



Appeal Decisions

No site visit

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 March 2026

Appeal Refs: APP/K0235/C/25/3370070 (Appeal A) and 3370292 (Appeal B) Land at Forty Farm, Great North Road, Wyboston, Bedford, Bedfordshire MK44 3AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Kabir Ahmed (Appeal A) and L&C Building Contractors Ltd (Appeal B) against an enforcement notice issued by Bedford Borough Council.
- The notice was issued on 3 July 2025.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of engineering operations to reprofile and increase the level of the land by the importation, deposit and spreading of non-inert waste including subsoils and waste topsoil, and the construction of bunds.
- The requirements of the notice are to:
 1. Cease the importation, deposit and storage of waste materials on the land and secure the land to ensure that there is no unauthorised access.
 2. Cease the spreading of waste materials on the land.
 3. Remove from the land all the waste soils and materials used in the construction of any bunds.
 4. Restore the land to its former level and profile prior to the commencement of the unauthorised development.
- The periods for compliance with the requirements are:
 1. Immediately from the date on which this notice takes effect.
 2. Immediately from the date on which this notice takes effect.
 3. 4 months from the date on which this notice takes effect.
 4. 5 months from the date on which this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Preliminary Matters

2. Given my findings in respect of the notice, it has not been necessary for me to carry out a site visit.

Matters concerning the notice

3. Section 173 of the Act sets out the contents and effect of an enforcement notice and identifies the matters that every enforcement notice shall specify. Paragraph 173(9) of the Town and Country Planning Act 1990 (as amended) sets out that an enforcement notice **shall** specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. Section 173(9) provides that an enforcement notice may specify different periods for different steps or activities; where different periods apply to different steps or

activities, references to the period for compliance are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

4. The enforcement notice identifies 4 requirements and 4 corresponding periods for compliance. However, for requirements 1 and 2, the time for compliance is 'immediately from the date on which this notice takes effect.' 'Immediately' is not a period and so the enforcement notice does not specify a period as required by section 173(9) of the Act for requirements 1 and 2.
5. An enforcement notice is null if it is 'defective on its face', normally by missing some vital element that an enforcement notice 'shall' include under section 173 of the Act. I am mindful that it is in the public interest to not set the nullity test too low, since the result may be the issue of another enforcement notice and further appeal. When considering whether a notice is a nullity, the defect must be considered in context and with regard to the importance or otherwise of that part of the notice.
6. The enforcement notice alleges the carrying out of engineering operations to reprofile and increase the level of the land by the importation, deposit and spreading of non-inert waste including subsoils and waste topsoil, and the construction of bunds. Section 55(1) of the 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.
7. While the construction of bunds may be an engineering operation, the tipping of waste materials is generally held to constitute a material change in the use of land rather than operational development (unless the tipping has some purpose other than waste disposal). The reasons for issuing the notice refer to 'the unauthorised waste disposal operation' and the requirements require the appellants to (amongst other things) cease 'the importation, deposit and storage of waste materials on the land' and 'the spreading of waste materials on the land'.
8. The inclusion of such requirements together with the reasons given, suggest that the notice is seeking to attack a material change of use. However, the notice does not allege a material change of use, nor does the notice identify where it considers the engineering works, including the construction of bunds have taken place, or the extent to which the land has been raised (which I would expect it to do, if it was attacking operational development). Indeed, I note that one of the appellants has requested levels showing current and original land profiles, to enable them to assess the extent of reprofiling required.
9. I also have concern about the requirement to 'secure the land to ensure that there is no unauthorised access' as this would not remedy the breach and therefore seems excessive, as well as concerns regarding the inclusion of the word 'storage' in requirement 1, since this is not identified in the allegation.
10. I have wide powers of correction subject to any correction or variation not causing injustice to the appellant or the local planning authority. It may be possible to correct the allegation so that it refers to a material change of use, or to correct the requirements to address the concerns I have raised above. However, as set out above, the time for compliance with requirements 1 and 2 is 'immediately', which is not a period.

11. Although compliance periods are identified for requirements 3 and 4, these requirements stop short of requiring the land to be restored to its condition before the breach took place. Requirement 3, for example, requires waste soils and materials used in the construction of bunds to be removed, but does not apply to waste which has been spread elsewhere within the site. Requirement 4 requires the land to be restored to its former level and profile, but does not require wastes to be removed. It may therefore be possible to restore the land to its former level and profile by (for example) removing material which is not waste, and by leaving waste which has been spread *in situ*.
12. Requirements 1 and 2 ensure that the appellants cease the importation, deposit, storage and spreading of waste materials on the land, whereas requirements 3 and 4 relate to the removal or alteration of works. It is not possible, in my view, to simply excise requirements 1 and 2. They are an important part of the notice (notwithstanding any concerns I may have regarding the requirement to secure the land to ensure that there is no unauthorised access). Nor would it be appropriate to substitute the period for requirements 3 or 4, as a period has simply not been identified for requirements 1 and 2, as required by section 173(9). The notice is therefore defective on its face and is, in my judgment, a nullity.

Conclusions

13. I conclude that the notice is a nullity. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR