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## Appeal Decisions

Site visit made on 2 May 2025

by **Grahame J Kean BA (Hons) Solicitor MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 May 2025

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### **Appeal A Ref: APP/P1940/C/23/3319401**

#### **Keepers Cottage, Solesbridge Lane, Chorleywood, WD3 5SU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Thomas Murphy against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 1 March 2023.
- The breach of planning control as alleged in the notice is Without planning permission the carrying out on the land of engineering operations compromising the excavation of land and creation of earth bunds ("the works").
- The requirements of the notice are:
  1. Dismantle the earth bunds (the approximate location and extent of which are shown marked green on the attached Site Map) and re-distribute the earth evenly across the land shown cross-hatched in red on the attached Site Map.
  2. Following compliance with Step 1 above, re-seed the land cross-hatched in red with a native grass seed mix.
  3. Following compliance with Step 2 above, re-seed any part of the land crossed hatched in red where the native grass seed mix dies or is dying within 5 years from the date of this Notice takes effect.
- The period for compliance with the requirements is 4 months from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) 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.

**Formal Decision:** the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the carrying out on the land of engineering operations compromising the excavation of land and creation of earth bunds at Keepers Cottage, Solesbridge Lane, Chorleywood, WD3 5SU as shown on the plan attached to the notice.

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### **Appeal B Ref: APP/P1940/C/23/3319403**

#### **Keepers Cottage, Solesbridge Lane, Chorleywood, WD3 5SU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Thomas Murphy against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 1 March 2023.
- The breach of planning control as alleged in the notice is Without planning permission: 1) the laying of hardcore aggregate on the land to create an area of hardstanding, and 2) the creation of earth bunds on the land ("the works").
- The requirements of the notice are:
  - (1) Remove the hardcore aggregate (approximate position and extent shown cross-hatched in red on the attached Site Map) from the Land.
  - (2) Following compliance with Step 1 above, dismantle the earth bunds (the approximate location and extent of which are shown marked green on the attached Site Map) and re-distribute the earth evenly across the land cross hatched in red on the attached Site Map.
  - (3) Following compliance with Steps 1 and 2 re-seed the land cross-hatched in red on the attached Site Map with a native grass seed mix.

(4) Following compliance with Step 3 above, re-seed any part of the land cross-hatched in red on the attached Site Map where the native grass seed mix dies or is dying within 5 years from the date this Notice takes effect.

- The period for compliance with the requirements is two months from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) 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.

**Formal Decision:** It is directed that the enforcement notice is varied as follows:

- Delete the plan attached to the notice and replace with the plan annexed to this Decision
- Delete Requirement (2) and re-number the remaining Requirements (3) and (4), as (2) and (3)
- In the renumbered Requirement (2), delete “Steps 1 and 2” and replace with “Step 1”
- In the renumbered Requirement (3) delete “Step 3” and replace with “Step 2”.

Subject to these variations, the enforcement notice is upheld. The appeal is allowed insofar as it relates to the retention of the earth bunds created on the land coloured green and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the retention of earth bunds at Keepers Cottage, Solesbridge Lane, Chorleywood, WD3 5SU. The appeal is dismissed, and the enforcement notice is upheld insofar as it relates to the hardcore aggregate on the land cross hatched red on the plan and planning permission is refused in respect of the hardcore aggregate on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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## Appeal A

### *Ground (b)*

1. This ground of appeal fails. It is asserted that the work carried out is so minimal that it cannot constitute an engineering operation as alleged in the notice. On this basis, it is said that the breach of planning control has not occurred as a matter of fact.
2. The photographs in the Council’s statement of case indicate, and my site inspection confirms that the profile of the land where the bunds have been created has been visibly raised compared to the surrounding ground levels. In addition the Council’s photographs of the two earth bunds correspond with those described in and marked on, the plan attached to the notice.
3. Development, as defined in s55 of the 1990 Act, includes the carrying out of building, engineering, mining or other operations in, on, over or under land. “Other” operations may include such works as the formation of earth banks where undertaken without the degree of pre-planning and skill constituting engineering operations. The question is one of fact and degree based on the individual circumstances of the case. I am satisfied that the excavation works and bunds amount to development for these purposes, whether engineering or other operations. In any event, in light of the decision quashing the notice there is no need to amend the description of the breach of planning control. Ground (b) fails.

### *Ground (c)*

4. Under this ground it is said that the bunds do not require planning permission as they fall within Part 2, Class A of the General Permitted Development Order 2015 (as amended) as a form of enclosure. It is also argued that excavation works fall within Class E which relates to the ‘provision within the curtilage of the dwellinghouse of (a) any building...’. It is pointed out that “building” is defined in s336 of the 1990 Act as “including any structure or erection, and any part of a building...”, thus the works within 20 metres of the dwellinghouse are permitted

development and for those beyond 20 metres, 10 square metres of them would be permitted (having regard to the restrictions set out in paragraph E.2 related to land within an area of outstanding natural beauty (AONB) in which the appeal site is located).

5. Within Part 2, there are several classes, including Class A which are all termed, by virtue of the overall heading, “minor operations”. However, there is no general qualitative test set out in Class A or elsewhere in Part 2, that references what works are “minor”. It is the application of the criteria set out in the dispositive wording of the class in question that applies. Therefore, I disagree with the Council’s interpretation and application of the legislation, because whilst the bunds are both substantial in length and required the use of machinery in their construction, operational development comprising bunds would in principle be capable of coming within the definition of a means of enclosure in Class A.
6. The Council also argues that the bunds are set in from the boundary edge and appear as freestanding structures, therefore they are outside Class A. I accept that the case of *R. (Dennis) v Sevenoaks DC [2004] EWHC 2758 (Admin)* confirms that Class A, Part 2 requires there to be a function of enclosure. The site is bound by an existing line of trees and fencing on the northern boundary of the site and mature trees and close-boarded timber fencing on the north-western corner. However, it is clear to me from what I saw that the bunds fulfil an enclosure function in parallel with or complementing the existing trees and fencing.
7. What the Council actually relies on is the passage quoted in *Dennis* which comes from another case, ie *Prengate Properties Ltd v Secretary of State for the Environment (1973) 25 P. & C.R. 311*. At paragraph 314 of that case, it was said:  
  
*“I think that on the proper construction of this paragraph the building of a wall is not authorised unless the wall has some function of enclosure; in other words, it would not extend to someone who places a free-standing wall in the middle of his garden in circumstances in which the wall neither encloses nor plays any part in the enclosure of anything ...”*
8. The present appeal concerns not a wall but arguably an “other means of enclosure”, ie the earth bunds if they were to be considered under Class A. I disagree that they appear as “freestanding” structures. They are erected at the perimeter of the site very close to the treeline and fencing, and nowhere near the middle of the site. They clearly have a function of enclosure.
9. However, that is not the end of the matter. The bunds have been created out of excavated material from the land, as acknowledged by the appellant. The evidence in the various statements and photographs shows that it is likely that the bunds were erected in association with and as part of a single engineering operation including the excavation works. The excavation works and the bunds constitute a demonstrable change in the land levels which go beyond de minimis and are to be regarded as development.
10. Moreover, when it comes to the possible application of Class E in respect of the excavation works, these cannot come within the definition of “building” for the purposes of Class E, nor can they sensibly be regarded as “part” of a building. I accept that the land marked “excavated land” and “earth bunds” on the enforcement notice plan are within the curtilage of a dwelling house. However, the excavation works are engineering or other operations (not building operations) that

have altered the levels of the land. Such excavation works, taken with the erection of the bunds are an engineering operation which cannot be considered permitted development under Class A or Class E.

11. I find in the circumstances that the bunds should not be considered in isolation and therefore do not fall within the definition of permitted development in Class A of Part 2 of Schedule 2 to the 2015 order (as amended).
12. The appeal on this ground therefore fails.

*Ground (a)*

13. The appeal site prior to the unauthorised works contained a detached dwelling, Keepers Cottage within a plot of some 0.5ha north of Solesbridge Lane, adjacent to the M25 which abuts the western boundary with open fields to the north-east. The site is gated and accessed via Solesbridge Lane. It is largely screened by mature trees which line the road boundary. The site is in the Metropolitan Green Belt (GB) and the Chilterns AONB (now referred to as a National Landscape). The Council states that the pre-existing condition of the land was an open parcel of reasonably maintained land with a clear gradual slope in topography from the rear boundary of the site down towards the original dwellinghouse.
14. It should be noted that on 18 March 2025 planning permission was granted at the site for change of use of land to a residential caravan site: construction of raised decking; construction of an outbuilding; installation of fencing and a gate; provision of hard standing; associated landscaping works and alterations to land levels.
15. The current land levels within the permitted caravan site area are therefore deemed acceptable by the Council. Although noticeable, there is not a significance difference between those levels and the adjacent land which consists of the excavated area, such that the depth and spatial extent of the excavations or the scale of the earth bunds can be said to have eroded the open-natured character of the land.
16. Paragraph 154 of the National Planning Policy Framework (NPPF) states that certain forms of development including engineering operations, are not inappropriate in the GB provided they preserve its openness and do not conflict with the purposes of including land within it. The NPPF at paragraph 189 also states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes, which have the highest status of protection in relation to these issues.
17. The works have excavated a large section of the garden, some 500m<sup>2</sup>, with earth bunds enclosing the northern and western boundaries, some 60-65 metres in length. However, I am unable to agree with the Council that the depth and spatial extent of the works have reduced openness across the site to the extent that it has produced harmful effects that conflict with national guidance and local plan policy.
18. Nor do I consider that the development conflicts with the purposes of the GB in that it fails to safeguard the countryside from encroachment. The appeal site is a residential plot of land sandwiched between the defensible boundaries of Solesbridge Lane, the M25 to the north and a landscaped buffer to the eastern boundary. Beyond the change in levels and raised embankments there is no intrusion of buildings or infrastructure. The land is essentially left open. From a

visual and physical point of view, any intrusion is relatively small with the additional bulk created by the works. The development does not fail to safeguard the land from encroachment in the countryside and the works are not inappropriate development for the purposes of the NPPF.

19. The purposes for which national landscapes are designated, ie conserving and enhancing the natural beauty of the area, should be recognised in decisions that impact such areas. The impacts here consist essentially of the loss of the gradual slope in topography from the rear boundary of the site to the original dwellinghouse. Whilst this may have been aesthetically pleasing where visible the special character and rural appearance of the AONB has not been harmed by the works, nor has there been harm caused by loss of the openness of the GB. Consequently, the development complies with Policy CP11 of the Core Strategy (adopted October 2011), Policies DM2 and DM7 of the Development Management Policies LDD (adopted July 2013) and the NPPF. Accordingly, permission should be granted.

#### *Other matter*

20. The Council contends that the development does not benefit from the exception set out in paragraph 155 (development of “homes, commercial and other development” in the GB). It makes a detailed case as to why the various criteria are not met, but in my view the particular development under consideration here cannot sensibly be regarded as falling into this genre.
21. Under the *eiusdem generis* principle general words following a list of specific words are understood to refer only to things of the same kind as the specific items listed. If literally all other development were to be within the scope of the paragraph it is likely it would simply have referred to “development”. The specific description of homes and commercial development are clearly references to substantial forms of built development. One might read “other development” by dint of the *eiusdem generis* principle as related in some ancillary way to residential or commercial development. Alternatively, it might be read as development with a similarly substantial built form but involving other uses, for example recreation. With the former approach, one would expect it to be spelled out clearly that the “other development” was to be linked to the specific words in this way.
22. At any rate for present purposes, the NPPF makes adequate provision in Section 13 and paragraph 154h) to assess the impact on the GB of development of hard surfaces constituting engineering operations rather than buildings, without recourse to paragraph 155 unless (which I do not find is the case here) it constitutes a substantial form of built development in its own right which falls under the *eiusdem generis* principle.

### **Appeal B**

#### *Ground (c)*

23. The arguments deployed in respect of Appeal A, are also made for the earth bunds and it is again accepted that they were formed out of excavated material from the land. The bunds surround the new hardcore area and in appearance and function they form a means of enclosure very close to the perimeter of the site. They surround an unauthorised area of hardstanding which is also a form of operational development. This land was formerly lawn. It was scraped back and

then laid with asphalt hard surfacing. It appears that the excavated material in this part of the site was used to form the earth bunds. The extent of works involved comprise engineering operations for which planning permission is required.

24. The appellant claims that the hardstanding does not require planning permission because, pursuant to Part 1, Class F of Schedule 2 to the GPDO, it is incidental to the enjoyment of a dwellinghouse. The Council's argument that the hardstanding exceeds what is reasonably considered to be incidental to the enjoyment of the dwellinghouse is refuted on the basis that this is not one of the statutory conditions of permitted development and it would create uncertainty for homeowners.
25. Class F permits the provision within the curtilage of a dwellinghouse of a hard surface for "*any purpose incidental to the enjoyment of the dwellinghouse as such*". Therefore, just as with Class A of Part 1, there is a test of what is incidental to the enjoyment of the dwellinghouse. It does not have to be justified by reference to the statutory conditions in paragraph F.2 of Class F.
26. Prior to the laying of hard-core the dwelling was served by a large area of concrete (now tarmac), located centrally within the site and, as I saw, it also forms part of the driveway into and out of the site. A new area of brick paving in front of the house accommodates several vehicles. Excluding the newly laid hard-core, I agree with the Council that the dwellinghouse is already served extensively by hard surfacing. It can also be easily seen from the site and block plan overlay that there is adequate driveway space apart from the area enforced against, so it is unclear what purpose is served by such a large area of hardcore in the western part of the appeal site and it is unlikely to be for a purpose incidental to the enjoyment of the dwelling itself. For the avoidance of doubt my assessment is made on the new hardcore aggregate area, excluding the tarmacked area within the notice.
27. Therefore, as a matter of fact and degree the appellants have not discharged the necessary burden of proof to demonstrate on the balance of probabilities that there has not been a breach of planning control. The appeal on ground (c) accordingly must fail.

#### *Ground (a)*

28. The appeal site is also within the Chilterns National Landscape (formerly Chilterns AONB). Views into and across the site are limited due to the presence of trees along the boundary with Solesbridge Lane.
29. The Council alleges harm by loss of openness in the GB and that it is inappropriate development. The NPPF at paragraph 150b) states that engineering operations are appropriate development in the GB provided they preserve its openness and do not conflict with the purposes of including land within it.
30. The hardcore aggregate area and bunds are of a significant scale. The former in particular is extensive and visually intrusive. Large areas of hard surfacing can physically take up space and reduce the amount of open land available within the GB. Such is the case here. The development is effectively screened from several public viewpoints and would have a limited effect on one's perception of openness from beyond the boundary of the site. Nevertheless, although the visual impact of the hardstanding may be less than for example a building, there is a significant loss of a sense of natural space. No specific purpose is identified for the development and no specific proposals attempt to mitigate these harmful effects.

31. There are patches of grassed area within the area enforced against, but this does not render the impacts negligible and the area is certainly not “considerably” grassed over as alleged. To the contrary it is predominantly laid with hardcore aggregate.
32. Nevertheless, in respect of the bunds I agree with the appellant that they have now fully grassed over and appear as a vegetative boundary to the land. As such they are more consonant with their surroundings. The bunds cause no harm to the appearance of the AONB and provide a limited functional purpose in enclosing this part of the residential plot. Planning permission should be granted for their retention without having to re-distribute the earth across the land.
33. I acknowledge that the site is screened by hedging and trees and public viewpoints are restricted, however, the simple fact is that there is too much new hardcore aggregate not to cause a conflict with the purposes of including land within the GB. Being level to the ground, the hardstanding arguably preserves the openness of the GB, but it has not assisted in safeguarding the countryside from encroachment. In this respect it fails to protect encroachment into the countryside. The development is therefore inappropriate development in the GB. The NPPF states that substantial weight should be given to any harm to the GB, that inappropriate development should not be approved except in very special circumstances, which will not exist unless the harm is clearly outweighed by other considerations (paragraph 153).
34. A security and privacy case is made in the composite appeal statement in favour of other development on the wider site, but not made in terms in the present appeal. However, even if I read across what is said on this issue, whilst the earth bunds in question do enclose the site and offer some security and privacy, there are no compelling special circumstances advanced in terms for the hardstanding.
35. The hardcore aggregate surface may be loose and permeable and similar development may be found in the more built-up areas nearby, but here it has a seriously eroding effect on the immediate local landscape character. I am not persuaded that very special circumstances exist that would justify approval.
36. Bizarrely, the appellant argues that the very fact that the land is in the curtilage of an existing dwelling means there can be no conflict with any of the purposes of including land within the GB. On balance I would consider that the land to the west of the dwelling comprised in this appeal is probably within the curtilage and I have treated it as such for the purposes of examining the case under ground (c). It does not follow that under ground (a) the land is thereby exempt from considerations in NPPF paragraph 154(h)(ii) applicable to engineering operations in the GB.
37. Paragraph 189 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues. In my view the scale and extent of the new hardstanding caused has a harmful effect on the special character and rural appearance of the AONB.
38. Overall, the development causes demonstrable harm to the special landscape character and distinctiveness within the AONB and would not preserve the natural beauty of the area. The development fails to comply with the aims of Policy CP9 of the Core Strategy and Policy DM7 of the Development Management Policies LDD which aim to conserve and/or enhance the special landscape character and

distinctiveness of the AONB. It also fails to accord with NPPF paragraph 187 in failing to contribute to and enhance the natural and local environment.

39. I conclude that for the reasons given, the development does not accord with the GB protection and aims of the aforementioned local plan policies and the NPPF. The development does not accord with the development taken as a whole and material considerations do not indicate a decision other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

#### *Other matter*

40. I do not consider that NPPF at paragraph 155 in referring to “homes, commercial and other development”, applies in this particular case for the reasons stated above in relation to Appeal A. However, if it did fall into this category, the criteria would not all be met for the reasons given by the Council in its final comments.

#### *Ground (f)*

41. The notice requires among other things the re-seeding of the land cross-hatched in red with a native grass seed mix and thereafter the re-seeding of any part of that land where the native grass seed mix dies or is dying within 5 years from the date the notice takes effect. It is said this is an excessive requirement, but I disagree. The evidence clearly shows that the pre-existing state of the land, ie its former condition, was a lawn or pasture as described by the Council and demonstrated in the images submitted, and this is not disputed by the appellant. The appellant does not seek to differentiate between the state of the land as it would be remediated in this way, and its “former condition”. Requiring the land to be properly re-seeded to bring it back to its former condition is not an excessive requirement.
42. I recognise, as the appellant points out by reference to the overlay plan 22\_1270\_002, that some of the pre-existing tarmac is included in the area enforced against. This is not the specific target of the breach of planning control as alleged, which is the laying of hardcore aggregate on the land. The notice was issued on 1 March 2023 and the Council was aware by then that some of the area covered by the notice was now covered with tar macadam and formed part of the drive. Clearly it was new development, but the area covered by the requirements of the notice is excessive.
43. Accordingly, I will amend the plan attached to omit the tarmaced area and alter the requirements accordingly.
44. Therefore, the appeal on this ground succeeds in part.

#### *Ground (g)*

45. The enforcement notice allows for 2 months to comply with the notice which is quite adequate a period in which to carry out the required remedial work. The compliance period of 2 years sought is entirely unrealistic. The appeal on this ground fails.

### **Conclusions**

#### Appeal A

46. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

47. Grounds (f) and (g) of the appeal do not therefore fall to be considered.

Appeal B

48. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the bunds, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the other matters. 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.

*Grahame Kean*

INSPECTOR

Amended Plan referred to in the Decision

