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# Appeal Decision

Site visit made on 15 April 2024

**by R Hitchcock BSc DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> May 2024**

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**Appeal Ref: APP/P0240/C/22/3299811**

**Land east of Warren Farm, Woburn Road, Millbrook, Bedford, MK45 2HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Thomas Meehan against an enforcement notice issued by Central Bedfordshire Council.
  - The notice was issued on 27 April 2022.
  - The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of Land for use for the parking of HGVs, trailers and a construction plant, the storage and siting of mobile offices, metal shipping and storage containers, equipment and parts for plant and caravans and skips, the deposition and importation of building and other waste including plastics, vehicle parts, sub soil, pipework, sand, tyres, stone, metals, roofing materials and timber and the formation of areas of bunding throughout the Land'.
  - The requirements of the notice are to:
    1. Cease the use of the Land for the parking of HGV's, trailers and construction plant. Cease the use of the Land for the siting and storage of mobile offices, metal shipping and storage containers, equipment and parts for plant and caravans and skips
    2. Cease the use of the Land for the deposit of building and other waste materials including (but not limited to) all plastics, vehicle parts, sub soil, pipework, sand, tyres, stone, metals, roofing materials and timber.
    3. Remove from the Land all HGVs, trailers and construction plant, mobile offices, metal shipping and storage containers, equipment and parts for plant and caravans and skips.
    4. Remove from the Land all building and other waste materials including (but not limited to) all plastics, vehicle parts, sub soil, pipework, sand, tyres, stone, metals, roofing materials and timber.
    5. Remove from the Land all areas of bunding throughout the Land.
    6. Return the Land to its former grassed condition before the breach took place throughout the Land by levelling the ground as topsoil and re seeding it with grass.
  - The periods for compliance with the requirements are:
    1. One calendar month from the date of this notice takes effect in respect of requirements 1-4.
    2. Four calendar months from the date this notice takes effect in respect to requirements 5 and 6.
    3. Six calendar months from the date list notice takes effect in respective requirement 7.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended) (the Act).
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## Decision

1. It is directed that the enforcement notice is corrected as follows:
  - The allegation in Part 3 of the Notice is corrected by deletion of the acronym 'HGVs,' and the phrase 'and skips'.

- The requirement at Paragraph 1 of Part 5 of the Notice – WHAT YOU ARE REQUIRED TO DO is corrected by deletion of the acronym 'HGVs,' and the phrase 'and skips'.
  - Paragraph 3 of Part 5 is corrected by deletion of the acronym 'HGVs,' and the phrase 'and skips'.
  - The TIME FOR COMPLIANCE set out in Paragraph 3 of Part 6 of the Notice is deleted.
  - The plans attached to the Notice are deleted and substituted with the single plan attached to this Decision which shows a reduced site area edged red.
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

### **Preliminary Matters**

3. The address appearing in the banner heading above has been used by the Council when serving several enforcement notices in the locality. For the avoidance of doubt, the parcel of land identified by the Notice (the Land) is more specifically referred to as Plot 6 in the main parties' submissions.

### **The Notice**

4. Section 176 of the Act requires me to consider the status of the enforcement notice and whether any defect, error or misdescription could be corrected, or its terms varied, without injustice to the appellant or the local planning authority.
5. Since serving the Notice, the Council concede that the allegation should not include reference to the parking of HGVs or the storage of skips. These do not appear in the photographs taken by the Council prior to the service of the Notice. Removal of that part of the allegation, as suggested by the Council, would not in my view cause injustice to any party. It would reduce the burden on the appellant and has not otherwise prejudiced the ability to mount the submitted grounds of appeal. Accordingly, reference to them in the allegation and requirements is deleted.
6. The TIME FOR COMPLIANCE set out in Paragraph 3 of Part 6 of the Notice refers to requirement 7 of Part 5. However, as there is no requirement 7 in Part 5, Paragraph 3 of Part 6 is deleted as superfluous.
7. The 'Land' defined by the plan attached to the Notice includes a shared access. The track is used by a number of other sites in the vicinity. Although use of the site is facilitated by the access track, it falls outside of the relevant planning unit. Accordingly, I have substituted the Notice plan to reflect the planning unit where the alleged uses were taking place. As a reduction in the relevant site area, I find no injustice would be caused to any party in the appeal. On correction of the initial plan, the second block-coloured plan is unnecessary.

### **Ground (b)**

8. To succeed on ground (b) the appellant must prove that the use of the Land identified in the Notice had not changed to the alleged uses for parking, storage and deposition of waste materials, or that the formation of areas of bunding throughout the Land had not taken place. The burden of providing

relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

9. There is no dispute between the main parties that the formation of the bunding has taken place within the last 4 years, or that it is operational development as defined by s55(1) of the Act. Accordingly, this part of the allegation cannot succeed under the ground (b) appeal.
10. In relation to the alleged use, the appellant relies on 2 undated photographs showing parts of the site. The first image shows stripped surfaces and mounding to the sides with limited vegetation cover. Part of a large vehicle is visible alongside a levelled area showing vehicle tracks which leads to an area of stored items. The items include a caravan, containers, and other objects. Mounded earth is stored alongside. This is backed by a large, vegetated bund with an established tree line behind.
11. A second photo shows part of a bund, mounded aggregates/soil and a less vegetated bund backed by mature trees. A portable building and plant or machinery are visible on the bund. No other evidence is submitted in support of the ground (b) claim.
12. Photographs taken by the Council on 24 February 2022, demonstrate that the majority of items referred to in the Notice were present on the site. As the appellant's photographs only show limited parts of the site, they are not sufficiently precise or unambiguous in their coverage of the Land to demonstrate the entirety of the site use on the date they were taken.
13. The appellant refers to 4 water tanks on the Land that are not referred to in the Notice. From the evidence submitted by the appellant, it is unclear as to the water tanks being referenced at the time the Notice was served.
14. The Council's imagery shows a single water tank trailer. However, as the Notice alleges the parking of trailers and requires their removal, that water tank is addressed by the Notice. If others were present on 22 April 2022, there is little evidence submitted to substantiate the appellant's claim in that regard.
15. The Council's concession in relation to HGVs and skips alone is sufficient to provide a partial success on ground (b). However, subject to that correction to the Notice (and corresponding amendment of its requirements) I find that, on the evidence provided, what is alleged in the Notice is more likely than not to have occurred on the balance of probability. The remainder of the ground (b) therefore fails.

### **Ground (c)**

16. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control.
17. The allegations in the Notice include reference to both a material change of use of the Land and operational development. By virtue of the distinction made in Section 4 of the Notice, which refers to the relevant time limits for enforcement action, only the areas of bunding are defined as operational development.
18. The alleged storage and siting of caravans and the siting of storage containers form part of the alleged change of use of the Land. There is no dispute between the main parties that the caravans or containers do not constitute the

carrying out of 'building, engineering, mining or other operations in, on, over or under land' for the purposes of s55(1) of the Act, in the particular case circumstances.

19. The appellant's stance that the caravan and containers are not operational development and therefore don't require planning permission fails to take account that they form part and parcel of the alleged use. As s55(1) of the Act also makes it clear that the making of any material change in the use of any buildings or other land is 'development', those elements of the allegation require the benefit of planning permission.
20. In the absence of demonstration that planning permission exists for either the alleged use of the Land or the operational development (the bunding), or any other reason why the matters alleged do not constitute a breach of planning control, the appeal on ground (c) fails.

### **Other Matters**

21. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to the service of the Notice. However, this is not a matter for this appeal which I have determined on the evidence.

### **Conclusion**

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

*R Hitchcock*

INSPECTOR



The Planning Inspectorate

## Plan

This is the plan referred to in my decision dated: 24<sup>th</sup> May 2024

**by R Hitchcock BSc(Hons) DipCD MRTPI**

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