



Appeal Decision

Site visit made on 27 January 2025

by **Mr James Blackwell LLB (Hons) PGDip, Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 3 February 2025

Appeal Ref: APP/P0240/C/23/3326703

Land North of Woburn Road, Lidlington, Bedfordshire MK43 0RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Colin Green against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 3 July 2023.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission the importation to and the tipping and depositing of waste materials including soil, sand, clay, rocks and brick, rubble, timber and other building waste on the Land.
 2. The alteration of ground levels and construction of bunds on the Land.
- The requirements of the notice are to:
 1. Cease the importation to and the tipping and depositing of waste material on the Land.
 2. Remove all imported, tipped and deposited waste materials including soil, sand, clay, rocks and brick, rubble, timber and other building waste from the Land.
 3. Restore the Land to its condition before the unauthorised development was carried out including by removing the bunds and reinstating its former levels.
- The periods for compliance with the requirements are: 1 month from the date the notice takes effect in relation to step (1); 6 months from the date notice takes effect in relation to step (2); and 12 months from the date the notice takes effect in relation to step (3).
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 a correction and variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. There are two separate components to the alleged breach of planning control set out in the notice: the first relates to the importing, tipping and depositing of waste; and the second relates to operational development comprising the alteration of ground levels and construction of bunds.
2. To ensure greater clarity and accuracy with regard to the alleged breaches of planning control, I have corrected the first part of the allegation, to ensure it explicitly refers to a use of land. I have also deleted reference to “importation”, as this relates to offsite activities. Corresponding variations have also been to the requirements, to ensure they accurately reflect the amended breach. I am satisfied these changes will not prejudice either party, as the substantive content of the breach and the requirements remains the same.
3. Since the appeal start date, the National Planning Policy Framework has been updated. I have determined this appeal with regard to the latest version, published in December 2024.

Ground (a)

Main Issues

4. The main issues in respect of the ground (a) appeal, being the deemed planning application, are the effects of development with regard to the character and appearance of the area; pollution and contamination; and ecology.

Reasons

Character and Appearance

5. The appeal site is an agricultural field located to the north of the A507 (Woburn Road). It is flanked to the north-east by woodland, and follows a sloping upwards gradient in this direction. The surrounding landscape is made up of rolling countryside with a gentle undulating topography, which contributes positively to the open and rural character of the area.
6. The development has introduced an extensive bund within the southern part of the site, which follows a rough horseshoe shape extending towards its centre. On account of its overall size and height, the bund is seen as a notable intrusion into the appeal site, which undermines its open and rural character.
7. The impact of the bund is reduced by its siting in the lowest part of the site. The southern hedgerow and western copse of trees also help screen it from view in these directions. However, these mitigating factors do not eliminate the harm arising from the bund: the loss of openness is still readily experienced within the site itself, and to a lesser degree it is also experienced from land surrounding the site to the north and north-west, including the nearby bridleway.
8. Whilst the external side of the bund has been softened by planting, inside the horseshoe, the content of waste deposits is much more apparent. The ground within this area is scattered with waste materials, including broken up rubble, bricks and gravel. Whilst this area is screened from public view by the bund itself, the presence of these materials still undermines the rural landscape character of the site.
9. For these reasons, the development harms the character and appearance of the appeal site itself and the surrounding area. It conflicts with Policy HQ1 of the Central Bedfordshire Local Plan (2021) (Local Plan), which says development should complement the existing natural environment, taking account of its landscape setting, landscape character and tranquillity. The development also conflicts with saved Policy GE9 of the Bedfordshire and Luton Minerals and Waste Local Plan (2005) (Bedfordshire and Luton MWLP), which says planning permission for minerals and waste development which has an adverse effect on landscape character will only be granted where any adverse effects are mitigated as far as practicable and are outweighed by other planning benefits. Whilst the benefits of the scheme are discussed later on, they are not considered sufficient to outweigh the harm in this regard.

Pollution and Contamination

10. Much of the waste material deposited on site was sourced from the grounds of Kingsland School, following a construction project within the school site. The Geoenvironmental Report (September 2020) (Ground Report) explains that none of

the samples of the source material, which comprised topsoil and made ground, were found to exceed acceptable levels of contaminants, as prescribed by the Generic Soil Assessment Criteria. A further laboratory test report prepared by CMTL Limited identifies source materials from other construction sites, and suggests the materials brought on to site were inert waste, comprising recycled materials such as grey sandy gravel, brick and concrete fragments.

11. Notwithstanding these findings, the Ground Report highlights that *“construction activities during the development could potentially find localised areas of, or soils different to those sampled and tested in this investigation. In this event, stockpiling and further testing would be necessary”*. Whilst it may be the case that additional testing was not necessary, there is nothing before me to confirm this. This absence of information is problematic, as it raises uncertainty with regard to any residual pollution risk arising from the source material.
12. Moreover, at paragraph 6.7.8 of the Ground Report, it says *“all soil arisings that are not to be re-used on site should be removed from the site by an appropriately registered waste carrier and disposed of in an appropriately licensed facility under the appropriate duty of care procedures and waste regulations”*. It goes on to say that *“Operators also have a duty to undertake in-house quality assurance testing, and may require further testing to be carried out, before they are able to accept the waste stream”*. On the available evidence, it does not appear that the appeal site is licensed to receive such waste. It is also not clear whether the waste was removed by a registered waste carrier, nor whether any additional quality assurance testing was carried out. In turn, I cannot be sure that the necessary precautions have been adhered to prior to depositing the waste material, which is of particular concern, given the uncertainty identified above.
13. Overall, this means I am unable to conclude with sufficient certainty that the source material does not pose any risk in terms of pollution or contamination. The development therefore conflicts with Policy CC8 of the Local Plan, saved Policy GE17 of the Bedfordshire and Luton MWLP, and Policies WSP6 and WSP14 of the Bedford Borough, Central Bedfordshire and Luton Borough Councils Minerals and Waste Local Plan (2014). Together, these policies are prescriptive as to where waste can be deposited or recycled, to ensure development does not cause unacceptable risk in terms of pollution or contamination.

Ecology

14. The appellant's Preliminary Ecological Appraisal (August 2023) concludes that the majority of the habitats within the site have either been enhanced or retained as part of the development. The report concludes that overall, the development has a minor beneficial impact to the ecology of the site, even when balanced against the loss of some low-value grassland. The improvements are said to provide some foraging and commuting habitat for birds and bats, and are also said to be beneficial to invertebrates and terrestrial mammals.
15. In the absence of other evidence to the contrary, the development therefore preserves, and even enhances the ecology of the site. In this regard, the development is consistent with Policies EE1 and HQ1 of the Local Plan, insofar as they seek to ensure development complements natural landscape through biodiversity, green infrastructure and tree planting.

Other Matters

16. Whilst the scheme is said to have enhanced the ecology and biodiversity of the site, the ecological appraisal says these enhancements are minor. In turn, the corresponding benefits would not be sufficient to outweigh the other harms identified.

Ground (a) - Conclusion

17. Overall, I have found no harm to the ecology of the site. However, the development harms the character and appearance of the site and its surroundings. On the available evidence, I have also not been able to rule out harm with regards to pollution or contamination. The scheme therefore conflicts with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, that outweigh this finding. The appeal on ground (a) therefore fails.

Ground (f)

18. Pursuant to ground (f), the appellant says that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach of planning control. Whilst limited detail has been advanced on this ground, the appellant says that regularisation of the development would be a more proportionate way to remedy the alleged breach.
19. As per s173(4) of the 1990 Act, the purpose of the notice is to remedy the breach of planning control. The requirements set out in the notice must achieve this purpose. In this instance, the steps require the unauthorised use of the land for the depositing and tipping of waste to cease. They also require the bund and associated waste materials to be removed from the site, and the land to be restored to its former condition. These requirements go no further than remedying the breach of planning control alleged in the notice, and any lesser steps would not achieve this same purpose. The requirements are therefore proportionate, and the main substance of the ground (f) appeal fails.
20. Nonetheless, as discussed, I have made some minor changes to the notice to make it explicit that part of the alleged breach relates to a use of the land. I have also removed reference to “importing” waste. To the extent that the requirements have been varied to reflect these changes, the appeal on ground (f) succeeds.

Conclusion

21. I have made some minor variations to the requirements of the notice, and to this extent alone, the appeal on ground (f) succeeds. However, the appeal on ground (f) otherwise fails, and for the reasons outlined, the appeal on ground (a) should also not succeed. I shall therefore 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 (as amended).

Formal Decision

22. It is directed that the enforcement notice is corrected by:

(a) The deletion of (1) from paragraph 3 and its substitution with the following:

1. Without planning permission, use of the site for the tipping and depositing of waste materials including soil, sand, clay, rocks, brick, rubble, timber and other building waste.

and varied by:

- (b) The deletion of step (1) from paragraph 5 and its substitution with the following new step:

1. Cease use of the site for the tipping and depositing of waste materials including soil, sand, clay, rocks, brick, rubble, timber and other building waste.

23. Subject to the corrections and variation, 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 as amended.

Mr James Blackwell

INSPECTOR