



Appeal Decision

Hearing Held on 16 July 2024

Site visit made on 17 July 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2024

Appeal Ref: APP/Z1585/C/23/3324623

Land at Fairfields Farm, Fordham Road, Wormingford, Colchester CO6 3AQ

- 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 Mr Mark Slade of East Anglia Environmental Services Ltd against an enforcement notice issued by Essex County Council ('the Notice').
 - The enforcement notice, numbered DEVC/3756, was issued on 19 May 2023.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, a material change of use of the Land to land used for waste recycling involving the importation, deposit, storage and processing of waste, namely timber, and compost. Without the benefit of planning permission, the installation and operation/use of associated plant, equipment, machinery and storage containers. And operational development including the creation of bunds and erection of netting and supporting poles. Together comprising "the unauthorised development".
 - The requirements of the notice are a) Cease, and do not resume, any further importation, deposition, storage and processing of waste materials on the Land.
 - b) Remove from the Land all processed and unprocessed waste materials. c) Remove from the Land all plant, equipment and machinery, storage containers, bunding, netting and supporting poles associated with the unauthorised development. d) Restore the Land to its condition prior to the commencement of the unauthorised development.
 - The period for compliance with the requirements is a) In relation to steps set out in 5a) within 1 day b) In relation to the steps set out in 5b) 2 months; c) In relation to the steps set out in 5c) 2 months; and d) In relation to the steps set out in 5d) 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 22 August 2024.

1. It is directed that the enforcement notice is corrected by: omitting the text of section 3 of the Notice, 'The matters which appear to constitute the breach of planning control', and replacing it with "Without the benefit of planning permission, operational development consisting of the creation of a bund in the position marked in green on the plan attached to this decision, and the erection of netting and supporting poles on the bunds on the appeal site".

Further, it is directed that the Notice is varied by: omitting paragraphs a), b), c) and d) from section 5 of the Notice, 'What you are required to do', and replacing them with "a) Remove from the land the netting and supporting poles

on top of the bunds"; and omitting paragraphs a), b), c) and d) from section 5 of the Notice, 'Time for compliance', and replacing it with "a) 12 months".

Subject to the corrections and variations, the appeal is allowed in part on ground (a) insofar as it relates to the creation of a bund in the position marked in green on the plan attached to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for creation of a bund in the position marked in green at Land at Fairfield's Farm, Fordham Road, Wormingford, Colchester CO6 3AQ.

Otherwise, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the erection of netting and supporting poles on the bunds on the appeal site, at Land at Fairfield's Farm, Fordham Road, Wormingford, Colchester CO6 3AQ on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. An appeal¹ under s78 of the Act against a decision by the Council to refuse planning permission for a composting facility to process 25,000tpa of green waste to include the provision of a weighbridge, 0.4ha of hardstanding for windrows and associated landscaping was also lodged by the Appellant. As the parties anticipated that the two appeals would be heard at the same time, their written submissions refer to both proposals. However, the timing of the submissions was such that they are arranged to be determined separately. Therefore, the parties made their cases on the basis of the enforcement notice appeal only.
3. The Appellant originally lodged his appeal on Grounds (a), (d) and (f). However, later in the process he added Grounds (b) and (c), both of which were addressed by the Council.
4. A written representation was received by the Planning Inspectorate on the day of the Hearing, but after it had opened. It was accepted and circulated to the parties after the Hearing, and both were asked if they had any comments to make; neither did, saying that their written and oral submissions addressed the points it raised.

Reasons

The Appeal Site and its Surroundings

5. The appeal site comprises a small area of hardstanding, largely enclosed by earth bunds, at the northern extremity of the former Wormingford Airfield. Two of the possible means of access to the site, from Fordham Road along tracks within the airfield, have been included within the land covered by the Notice.
6. The airfield is, understandably, open in nature. The principal exceptions to this are a number of large buildings associated with a farm, an anaerobic digester facility and a potato crisp factory at the eastern end of the airfield. There are also some smaller buildings with outside storage associated with the use of the airfield by a glider club. As the airfield slopes gently uphill, from south to north, the appeal site is at, or close to, its highest point.

¹ APP/Z1585/W/23/3327402

7. The hardstanding is accessed by a rough-surfaced track, which runs around the airfield. Save for its entrance from the track, the hardstanding is enclosed by earth bunds. These are largely covered by vegetation and they have posts supporting net fencing on top of them.
8. The land starts to fall away, a short way to the north of the hardstanding, towards the valley of the River Stour. In other directions, the landscape gently undulates, being primarily agricultural and well-treed.
9. In terms of built form away from the airfield, the small village of Wormingford lies to the northeast and there are a number of dispersed farms and houses in the area. To the east of the airfield, on Fordham Road and Packards Lane, there are also large buildings associated with farms and other commercial enterprises and some dwellings.
10. The airfield's perimeter track is a public footpath, from which, close to the site, several other rights of way run northwards. These are linked, to the north of the site, by a public footpath running east to west. They afford views to the site to varying degrees.

The Notice

11. Given that a material change of use is alleged, it is necessary to determine the correct planning unit. The Appellant's position was that it is a difficult site to assess using the accepted tests in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. Briefly, this sets out that the planning unit is the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. In this assessment, the concept of physical and functional separation is key.
12. The Appellant reasoned that the best fit would be to look at Fairfields Farm overall, where a number of different activities take place. Not all of these take place in separately defined areas, with uses overlapping and moving position. He was of the view, therefore, that the unit was as shown on a plan attached to a Planning Contravention Notice ('PCN') that formed part of the evidence. Within this, there was a mix of uses including agriculture, food processing and an anaerobic digester, recreational gliding, outdoor storage and the use he puts the hardstanding to.
13. For its part, the Council opines that the land where the alleged activity takes place, leaving aside the access roads that would not be required to be included, is a separate planning unit.
14. I find that it is possible to apply the *Burdle* tests here. This small area of land at the northern extremity of the former airfield is, by reason of its location and enclosing bunds, physically separate and distinct. Although the long-term plans for the operations at the site might be related to Fairfields Farm, this was not the case when the Notice was issued. It was, therefore, also functionally separate at that time.
15. Given the above, I find that the plan defines the planning unit and I do not need to change the Notice or the plan attached to it in this regard.

Ground (b)

16. An appeal made under this ground is that the matters alleged in the Notice have not occurred. This is a legal ground of appeal where it is for the Appellant to make his case on the balance of probability. Here, the Appellant's case is made in respect of the material change of use of the land that is alleged to have occurred.
17. Briefly, the Council's position is that the land was in use as a timber reprocessing facility when the Notice was issued, and this is reflected in the Notice. The Council said that "99% of the site" was being used for this purpose, involving handling, storage and shredding, with one very small pile of compost. It said that the timber reprocessed on the land was then exported out to such recipients as biomass heat businesses.
18. The timber arose, and continues to arise, it says, as "overflow" from that which arrives at the nearby large waste management facility run by CSH Environmental Ltd, ('CSH') on Packards Lane. In the Hearing, I was told that the Appellant company was "related" to CSH, and Daniel Cox, who was amongst those representing the Appellant, told me that he was a board member at CSH. The Council claimed that the overflow arose as the result of the partial displacement of capacity at the CSH site when a recycling building was constructed.
19. It says that there is no evidence that the processing of green waste, neither intended nor actual, has taken place. It points to photographs that it appended to its Statement of Case ('SoC'), taken on 19 May 2022 and in April 2022, in support of this position.
20. The Council issued a Planning Contravention Notice ('PCN') on 17 March 2022. This was addressed to the owner of Fairfields Farm, on whose land the appeal site lies. A copy of the completed PCN was submitted by the Appellant. In this, whilst the landowner referred to a number of tests that had been undertaken for noise and odour, and that screening had taken place to allow for a successful composting operation, the landowner made no reference to shredding. Although his answers are at times a little vague, this appears to be because he was not carrying out the operations, and in his responses he gives contact details for East Anglia Environmental Services Limited ('EAES') which was. I find that his answers were not false or misleading statements. Although the Landowner drew attention to EAES, there is nothing in the evidence to show that the Council sought additional information from EAES.
21. The Appellant said that its plan, the subject of the aforementioned s78 appeal, is to establish a composting facility on the land and it was preparatory work that was being undertaken on the land when the Notice was issued. Mr Cox told me of the operations that were undertaken by EAES. His evidence was given in a clear, precise and unambiguous manner.
22. The operations involved the importation of wood and green organic material, used in varying quantities, to produce compost. This involves, in terms of plant and machinery, a loading shovel, eddy current separator to remove unwanted materials such as ferrous and non-ferrous metals, and a mobile trommel to produce the required size of brown waste product. He said that no shredding has been or is undertaken on site, a point that the Council conceded in the Hearing. All of the wood dust arising from the process is used in the

- composting process, as well as some of the larger pieces, which aid in the aeration process.
23. The composting was carried out in the open on the hardstanding, with the green waste coming from the CSH facility. Although I heard that that facility did not have planning permission for green waste, I was told how this comes in, nonetheless, in skips and lorries amongst waste that can be brought there.
24. Although I was not provided with a copy of the planning permission for the building at the CSH site, the Appellant told me in the Hearing that the erection of the building had not affected the area of land at the CSH facility that is used for timber reprocessing. The Council provided no evidence to back up its assertion of displacement; and, when I went to the CSH site, it agreed that there had been no reduction in the area used for timber reprocessing as a result of the recent erection of a building.
25. From the written and oral evidence put before me, the Appellant's case that the timber used at the site was not overflow arising from the displacement of activities at the CSH facility, is compelling. Likewise, I find on the balance of probability that this was not a timber waste facility at the time that the Notice was issued nor, for that matter between then and the time of the Hearing, as claimed by the Council. It was, and is, a composting facility in which timber and green waste are constituent ingredients. This is a materially different use, and I could not correct the allegation without causing injustice. The plant, equipment, machinery and storage containers referred to in the Notice are not associated with the use of land for waste recycling, as alleged. Therefore, they are not caught by the terms of the Notice, and I shall not require their removal.
26. For the above reasoning, I find that the Ground (b) case succeeds.

Ground (c)

27. A Ground (c) appeal is made on the basis that the matters alleged in the Notice do not constitute a breach of planning control. Again, these are legal grounds of appeal where it is incumbent upon the Appellant to make his case on the balance of probability.
28. The case is made in respect of the bunds that have been constructed, though not the netting and supporting poles on top of them. The Appellants claim that they are permitted development, allowed by Class A of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended ('the GPDO'). Amongst other things, Class A allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure up to 2m in height where it is not adjacent to a highway used by vehicular traffic.
29. This raises two questions: did the bunds act as a means of enclosure when the Notice was issued; and, if they did, did they accord with the height restriction?
30. The parties' submissions referred to aerial photographs of the site, taken between 2009 and 2022. That from 2009 shows a bund along the north side of the appeal site, which continues westwards beyond the boundary of the site. By 2012, is one along the south side, mirroring that on the north side but not connected to it; this, again, runs westwards beyond the appeal site. There appears to be no substantive change until the images from 2016 and 2017 which appear to show some remodelling of the south bund taking place. A

significant change from that position is shown in the image from 2022, where a new bund running north-south has been constructed at the western end of the appeal site.

31. Prior to the construction of the north-south bund, I find that the bunds running along the north and south sides of the appeal site did not enclose it. They were two free-standing structures flanking the land that had been erected to screen the hardstanding from surrounding views for the storage of farm machinery at that time.
32. As a matter of fact and degree, I find that the bunds were not a means of enclosure until the construction of the north-south bund shown in the 2022 image. Furthermore, my reading of the terms of Class A is that the erection of a means of enclosure would need to be a single operation undertaken over a relatively short period of time. That is not the case here, the enclosure was formed over a period of several years. Thus, for these reasons, I find that the Appellant has failed to demonstrate on the balance of probability that the construction of bunds was permitted development under the terms of Class A. Having reached this position, I need not address the height issue.
33. The Ground (c) case fails.

Ground (d)

34. A Ground (d) appeal is that, at the date the Notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The Appellant's case relates to the construction of the bunds, but not the netting and supporting poles. In this legal ground, the onus lies with the Appellant to show, on the balance of probability, that the bunds have been substantially completed for more than 4 years. As the evidence shows the bunds to have been separate acts of operational development, so I shall look at each of them separately.
35. It is clear that the bunds to the north and south of the hardstanding have been in place for more than 4 years. This is demonstrated in both the aerial photographs and the landowner's email, I have referred to. The Council correctly said that the aerial photographs do not show the height of the bunds; they say, therefore, that it has not been demonstrated that they have not been subject to some change over time. For his part, the Appellant stated that the bunds were substantially complete 4 years prior to the issuing of the Notice and that whilst there may have been some minor changes, these did not suddenly render the bunds as becoming "available for enforcement". He also pointed to the manner in which vegetation modifies the aerial photographs.
36. On the balance of probability, I find that it was too late to take enforcement action against the bunds to the north and south of the hardstanding. However, this is not the case in respect of the bund running north-south that links them. This was not present on the 10 April 2020 aerial photograph and was constructed sometime between then and the photograph dated as "03/2022".
37. Thus, to the degree that I have described, the Ground (d) appeal succeeds, and I shall vary the Notice accordingly.

Ground (a)

38. An appeal made under Ground (a) is that planning permission should be granted for the matters alleged in the Notice. Given my findings, above, this ground applies only to the bund trending north-south, and the poles and fencing added to all of the bunds.
39. As agreed in the Hearing, I was given a copy of an Ordnance Survey ('OS') map at the site visit that showed the site and public vantage points that the parties wished me to view the site from. After going onto the hardstanding area accompanied by the parties, I visited those vantage points and walked along the public rights of way alone.
40. The main issue here is the effect that the north-south bund and the poles and netting on all of the bunds have on the character and appearance of the area.
41. In common with those bunds flanking the hardstanding on its north and south sides, the top of that running north-south appeared to be in the order of 2m above the level of the hardstanding. Poles projected from the tops of the bunds by between 1 and 1.5m, which supported netting. This was designed to stop rubbish being blown from the site.
42. The north-south bund was largely screened from outside the site when I visited. This was due to what I have referred to as the flanking bunds and the use of the land immediately to the west of the appeal site for storage purposes. This did not appear to be the storage of agricultural equipment, and included HGV trailers, metal site fencing, large 'dumpy' bags of material and many large liquid storage containers.
43. As I was not given any evidence as to the lawfulness of the storage on the adjacent land, I give little weight to how it mitigates the effects of the bund and fencing. Notwithstanding the items stored on the land, I was able to see the north-south bund and assess the effects it and the fencing have on the character and appearance of the area.
44. Given the presence of the flanking bunds, the north-south bund could only be seen from vantage points in an arc from the northwest to the southwest of the site. When viewed from public vantage points in those directions, it is seen in the mitigating context of those flanking bunds.
45. The use of bunds to screen agricultural activities, as the landowner set out was the reason for the initial erection of the flanking bunds, is commonplace in the countryside. Whilst it is partially seen presently, were the adjacent land not used to store materials the north-south bund would be clearly seen from public vantage points close to the site. As one moves westwards along the track running around the perimeter on the north side of the airfield, given its small size and the presence of low bunding around a water lagoon close-by to its west, any effect it has is soon lost.
46. By the time I viewed the site from vantage point 'f' on the OS map, a little under a kilometre away to the southwest, the bund was imperceptible and its position could only be accurately ascertained by reason of the HGV trailers on the adjacent land.
47. Had I found that the flanking bunds were not immune from enforcement action in my Ground (d) assessment, I would have reached the same conclusion on their effect on the character and appearance of the area. Whilst longer than the north-south bund, I did not find them to be alien features in the landscape that

caused harm. Again, the small effect that they had on the landscape was soon lost as one moved away from the vicinity of the hardstanding.

48. For the above reasons, I find that the north-south bund does not have a harmful effect on the character and appearance of the countryside in which it stands. Therefore, it accords with the terms of: Policy 10 of the Essex and Southend-on-Sea Waste Local Plan, adopted July 2017 ('WLP'); Policies ENV1, DM15 and OV2 of the Colchester Borough Local Plan 2017-2033, adopted July 2022, ('CBLP'); and chapter 15 of the National Planning Policy Framework ('the Framework') that seek to protect the landscape and countryside from harmful or inappropriate development.
49. Notwithstanding that the bunds on which they sit are commonplace in the countryside and do not cause visual harm, the poles and net fencing that runs along the top of the bunds is, at close-quarters, a jarring feature in the landscape. One would not expect this sort of fence in this landscape and, although small, they give a more industrial look to the site. Although this harm is geographically very limited, it is clearly experienced from the public footpath immediately to the south of the site and the right of way running north to Wellhouse Farm.
50. Had the use that the appeal site is being put to benefited from planning permission, this would have been a point in favour of retaining the posts and netting. I am aware that the s78 appeal is pending and the use that I have identified that the land is being put to in Ground (b) is likely to continue until at least the time that a decision on that appeal is reached. Although it appeared that little wind-blown non-organic waste is generated at the site, requiring the removal of the fence prior to that decision would be counter-productive, as it stops waste material that might be blown from the site. I could grant a 12-month temporary permission for the posts and netting, in the manner discussed in relation to a number of matters in the Hearing. However, it seems to me to be more appropriate to refuse planning permission and vary the terms of the Notice under Ground (g).
51. Therefore, for the reasons above, I find that the poles and netting that they support are jarring features that cause harm to the local landscape contrary to the terms of WLP Policy 10, CBLP Policies ENV1, DM15 and OV2, and guidance in chapter 15 of the Framework.

Other Matters

52. In the Hearing, the Council referred to a drainage ditch to the north of the northern flanking bund, which it said had been created. At my site visit, I walked along this overgrown ditch. I could not be sure that this was a drainage ditch associated with the erection of the bunds. Furthermore, it is not referred to in the Notice, so I take the matter no further. However, if I was wrong to take this position, my finding would have been that the ditch, which could not be discerned from public vantage points, had no ill-effect on the character and appearance of the area.

Overall Conclusion on Ground (a)

53. For the above reasons, I find that the north-south bund does not cause significant harm to the appearance of the area that might justify refusing planning permission. However, I find that the poles and netting fencing do

cause such harm and refuse to grant them planning permission. I shall vary the terms of the Notice accordingly.

Ground (f)

54. The Appellant's case related to the bunds on the site. As I have found two of them to be lawful and have granted permission for the other, there is no need to take this ground further.

Ground (g)

55. The basis of the Appellant's case related to the first requirement of the Notice, to cease the use of the land within 1 day. Given my decision on the Ground (b) case, there is no need to address this.
56. I have, above, refused planning permission for the posts and netting that have been erected on the site. However, as I said there, there is merit in their temporary retention pending the determination of the s78 appeal. I will, therefore, vary the Notice to allow for their retention for 12 months.

Conclusion

57. For the reasons given above I shall correct and vary the Notice and conclude on the Notice, as corrected and varied, that: the Ground (a) appeal should succeed in part only, and I will grant planning permission for the creation of a bund marked in green on the plan attached to this decision, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the erection of netting and supporting poles on the bunds on the appeal site. The requirements of the Notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Roy Curnow
Inspector

APPEARANCES

FOR THE APPELLANT

Michael Bedford KC	Barrister, instructed by Paul Calder
Paul Calder	Agent, Real8 Group
Daniel Cox	Operations Manager – EAES Ltd
Ms Jo Wild	Arboterra Ltd

FOR ESSEX COUNTY COUNCIL

Terry Burns	Principal Planning Officer
Shaun Long	Enforcement Officer

DOCUMENTS

1. Aerial photograph of site – ‘Mixed use aerial plan’, June 2024.
2. Part OS map showing viewpoints.
3. Letter from Holmes and Hills, Solicitors, dated 16 July 2024.



Plan

This is the plan referred to in my decision dated:

by Roy Curnow MA BSc(Hons) DipTP MRTPI

Land at: Fairfield's Farm, Fordham Road, Wormingford, Colchester CO6 3AQ

Reference: APP/Z1585/C/23/3324623

Scale: Not to scale

