin should be removed from the effect of the requirements. I have no reason to disagree with the agreed position and conclude that the ground (f) appeal should succeed insofar as it relates to this matter.
52. As for the remainder of the site, it is suggested that the steps required by the notice are excessive because the development is acceptable. This reflects the case made under ground (a), which I have considered above.
53. As an alternative, the appellant suggests that I vary the notice so that only a portion of the deposited material must be removed. As I note above, the purpose of the notice is to remedy the breach of planning control. Were I to vary the requirements so as to allow ground levels that would be higher or otherwise different to those shown on the plans attached to the notice, this would not achieve the purpose of remedying the breach in this case.
54. Notwithstanding this, if I were to regard such a proposal as part of the matters stated in the enforcement notice, as there is a ground (a) appeal it is open to me to consider whether or not this alternative is acceptable. However, I have no details of the alternative scheme before me, including details of alternative ground levels. Neither has the appellant indicated the amount of deposited material that would remain and how what remains would be dispersed about the site. Accordingly, the information I have regarding the alternative scheme is not sufficient for me to undertake an informed consideration of it for either the deemed planning application or as an alternative to the requirements of the notice. Furthermore, even if sufficient detail were provided, I have no reason to conclude that the alternative scheme would have an acceptable effect on such matters as the flood risk on adjoining land.
55. On this basis I can only conclude that, save for the exclusion of the land occupied by the attenuation basin from the requirements of the notice, the steps required are necessary and proportionate. For this reason, my conclusions on the ground (f) appeal remain unchanged, in that it should only succeed in part, as set out above.

Ground (g)

56. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 4 months from the date it takes effect.
57. The appellant suggests that the 4 month period for compliance is insufficient to obtain a contractor to undertake the works and to mobilise and undertake the removal of some 7500 square meters of material from the site. He suggests 850 lorry trips would be needed for this, which is not disputed by the Council.

58. Even if the removal of material from the site commenced on the date the notice comes into effect, which would be the date of this decision, some 50 lorry trips per week would be needed to remove the material within the period given. This does not account for the time needed to secure a contractor to carry out the work and plan the logistics of the operation. Although it is not suggested that there would be any difficulty in securing a contractor, I can agree that the time given would not be sufficient to make these arrangements, as well as carry out the necessary work.
59. Whilst I note the appellant has requested a 12 month period, I can see that, when asked how long a period would be reasonable, he suggested in an email exchange⁶ that a 5 month period would be sufficient. Notwithstanding this, I note this email exchange was in May last year, only days before the notice was issued. Had the appeal not been made, the 5 month period for compliance with the notice would have been over the summer months. It is likely that weather conditions during this period would have been better than the conditions that might be experienced during the winter months that will follow the date of this decision.
60. Had the appellant known the time of year for the determination of this appeal, he might have suggested that the winter months would hamper his ability to comply with the requirements of the notice within even a five month period. He would not have been unreasonable to suggest this. I do not, however, have sufficient evidence to conclude that a 12 month period is necessary.
61. Accordingly, I consider an 8 month period would be a reasonable time to allow the appellant time to secure a contractor, organise the logistics necessary to remove material from the land, and to carry out the works during a time of year when weather conditions would be better than in the coming months.
62. For the reasons given above, I conclude that the period specified in the notice falls short of what should reasonably be allowed. Accordingly, the ground (g) appeal should succeed. I will vary the notice to give an 8 month period for compliance.

Overall Conclusion

63. For the reasons given above, I conclude that the requirements of the notice are, in part, excessive to remedy the breach of planning control. I also conclude that the period for compliance with the notice falls short of what is reasonable. Otherwise, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

64. It is directed that the enforcement notice is corrected and varied by:
- The deletion from part 3 of the words 'profiling of the Land' and their substitution with the words 'a change to the profile of the Land, which includes the raising of the ground levels resulting from the deposit of material on the Land';

⁶ Email exchange provided at the Council's appendix 8.

- The addition in part 5 of the words 'Save for the part of the Land occupied by the attenuation basin, shown in the approximate location outlined with a dotted red line on the plan entitled 'Notice Plan' attached to this notice, alter the' before the words 'Profile of the Land'; and
- The deletion from part 6 of the word 'four' and its substitution with the word 'eight'.

65. Subject to the corrections and variations, the appeal is dismissed, 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.

J Moss

INSPECTOR