



Appeal Decision

Site visit made on 4 January 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 JANUARY 2025

Appeal Ref: APP/U2750/C/24/3340858

Windmill House, Skipton Road, Kettleasing, Harrogate, North Yorkshire, HG3 2LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mark Harper against an enforcement notice issued by North Yorkshire Council.
 - The notice was issued on 31 January 2024.
 - The breach of planning control as alleged in the notice is formation of land bund.
 - The requirements of the notice are to remove the earth bund shown edged green on the attached plan and return the land within the redline boundary to its land level prior to the construction of the bund.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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 varied by (i) the deletion of the words *'remove the earth bund shown edged green on the attached plan and return the land within the redline boundary to its land level prior to the construction of the bund'* in section 5, and the substitution of the words *'remove the land bund shown edged green on the attached plan and return the land within the redline boundary to its land level prior to the construction of the bund'*, and (ii) the deletion of the words *'you are required to comply with this notice within 60 days from the date upon which this Notice takes effect'* in section 6, and the substitution with the words *'you are required to comply with this notice within 8 months from the date upon which this Notice takes effect'*. Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

The Notice

2. In the interests of precision, it is necessary that the requirements of the notice match the breach of planning control. The breach of planning control is the *'formation of land bund'*. The requirements of the notice are to *'remove the earth bund...'* I shall vary section 5 of the notice, without injustice being caused to the main parties, so that it reads *'remove the land bund...'*

Reasons

Ground (f) appeal

3. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

4. The claim made by the appellant under ground (f) is that the bund is needed to address a surface water drainage issue and that the complete removal of it is excessive in so far that the harm caused by it when experienced from the nearby footpath could be addressed by making modifications to part of it and, in particular, that part that is closest to the public footpath.
5. The comments made by the appellant are matters that are relevant to the consideration of a deemed planning application made under ground (a) of section 174(2) of the Act. A deemed planning application is not before me and consequently I am unable to consider whether part of the matters alleged in the notice would be acceptable from a planning merits point of view. Moreover, the purpose of the notice is to remedy the breach of planning control. In this regard, the requirements of the notice are not excessive.
6. The evidence indicates that the Council has communicated with the appellant about the possibility of exploring an alternative scheme in the form of a modified bund. For the above reasons, I am unable to consider such an alternative scheme from a planning merits point of view and, in any event, do not have a detailed scheme before me. Nonetheless, the evidence indicates that the Council may be prepared to consider an alternative scheme and hence this is of relevance from the point of view of considering the ground (g) appeal and the compliance period below.
7. If an alternative or modified earth bund planning application scheme was submitted to the Council and approved by it, then such a planning permission may override, in part, the requirements of the notice given section 180 of the Act. Indeed, section 180 of the Act states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
8. For the reasons outlined above, I conclude that the ground (f) appeal fails.

Ground (g) appeal

9. The appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the 1990 Act (as amended) falls short of what should reasonably be allowed. The compliance period in the notice is sixty days. In response to the appeal, the Council supports the appellant's request to increase the compliance period to eight months.
10. I find that increasing the compliance period from sixty days to eight months would, firstly, reasonably afford more time to ensure that the existing trees are suitably planted elsewhere and, secondly, to give the appellant further time to explore with the Council the option of submitting a further, albeit different, planning application for a modified earth bund which might address the planning concerns raised by the Council when it considered a retrospective planning application for the current bund on the land¹.
11. I find that an increased compliance period is reasonable and proportionate based on the evidence that is before me. It strikes an appropriate balance between exploring other options and ultimately bringing the unauthorised

¹ Planning application reference 22/04669/FUL

development to an end. This is of course in the context of what it says in section 180 of the Act.

12. For the above reasons, I conclude that the ground (g) appeal succeeds.

Conclusion

13. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

D Hartley

INSPECTOR