



Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2026

Appeal Ref: APP/M3645/X/24/3351483

Winnies Woodland, Eastbourne Road, Blindley Heath, Surrey RH7 6LG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Simon Winchester against the decision of Tandridge District Council.
 - The application ref 2023/1194, dated 2 October 2023, was refused by notice dated 6 March 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful development is sought is the erection of 1.5m high earth bunds constructed along the boundary running parallel to the A22 (and part of the southwest boundary).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided of the alleged development and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. Photographs of the earth bunds have been supplied, and it is clear to me what they look like and where they are on the site from the supplied plans. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.
3. The appellant has provided details of correspondence with various Council officers in which he is complaining that he was initially given poor advice to apply for an LDC rather than (retrospective) planning permission for the earth bunds, which is what the Council subsequently advised him to do. He also queries why he should have to pay two fees when the Council was at fault for giving him such poor initial advice. I acknowledge his frustrations in this respect but would point out that his application, which the Council refused and is the subject of this appeal, was and still is – as a matter of fact – seeking a Lawful Existing Development Certificate (an LDC) for the earth bunds. I deal with this based on its merits below. Any complaint or redress the appellant seeks in relation to how the Council dealt with his application and query must be taken up directly with the Council itself, and is not a matter for me.

Main Issue

4. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC is well-founded. An application for an LDC is not a planning application and a decision whether or not to grant one is not therefore assessed on the planning merits of the proposal including any planning policies set out in the Council's local plan.

Reasons

5. Section 191(2) of the Town and County Planning Act 1990 provides that any uses or operations shall be lawful if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and,

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. There is no Enforcement Notice in place on the Land. The relevant test for this application is therefore whether the applicant has demonstrated that either the bunds did not require express planning permission (either as they do not amount to development or they benefit from deemed consent) or that the time for taking enforcement action has passed.
7. Planning Practice Guidance makes clear that it is for the applicant to demonstrate, on the balance of probability, that the operational development for which the LDC is being sought is lawful. It is not entirely clear from the application form on what basis the appellant believes the development is lawful. I therefore assess below in the underlined sub-headings each potential ground for the appellant's claim.
8. The appellant provided (in his application) the following evidence in support of his application:
 - Application form dated 2 October 2023. The form states the bunds were substantially complete on 22 September 2022
 - Undated photographs of the completed bunds with a covering of grass
 - Email disputing third party comments that the bunds are above 1.5m in height.
9. A site visit by the Council's Enforcement Officer on 28 October 2022 showed the bunds uncovered with grass and appearing to be newly constructed.

That the works do not amount to development

10. Section 55 of the Town and Country Planning Act 1990, as amended, defines 'development' as *'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'* Section 57(1) of provides that *'planning permission is required for the carrying out of any development of land.'*
11. The bunds the subject of this application (measuring 4m wide at their base with a height of 1.5m) involved significant changes to land levels and heavy machinery would have been required to undertake this work, which was clearly an engineering operation. The works undertaken clearly amount to development as defined by the Act and therefore planning permission was required for them.
12. The applicant has not disputed that the works amount to development requiring planning permission and has provided no evidence to suggest that this is not the case.

The bunds benefit from deemed consent

13. Section 58 (1) of the Town and Country Planning Act 1990, as amended, provides that planning permission may be granted *'by a development order, a local development order or a neighbourhood development order'*.
14. There is no local development order or neighbourhood development order applicable to this land. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), as amended, grants planning consent for a wide range of development. But the appellant stated on the application form that he was *'unaware that permission needed to be sought'*, which implies that he accepts permission is needed. In his appeal he has referred to what appears to be Schedule 2, Part 2 (Minor Operations), Class A (gates, fences, walls etc) but the creation of earth bunds is an engineering operation that is not covered by this part of the GPDO, nor any other part. Hence planning permission is required for them.

That the time for enforcement action has passed

15. Section 171B of the Town and Country Planning Act 1990, as amended, sets out the relevant times after which no enforcement action may be taken. Given that the development the subject of this application is 'operational development' the relevant period for taking enforcement action is 4-years from the date the works were substantially complete.
16. The applicant has stated that the works were substantially complete on 22 September 2022, and this would seem to accord with the Council's site photos taken on 28 October 2022 which show the bunds recently completed and not yet covered with grass. So, even by the appellant's own evidence it is clear that the 4-year period for taking enforcement action had not passed when the LDC application was submitted (and refused) and indeed has still not yet passed.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the earth bunds is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).
18. If the appellant wants to retain the earth bunds he will have to apply for and be granted (retrospective) planning permission by the Council, although he would be advised to consult Council planning or enforcement officers to ascertain whether this is likely, given that threats of enforcement action against the bunds have been issued to him already.

Nick Fagan

INSPECTOR