



Appeal Decision

Site visit made on 30 January 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/P1940/C/23/3317115

Land to the rear of 69 to 107 Ebury Road, Rickmansworth, Hertfordshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Patrick Rosso against an enforcement notice issued by Three Rivers District Council.
 - The notice was issued on 26 January 2023.
 - The breach of planning control as alleged in the notice is (1) the carrying out of engineering operations on the Land comprising: (a) vegetation and topsoil stripping, (b) re-grading works, (c) the importation, deposition and spreading of hardcore aggregate, rubble, other inert waste materials and topsoil, (d) the laying of a geotextile membrane and (e) the erection of an earth bund; and (2) the placement of a shipping container on the Land (together hereinafter referred to as "the Works").
 - The requirements of the notice are:
 1. Remove all of the topsoil imported and deposited on the land.
 2. Remove all of the hard-core aggregate, rubble and other inert waste materials imported and deposited on the land.
 3. Remove the geotextile membrane from the land.
 4. Remove the shipping container from the land (the approximate position of which is shown shaded blue on the site map attached to this notice).
 5. Following compliance with steps 1, 2, 3 and 4 above, dismantle the earth bund that runs along the edge of Rickmansworth Town Ditch (the approximate location of which is shown marked between X-X on the attached site map) and redistribute the earth evenly across the whole of the land. Place additional topsoil on the land where necessary so as to ensure that the consistent depth of topsoil across the whole of the land is a minimum of 15cm in depth (to enable the successful re-seeding of the whole of the land with a native grass seed mix).
 6. Following compliance with steps 1-5 above re-seed the whole of the land with a native grass seed mix.
 7. Following compliance with steps 1-6 above, re-seed any part of the whole of the land where the native grass seed mix dies or is dying within 5 years from the date of this notice takes effect.
 8. Remove the temporary boundary treatment (the approximate position of which is shown marked Y-Y on the site map and photograph 1 attached to this notice) and reinstate a 2m high close boarded fencing between Y-Y.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the ground set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of the words "Place additional topsoil on the land where necessary so as to ensure that the consistent depth of topsoil across the whole of the land is a minimum of 15cm in depth (to enable the successful re-seeding of the whole of the land with a native grass seed mix)" from requirement 5.
 - In section 5 the deletion in their entirety of requirements 7 and 8.

- In section 5 the deletion of the words “6 months” and replacement with the words “9 months”.
2. Subject to the above variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
4. Section 172(3)(b) of the 1990 Act requires that an enforcement notice is served not less than 28 days before the date specified as that when the notice is to take effect. This is to give the recipient(s) of the notice sufficient time to make an appeal under section 174 or to make an application for a judicial review. From the available evidence it appears that the enforcement notice was served on 26 January 2023, with the effective date specified as being 22 February 2023. This would provide a period of 27 days, which would fail to comply with section 172(3)(b).
5. However, in the case of *Porritt & Williams*¹ it was held that, despite the enforcement notice only affording 27 days, the Inspector had discretion to disregard the defect because a valid appeal had been received in time and no recipient had been substantially prejudiced. There are clear similarities with this appeal. It is clear that a valid appeal has been received in time and that the appellant has been able to substantiate his case, with the appeal being submitted on his behalf by a planning professional. I am therefore satisfied that the defect can be disregarded since no injustice has been caused.

Ground (c)

6. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test is on the balance of probabilities.
7. The enforcement notice alleges two breaches of planning control, firstly the carrying out of engineering operations (which are said to be made up of five components and listed (a) to (e) on the notice), and secondly the placing of a shipping container on the land.
8. The appellant asserts that the ground works said to constitute the engineering operations do not amount to development. Section 55(1) of the 1990 Act sets out the meaning of development. Development comprises two limbs; (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.
9. There is no definition in the 1990 Act of what constitutes an engineering operation, and therefore it is a matter of fact and degree whether ground works are engineering operations based on the particular circumstances of the case. The

¹ *Porritt & Williams v SSE & Bromley LBC* [1988] JPL 414

appellant has referred to an appeal decision² where the definition of an engineering operation was discussed. In particular the appellant refers to paragraphs 9 and 10 of the decision where, amongst other things, the Inspector states that *“it could be an operation which would generally be supervised by an engineer”* and *“would need to be laid to drawings prepared in advance by someone with the necessary expertise, typically an engineer”*.

10. In *Fayrewood Fish Farms*³ it was held that the term “engineering operations” should be given its ordinary meaning in the English language. It must mean operations of the kind usually undertaken by engineers (i.e. operations calling for the skills of an engineer). However, this does not mean that an engineer must actually be engaged on the project, simply that it is the kind of operation on which an engineer could be employed.
11. Furthermore, engineering operations involve works with some element of pre-planning, which would normally but not necessarily be supervised by a person with engineering knowledge. Therefore, the appellant or person(s) who carried out the works do not have to be an engineer or possess engineering knowledge for the works to constitute an engineering operation.
12. The appellant addresses each of the five components of the alleged engineering operations separately and argues that none of them amount to development. I agree that if taken in isolation some of the components, such as “vegetation and topsoil stripping”, may not constitute engineering operations. However, it is the totality of the ground works undertaken that need to be assessed in order to establish whether they can be said to be engineering operations and amount to development.
13. In addition to the stripping of vegetation and topsoil, there have also been re-grading works, the importation, deposition and spreading of aggregate, rubble, other inert waste materials and topsoil, and the laying of a geotextile membrane. The appellant contends that despite the re-grading works and the importation of various materials to the site, there has been no material change to ground levels and the works do not constitute an engineering operation.
14. Although I acknowledge that the ground levels immediately adjacent to the rear boundary fences of the properties on Ebury Road do not appear to have been raised, from the photographic evidence provided by the Council it is apparent that the site has been raised in other areas and is now much more level than previously existed. Indeed, the appellant accepts that the works have resulted in a more even surface compared to its previous condition.
15. I disagree with the appellant’s statement that a “small amount” of topsoil and other material has been imported to the site. The photographic evidence provided by third parties shows material being brought to the site in large tipper lorries, with small dump trucks and mini diggers also evident on the site to move the imported material around and to level the land. When considering both the change in ground levels and the amount of material that has been imported by the tipper lorries, in my view the extent of the material imported goes beyond what could be reasonably described as being a “small amount” or being necessary for the “reasonable upkeep of the land”.

² APP/N1215/X/12/2185102

³ *Fayrewood Fish Farms Ltd v Secretary of State for the Environment & Hampshire CC* [1984] JPL 267

16. With regards to the laying of a geotextile membrane, the appellant's position is that the membrane is permeable and allows water to infiltrate naturally, therefore not materially increasing the risk of flooding. Notwithstanding these claims, it is clear that the membrane is a man-made feature which forms part of the engineering operations that have taken place on the site.
17. In relation to the earth bund, the judgement in *Ewen Developments Ltd*⁴ endorsed an Inspector's finding that earth bunds amounted to an engineering operation and therefore was not permitted development. It is important to note though that the judgement did not find that all earth bunds are engineering operations, and it is a matter of fact and degree whether an earth bund amounts to an engineering operation.
18. In this instance the earth bund is approximately 1 metre high and runs adjacent to the town ditch for almost the entire length of the southern boundary of the appeal site. Despite there being small gaps at intermittent points along the bund, given its overall size and length, its creation would have no doubt required the use of heavy plant and machinery as well as an element of pre-planning. Consequently, the earth bund amounts to an engineering operation.
19. It is clear that the totality of the works would have involved a degree of pre-planning to co-ordinate the operations and the required machinery and materials. Whilst the works may not have been carried out or supervised by an engineer, such matters are not fatal and do not preclude the works from comprising an engineering operation.
20. Therefore, as a matter of fact and degree, I consider that cumulatively the ground works constitute an engineering operation and are therefore development for the purposes of the 1990 Act. It has not been suggested that the works are permitted development, and given their extent and scale, I do not consider that they are *de-minimis*⁵. The works are development for which planning permission is required and since none has been granted, they constitute a breach of planning control.
21. Turning to the shipping container that has been sited on the land, the Council consider that, as a matter of fact and degree, the shipping container amounts to a building and that the building would not be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO"). The appellant takes the opposite view and considers that the shipping container does not constitute a building, citing an appeal decision⁶ where the Inspector concluded that the siting of containers did not amount to development.
22. The definition of development under section 55(1) of the 1990 Act is already set out above. In section 336 of the 1990 Act a "building" is defined as including any structure or erection, and any part of a building.
23. Case law⁷ states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. None of these factors are necessarily decisive and greater weight may be given to one

⁴ *Ewen Developments Ltd v SSE & North Norfolk DC* [1980] JPL 404

⁵ A latin term meaning that it is on too small a scale for the law to take account of it

⁶ APP/U1240/X/16/3159530

⁷ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385 & *Skerritts of Nottingham Ltd v SSETR* (No 2) [2000] 2 PLR 102

factor over another in reaching a decision. It is ultimately a matter of planning judgement.

24. The shipping container is substantial in both size and volume, is constructed in permanent materials, and was brought to site already assembled rather than being constructed on site. It is therefore highly probable that due to its size and weight, specialist lifting equipment would be required to move the container.
25. With regard to permanence, I acknowledge that shipping containers are designed to be transported from place to place. However, “permanence” does not necessarily connote that the state of affairs must continue forever or indefinitely. Whilst technically it may be true that the shipping container could be moved, I am not persuaded that in practice that would be the case. Specialist heavy lifting equipment is likely to be required to move the container, and it appeared to have been placed on hardstanding to provide an adequate base. The appellant has not demonstrated or explained in the submitted evidence how the container would be moved either within or off the appeal site, nor is there any evidence to suggest that the container has moved since it was first brought to site over two years ago. I therefore find it highly probable that it will remain in its current position for a considerable period of time and display a strong characteristic of permanence.
26. I acknowledge that the container is not physically connected to the ground or connected to any services. Nevertheless, it is not uncommon for shipping containers to simply sit on the ground. Due to the size of the shipping container, there is nothing that makes me consider the weight of such a sizeable structure would not be considerable and that it would not achieve the necessary affixation to the ground through its inherent weight.
27. As a matter of fact and degree, I find that the shipping container meets all of the tests for being a building. I therefore conclude that it would represent operational development. I have not been directed by the appellant to any part of the GPDO which may permit such a structure, and I am satisfied that the building would not be permitted development under any part of the GPDO. The shipping container is a building for which planning permission is required and since none has been granted, it constitutes a breach of planning control.
28. For the reasons set out above the matters alleged in the notice constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Ground (f)

29. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach.
30. In short, the requirements of the notice are to remove from the land the earth bund, geotextile membrane, all material imported and deposited on the land, and the shipping container, and to return the land to its previous condition. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

31. The appellant argues that, with the exception of requirements 5 and 8, the steps required to be taken are unnecessary and disproportionate. In the appellant's view, the works have not materially changed the character and appearance of the site, nor have they impacted its function as a flood plain. Whether the development is acceptable in terms of its impact on flood risk, or the character and appearance of the area, are arguments relating to the planning merits of the case.
32. However, where there is no appeal under ground (a) there is no deemed application for planning permission, and therefore there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose of the notice, which in this instance is to remedy the breach of planning control. Requirements 1-6 (save for part of requirement 5 as discussed below) would clearly achieve that purpose and are not excessive.
33. There is no evidence to suggest that the land was anything other than grassed prior to the development taking place, and therefore the requirement to re-seed the land with grass is reasonable and necessary to return the land to its previous condition. Nevertheless, the requirement to spread topsoil to a minimum depth of 15cm across the site appears arbitrary and unsupported by any credible evidence or reasoning. I shall therefore delete the specific reference to 15cm of topsoil from requirement 5. Similarly, requirement 7 is excessive and is not necessary to remedy the breach of planning control and should be deleted.
34. Requirement 8 of the notice requires the removal of the temporary boundary treatment from the approximate position shown between Y-Y on the site map and photograph 1 attached to the notice, along with the subsequent reinstatement of 2m high close boarded fencing. However, there is no corresponding allegation regarding the erection of a boundary treatment within the alleged breach of planning control set out in section 3 of the notice, either as operational development or a material change of use to which the works might have been associated with.
35. Consequently, requirement 8 is excessive and I shall vary the notice to delete this requirement. In any event, I observed during my site visit that the temporary boundary treatment referred to in the notice had been removed and replaced with timber fencing and gates. The timber fencing and gates are a separate act of development which the Council can take further formal enforcement action against, should they consider it expedient to do so.
36. As such, the appeal on ground (f) succeeds to that extent and I have varied the notice accordingly.

Ground (g)

37. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of six months after the notice takes effect.
38. The appellant argues that a compliance period of six months is unreasonably short, as an environmental permit may be required from the Environment Agency (EA) to carry out the works required by the notice. The preparation of technical information required to apply for the permit would take time, as well as there being an anticipated timeframe of around two months for the EA to make a decision once the

application has been submitted. The appellant has suggested a compliance period of twelve months, as it is considered that this would provide adequate time for both the EA permit process and the works on site to be completed.

39. I acknowledge that the need to obtain a permit from the EA will delay the commencement of remedial works on site. However, whilst the process to obtain a permit may take around two to four months, I am not satisfied that a compliance period of twelve months is justified. It would not provide the necessary balance between the public interest in securing expeditious compliance with the notice and the private interest bound up in the development.
40. I shall therefore extend the compliance period to nine months, which in my view strikes the appropriate balance and represents an appropriate and reasonable compliance period.
41. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

42. For the reasons given above I conclude that the appeal does not succeed, save for a limited extent under grounds (f) and (g). I have therefore upheld the enforcement notice as varied.

David Jones

INSPECTOR