



Appeal Decision

Site visit made on 27 July 2026

By D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2026

Appeal Ref: APP/E2001/C/25/3361589

Land South/South East of Gibson Lane, Melton, East Riding of Yorkshire, HU14 3HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Colin Hammond of AB Plant Hire Ltd against an enforcement notice issued by East Riding of Yorkshire Council.
 - The notice was issued on 5 February 2025.
 - The breach of planning control as alleged in the notice is without planning permission creation of a bund (shown for location purposes only and not to scale, marked edged blue on the Land plan attached).
 - The requirements of the notice are to 1) Identify and classify the waste within the bund in accordance with Environment Agency Technical guidance WM3 - Classification and assessment of waste (1st edition v1.2 GB) dated October 2021 AND 2). Remove the bund and any related or resultant materials, paraphernalia, debris or detritus from the Land, ensuring that: a. you meet your waste duty of care requirements as set out here <https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice> issued under section 34(7) of the Environmental Protection Act 1990 (the EPA) in relation to the duty of care set out in Section 34(1) of that Act; and b. Best practice measures are followed to control dust during the removal, including damping down with water, only exposing the part of the bund that is being worked on before clearing more vegetation and moving onto the next part, and ensuring any material being transported off site is covered; and c. Works are planned and undertaken in such a manner as to avoid any contravention of legislation relating to the Humber Estuary Site of Special Scientific Interest (SSSI), Sections 9 and 28 of the Wildlife and Countryside Act 1981 (as amended); SPA and SPA Conservation of Habitats and Species Regulations (as amended) ; RAMSAR — The Convention on Wetlands (Ramsar, Iran 1971) Intergovernmental Treaty; Regulation 43 of the Conservation of Habitats and Species Regulations 2017; and d. Works are undertaken only between 1 April 2025 and 5 August 2025 to avoid the wintering season for waders and waterbirds associated with the Humber Estuary Designated site AND 3) Upon completion of Steps 1 and 2, restore the ground level to match the profile of the land that existed prior to the unauthorised development taking place.
 - The period for compliance with the requirements is that the steps must be completed in full during the first non-wintering bird season (for these purposes defined as between 1 April 2025 and 15 August 2025) after the date the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 (as amended) (the Act).
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Decision

1. It is directed that the enforcement notice is varied by 1) the deletion of the words '*Works are undertaken only between 1 April 2025 and 15 August 2025*' in section 5.2d, and their substitution with '*Works are undertaken only between 1 April 2027 and 5 August 2027*', and 2) the deletion of the words in section 6, and their substitution with the words "*The steps must be completed in full during the first non-wintering bird season (for these purposes defined as between 1 April 2027 and 15 August 2027) after the date the Notice takes effect*". Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. The compliance period in the notice is that *'The steps must be completed in full during the first non-wintering bird season (for these purposes defined as between 1 April 2025 and 15 August 2025) after the date the Notice takes effect'*. The requirements of the notice also refer to *'Works are undertaken only between 1 April 2025 and 5 August 2025'*.
3. The notice was issued on 5 February 2025, and, given the passage of time, it would not now be possible to undertake and complete the works between 1 April 2025 and 15 August 2025. I shall vary the notice without injustice being caused to the main parties by deleting all of the words in section 6 and replacing them with *'The steps must be completed in full during the first non-wintering bird season (for these purposes defined as between 1 April 2027 and 15 August 2027) after the date the Notice takes effect'*, and deleting the words *'Works are undertaken only between 1 April 2025 and 5 August 2025'* in section 5.2d, and replacing them with *'Works are undertaken only between 1 April 2027 and 5 August 2027'*.

Ground (c) appeal

4. An appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
5. The bund is significant in size and extent. It is described in the retrospective planning application in 2022¹ as the *'construction of a bund approximately 2.0m high and 166m long, to be retained for a period of 10 years'*. In my judgement, the importation of the material to form the bund would have required a degree of pre-planning and the Council's evidence in the form of photographs indicates that machinery was involved. I therefore find that the breach of planning control constitutes an engineering operation and to this extent amounts to an act of development under section 55 of the Act.
6. The appellant does not dispute the Council's contention that the land has a 'nil' use. Moreover, the evidence in the form of a topographical survey which accompanied the 2022 planning application shows that the bund exceeds 2 metres in height. The breach of planning control does not fall to be permitted development within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In addition, there is not a planning permission in place for it.
7. On the evidence that is before me, I find that a new bund has been formed and that it constitutes a breach of planning control. The appellant does not provide sufficiently precise and unambiguous evidence to support the contention that a new bund has not been formed on the land.
8. For the above reasons, I conclude that the ground (c) appeal fails.

Ground (d) appeal

9. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement

¹ Planning application reference 22/01564/PLF

notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

10. The appellant makes the claim that the bund has been in place since before 2007 when the previous landowner signed a Dedication Agreement with the Council. The Council's evidence in the form of photographs dated 25 January 2022 showing material being deposited on the site and including the use of a JSB casts doubt about this claim. Moreover, the Council's dated Google Earth photographs shows that the land was not disturbed for many years, but in 2022 the deposit of the bunded material is visible. It is also noteworthy that in respect of a retrospective planning application for the formation of a bund on the land, the application form states that work commenced on 1 January 2022 and was completed on 28 February 2022.
11. The onus is on the appellant to provide precise and unambiguous evidence to demonstrate, on the balance of probability, that the engineering operation (i.e., bund) was substantially completed more than four years ago. The notice was issued on 5 February 2025. Given the Council's evidence above, it is my judgement, on the balance of probability, that the bund was substantially completed on 22 February 2022. Consequently, it has not been on the land for four years prior to the notice being issued. It is not therefore immune from enforcement action under section 171(B) of the Act. Hence, it is not lawful.
12. The appellant states that an agreement was made about a footpath being designed to follow the top of the bund and that the alleged joining of two existing bunds was necessary to eliminate issues with illegal fly-tipping and off-road vehicle access. These are not matters that are directly relevant to the consideration of the ground (d) appeal.
13. For the above reasons, I conclude that when the notice was issued it was not too late to take enforcement action. On the balance of probability, the appellant does not provide sufficiently precise and unambiguous evidence to support the contention that the bund, in part or in whole, is immune from enforcement action. The ground (d) appeal therefore fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

D Hartley

INSPECTOR