
Appeal Decision

Site visit made on 5 September 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 September 2025

Appeal Ref: APP/V2255/C/23/3327594

Land at Hill Top Farm, Elverland Lane, Ospringe, Faversham, Kent ME13 OSP

- 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 Ms Caroline Webb against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 11 July 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of stables and kennel buildings, the erection of a timber framed kennel, the alteration of land levels and the stationing of a touring caravan.
- The requirements of the notice are:
 - (i) Dismantle and remove the stables and kennel building.
 - (ii) Dismantle and remove the timber framed kennel.
 - (iii) Remove the raised soil bund ensuring that the finished ground level matches the lay of the adjoining land, cover with topsail and seed with grass.
 - (iv) Remove the touring caravan from the land.
 - (v) Remove from the land all resultant materials, rubble and debris associated with steps (i) to (iv).
- The period for compliance with the requirements is twelve (12) months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed

Procedural matters

1. The appeal was originally submitted on grounds (f) and (g) as set out in Section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). However, on my reading of the appellant's Enforcement Appeal Statement submitted with the appeal, it was apparent to me that an appeal was also being made on ground (c) as set out in Section 174(2) of the 1990 Act, namely that that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The Council has commented on this matter under its response to ground (f) and I am therefore satisfied that no injustice would be caused by considering this ground of appeal.
2. Ospringe Parish Council and one local resident have submitted representations in relation to this appeal. Much of those representations relate to matters that should properly be considered under an appeal on ground (a) as set out in Section 174(2) of the 1990 Act, namely that planning permission ought to be granted

for the matters stated in the notice. For example, the impact of the development on the Kent Downs National Landscape.

3. However, because an appeal has not been made on ground (a), I am unable to take those representations into account, other than insofar as they relate to the appeals that have been made on grounds (c), (f) and (g).

The Enforcement Notice

4. The breach of planning control alleged at paragraph 3 of the notice is, without planning permission, the erection of stables and kennel buildings, the erection of a timber framed kennel, the alteration of land levels and the stationing of a touring caravan.
5. The breach of planning alleged refers to the erection of stables and kennel buildings, in the plural. In practice, there is only building that is for dual use as stables and kennels. I shall correct and vary the notice accordingly.
6. The breach of planning control alleged in the notice refers to the alteration of land levels. However, the requirement at paragraph 5(iii) of the notice refers to the removal of a raised soil bund, this being at position 'C' as shown on the plan attached to the notice. This is the only aspect of the requirements to comply with the notice that involves an alteration of ground levels, and it is therefore reasonable to conclude that the raised soil bund paragraph 5(iii) equates to the alteration in ground levels alleged in paragraph 3.
7. It is essential that the requirements of the notice match as closely as possible the breach of planning control that is alleged. In this case, the description of a raised soil bund in the requirement at paragraph 5(iii) of the notice more accurately describes the breach of planning control alleged in paragraph 3. I shall therefore correct paragraph 3 of the notice to refer to the formation of a raised soil bund.
8. The requirement at paragraph 5(iii) of the notice also requires that, following the removal of raised earth bund, the finished ground level matches the lay of the adjoining land and then covered with topsoil and seed with grass. I take the appellant's point that there is an element of uncertainty in this requirement, which would make it difficult to comply with.
9. An alternative way of saying the same thing is to require that the land to be restored to its condition before the breach took place. This wording has the added benefit of being entirely consistent with the wording of Section 173(4) of the 1990 Act. I shall vary the notice accordingly.
10. Section 176(1) of the 1990 Act provides that a notice may be corrected and/or varied where the Inspector is satisfied that doing so will cause no injustice to the appellant or the Local Planning Authority. I am satisfied that the notice can be corrected and varied in the above respects without causing injustice.

The appeal on ground (c)

11. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. The appellant's case on this ground of appeal relates only to the raised soil bund.

12. The essence of the appellant's appeal on this ground is that the raised soil bund is a means of enclosure, and is therefore permitted by Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). Development is permitted by Class A subject to the limitations at Class A.1.
13. Assessment of the raised soil bund against the GPDO first requires consideration as to whether the bund constitutes a 'means of enclosure'. The Oxford English Dictionary (OED) defines 'enclose' as to surround or close off on all sides, and 'enclosure' as an enclosed area.
14. The appellant contends that the words "*other means of enclosure*" in Class A should be construed in context and that the *eiusdem generis* rule of statutory interpretation should apply here: in other words, that, for the purposes of Part A "*other means of enclosure*" should be similar to a gate, fence, or wall. In that context, the appellant relies on the judgment in *Ewen Developments Ltd v Secretary of State for the Environment* [1980] JPL 404 at 405¹.
15. In *Ewen*, the Inspector had concluded that embankments were not *eiusdem generis* with the (then applicable) Schedule 1 Class II.1 of the 1977 General Development Order. The High Court held that such a finding was a matter of fact and degree for the Inspector. The Court held that it matters not from what materials the bund is constructed. It is whether or not the bund 'encloses' that is relevant to the interpretation of the GPDO.
16. I noted at my site visit that the raised soil bund is completely covered in vegetation, to the extent that it not possible to discern the shape of the bund and/or whether it completely enclosed the space within it. It is therefore not possible to discern if the raised soil bund actually encloses anything. Indeed, the space within the bund is covered in the same vegetation as the bund itself and is indistinguishable from it.
17. The appellant contends that the means of enclosure comprises the combination of bund, wall and gate but this was not evident to me at the site visit. Neither does the appellant state what function the bund performs and what it encloses. Again, this was not evident to me at the site visit.
18. I conclude that, as a matter of fact and degree, the raised soil bund does not constate a means of enclosure and is therefore not permitted by Class A, Part 2, Schedule 2, Article 3 of the GPDO. It is no part of the appellant's case that the raised earth bund does not constitute development for the purposes of Section 55(1) of the 1990 Act. Section 57 of that Act states that planning permission is required for development. I have not been made aware of any planning permission, deemed or otherwise, for the raised soil bund.
19. I conclude that the raised soil bund does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (f)

20. The appeal on 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

¹ The appellant also refers to other cases where this issue has been considered by the Courts, as well as to appeal decisions where the Inspector has found that a bund could constitute a means of enclosure. However, I have not been provided with copies of those judgements and decisions, and therefore do not consider them further.

remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach 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 Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.

21. In this case, the requirements of notice (as I propose to vary them) include to dismantle and remove the building used as stables and kennels; dismantle and remove the timber framed kennel; remove the raised soil bund; and remove the touring caravan from the land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
22. The appellant maintains that the amount of work required to demolish and remove the buildings cannot be overlooked. The appellant explains that this would include a number of contractors, which would need to quote for the work and to be available within the timeframe specified.
23. I do not underestimate the amount of work that would be required to fully comply with the notice. However, the purpose of the notice is to remedy the breach of planning control that has occurred. Nothing short of the complete demolition and removal of the buildings would achieve that purpose. Consequently, whilst the requirement(s) might be onerous in terms of the amount of work required, they are necessary to achieve the purpose of the notice and accordingly are not excessive.
24. The appellant also considers that the removal of the materials to be an overstretch in terms of a remedy. The appellant points out that, should the building subsequently be replaced elsewhere with a suitable planning permission, then the same materials would be used. In that scenario, the appellant considers that in the interests of both finances and sustainability the removal of the materials is not necessary.
25. The difficulty with the appellant's argument is that there is no 'suitable planning permission' in place at this time for which the materials resulting from the demolition of the buildings might be used. Moreover, as the Council points out, there can be no guarantee that a suitable planning permission would be forthcoming given the isolated location of the site away from other permanent development and its sensitive location within a Natural Landscape. Overarching all the above is that the removal of the materials is necessary to achieve the purpose of the notice.
26. The appellant considers that the remedy for the earth bund is excessive and unclear. The requirement in this respect, as I propose to vary it, is:

Remove the raised soil bund shown in its approximate position marked "C" on the attached plan and restore the land to its condition before the development took place.

There is nothing unclear or uncertain in that amended requirement. Furthermore, the Courts have held that the oft-used standard wording 'to restore the land to its condition before the development took place' is sufficient and that in many cases the landowner will be the person with the best knowledge of what that previous condition was. This is one of those cases.

27. I have considered whether there are any other suitable alternatives to the requirements stated in notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me.
28. I conclude that requirements of the notice (as I propose to vary them) are necessary to achieve the purpose of the notice and are therefore not excessive. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

29. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is twelve (12) months.
30. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must assume that the development subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice, including to character and appearance to a National Landscape. Indeed, evidence of the harm caused by the breach of planning control on the character and appearance of the National Landscape is to be found in the letters of objection submitted in relation this appeal.
31. The appellant considers that twelve (12) months is a very limited window in which to dismantle and remove several buildings, landscape the site, remove vehicles and remove all the materials as well. The appellant points out due to a combination of factors builders and trades are in high demand, with most having a lead-in time of approximately 6-9 months in terms of availability to start a project. It is therefore the appellant's view that requiring a building be dismantled and materials removed from site within 12 months is simply unachievable. The appellant accordingly seeks a period of compliance of eighteen (18) months.
32. The difficulty with the appellant's argument is that it is not supported by any evidence. For example, I have not been provided with any quotes or assessments from builders and/or contractors indicating that a lead-in time of approximately 6-9 months would be required before works could commence on complying with the notice. Neither have I been provided with any evidence that dismantling the buildings and removing the materials from site could not be achieved within the 12 months specified in the notice (or, for that matter, within the eighteen months sought by the appellant). Moreover, it appears to me that no specialist skills or equipment would be necessary to comply with the steps required by the notice.
33. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in

extending that period of compliance. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of twelve months specified in the notice is a proportionate response to the breach of planning control that has occurred.

34. Accordingly, the appeal on ground (g) fails.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decision

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

- in paragraph 3 of the notice, deleting the words 'the erection of stables and kennel buildings' and substituting there the words 'the erection of a building for dual use as stables and kennels'
- in paragraph 3 of the notice, deleting the words 'the alteration of land levels' and substituting there the words 'the formation of a raised soil bund'

37. It is directed that the enforcement notice is varied by:

- deleting paragraph 5(i) of the notice in its entirety and substituting there the words 'Dismantle and remove the building for dual use as stables and kennels shown in the approximate location marked with an 'A' on the attached plan'
- deleting paragraph 5(iii) of the notice in its entirety and substituting there the words 'Remove the raised soil bund shown in its approximate position marked "C" on the attached plan and restore the land to its condition before the development took place'

38. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR