



Appeal Decision

Site visit made on 26 March 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH MARCH 2024

Appeal Ref: APP/B1930/X/22/3297501

**Fredericks Wood, Coursers Road, Colney Heath, St Albans, Hertfordshire
AL4 0PB**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mark Robinson against the decision of St Albans City & District Council.
 - The application Ref 5/22/0425, dated 13 December 2021, was refused by notice dated 22 April 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is described as engineering works - creation of an earth bund for health and safety reasons.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address in the banner heading above is taken from the Council's refusal notice and the appellant's appeal form rather than from the LDC application form as it is more precise.
3. For the avoidance of doubt, I have determined this appeal based on the drawings that were submitted to the local planning authority and formed the basis of its decision to refuse the LCD application.
4. As part of the appeal, the appellant has submitted a drawing showing three buildings. It is not clear from the evidence why this drawing has been submitted but, in any event, it is not relevant to the earth bund which is the subject of this appeal. I have not therefore had regard to this drawing for the purpose of considering this appeal.

Main Issue

5. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt and notwithstanding comments made by other interested parties, I make clear that planning merits, including an assessment of the development relating to flood risk, pollution, trees, and

Green Belt, are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the earth bund amounts to development requiring planning permission.

Reasons

7. I was able to see the earth bund on the land as part of my site visit. According to the third-party comments, which have not been disputed by the appellant, the earth bund which is adjacent to Coursers Road and within woodland known as Fredericks Wood, was formed in about 2021/2022. Indeed, Colney Heath Parish Council state *'by 6 December 2021, the number of lorries entering the site became considerable and continued until 12 January 2022 with a short break over Christmas and the new year. From data collected, between 14 and 40 lorries were entering the site every hour between 8am and dusk each day'*. The evidence indicates that the earth bund, which is significant in scale and length, was created from the deposit and moulding of significant material from external sources.
8. There is no dispute between the parties that the earth bund amounts to development having regard to section 55 of the Act. The appellant, however, asserts that the earth bund is permitted development having regard to the limitations imposed in respect of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Part 2 of the Order includes *'minor operations.'* Class A of Part 2 of Schedule 2 of the Order relates to the *'the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure'*. Owing to the nature and substantial scale of the earth bund, I do not find that it could reasonably be said to be a minor operation.
9. Even if one were to disagree with me in terms of the development not being a minor operation, the LDC application lacks precision in terms of the exact contours of the land and the various heights of the earth bund. Reference is made by the appellant to the earth bund not exceeding two metres in height, although other interested parties have referred to it being higher than this in some areas. The LDC application has insufficient information to fully consider the height of the earth bund in all areas. This would mean that the LDC application should be refused if this was a determinative matter.
10. While the earth bund is set slightly back from the highway, it is nonetheless close to it and, in my judgement, and notwithstanding the presence of some vegetation, it is *'adjacent to a highway used by vehicular traffic'* for the purpose of considering Class A of Part 2 of the Order. Even if one were to find that the proposal was an *'other means of enclosure'* under Class A of Part 2 of the Order which relates to minor operations, it would not likely be permitted development given that in my judgement the evidence is that it is adjacent to a highway used by vehicular traffic and part of it is more than 1 metre in height above ground level.
11. I therefore conclude that the development is not a minor operation. Even if one were to disagree with such a conclusion, there is either insufficient information before me to fully consider the height of the whole section of the earth bund,

or my site visit observations indicate, in any event, that the earth bund as a whole is likely to exceed one metre in height and is adjacent to a highway used by vehicular traffic. Either way, and, even if Class A of Part 2 of Schedule 2 of the Order was relevant in terms of the earth bund, I would not have been able to conclude that it was permitted development by virtue of Class A of Part 2 of the Schedule 2 of the Order.

12. The above is not determinative in any event. The evidence indicates that a significant amount of material has been brought onto the site. I find that an engineering operation has taken place to form a substantial earth bund. Owing to the nature and scale of the earth bund, I find, as a matter of fact and degree, that it amounts to an engineering operation and not a means of enclosure.
13. Section 55 of the Act states that an '*engineering operation*' constitutes development. I conclude that the earth bund constitutes an engineering operation and hence is development for which there are no permitted development rights. Therefore, planning permission is required for the earth bund. The appellant says, '*the creation of bunds/embankments are generally classified as an engineering operation given that they involve the deposit of imported earth and the use of machinery*'. I find, for the reasons outlined above, that the earth bund that is the subject of this appeal is an engineering operation and is not a means of enclosure.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of engineering works - creation of an earth bund for health and safety reasons was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Hartley

INSPECTOR