



Appeal Decision

Site visit made on 15 September 2026

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 September 2026

Appeal Ref: APP/T0355/X/24/3354664

Coningsby Farm, Coningsby Lane, Fifield, MAIDENHEAD, SL6 2PF

- 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 development (LDC).
- The appeal is made by Mr and Mrs E Davies against the decision of the Royal Borough of Windsor and Maidenhead.
- The application ref 24/00141/CLD, dated 16 January 2024, was refused by notice dated 13 May 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 a soil enclosure.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was submitted by Mr and Mrs E Davies against the Royal Borough of Windsor and Maidenhead. That application is the subject of a separate decision.

Main Issue

3. The main issue is whether the development as constructed fell within the provisions of Article 3(1) and Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) on the date of the application.

Reasons

4. The appeal is made to ascertain whether the soil enclosure was lawful as described in s191(2) of the Act. It provides that ‘...uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force’.
5. The relevant ‘time’ for the purposes of s191(2) is the date or ‘time of the [LDC] application’ as set out under s191(5). Here the relevant date was 16 January 2024.
6. The burden of proof in satisfying the requirement of s191(1)(b) falls to the appellants to establish that the development was lawful on the relevant date. According to the appellants, the ‘L’-plan soil bund consists of soil mounded to a height of less than 2m about two sides of a large shed. The appellants contend

that the works form a means of enclosure and, as such, benefit from planning permission because of the provisions of Article 3(1) and Class A of Part 2, Schedule 2 of the GPDO.

7. Subject to terms and limitations, Class A of Part 2 permits 'The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure'. Part 2 is termed 'Minor Operations' and Class A 'gates, fences, walls etc'.
8. There is no dispute that the soil forming the mounding was deposited as part and parcel of engineering works to create access tracks and a hardstanding elsewhere on the site (the surfacing works). The appellants assert that the material was initially stored in its location pending its removal but was later profiled to form a means of enclosure in accordance with the limitations of Class A of Part 2.
9. That process possibly amounts to two separate operations – the engineering operation to extract and deposit the material, then the act of reprofiling to create the intended landform. Nevertheless, both are integral to the development in question.
10. The earlier surfacing works were confirmed as engineering operations in appeal ref. APP/T0355/W/24/3354637. That decision has not been challenged. The removal and deposit of the soil was part of that operation. Class A does not refer to engineering operations. Although the case of *Eatherley*¹, referred to me by the Council, demonstrates that some undescribed works might necessarily fall within the scope of development permitted by the GPDO, this is a matter of fact and degree for the decision-maker.
11. When considering only the works to deposit the material, the Council's evidence shows that the bulk relocation of voluminous amounts of soil required the use of heavy machinery. The initial storage is shown to be considerable in height and probably over 2m when first deposited. The subsequently formed bund is now lower but 10's of metres long with a considerable base width and, in places, has a levelled top capable of accommodating more than the scale of the large machinery used to form it. The volume of the construction is significant.
12. Part 2 of Schedule 2 of the GPDO provides for 'Minor Operations'. Contrary to the appellants' contention, to qualify from its provisions, the various types of development must be 'minor' in nature. Although there is dispute as to the timing of works such that the Council made its assessment in conjunction with the surfacing works, even when taken in isolation, I find that compared to the scale of developments permitted under Part 2, including Class A walls and fences, the bund cannot be said to be 'minor', nor can the extent of the engineering operations involved in its construction.
13. The appellants contend that as the works were not a single operation and, as the surfacing works have since been granted planning permission retrospectively, that aspect of the development has now been regularised. However, despite the fact that the description of development for that planning permission made no mention of the mound, or the application/appeal were validly made, it was not granted until 20 March 2025 when appeal decision APP/T0355/W/24/3354637 was issued. That

¹ *Eatherley v Camden LBC & Ireland* [2016] EWHC 3108 (admin)

is some time after the relevant date of the LDC application and it does not assist the appellants.

14. The appellants compare the scale of development to fencing or walls that can extend for hundreds of metres. The appellants also assert that formation of the bund may be quicker than the erection of posts and fencing lending weight to its 'minor' nature. While that may be the case, those linear features are predominantly slender in profile and do not have the mass and bulk of the land-forming created on the appeal site. Furthermore, they generally require nothing of the scale of equipment to construct.
15. Unlike fencing or walls, the area the bund covers is a considerable proportion of the parcel of land on which it was formed. Its coverage is numerous times the footprint of the building it is said to enclose. Although its construction would require little structural (or similar) consideration, that has little bearing on its volume or scale.
16. Furthermore, it is well established that to benefit from the Class A rights, the development should form a continuous means of enclosure². The bund offers little means of physical enclosure. It sits alongside, but is distinct from, a panel fence to the boundary with the adjacent site to the north. To the west it lies close to post and wire fencing but is not contiguous with it. At the southern limit the bund is graded down to meet a post and rail fence, but together these only provide any physical containment or enclosure by virtue of planting installed on top of the mound rather than the mound itself. Although it offers a degree of visual relief to the building to the west and items stored on the adjacent hardstanding, it does not visually enclose it.
17. The hardstanding about the building said to be enclosed by the bund is separately edged by timber post and rail/wire fencing. At the time of my site inspection, kept fowl were additionally independently fenced within the angle of the mound. Taking the above matters together, I do not find that the physical landform acts as a means of enclosure, either in isolation or with other fences present on the site. Accordingly, it is not consistent with the terms of Class A of Part 2.
18. In support of the development, the appellants refer me to a LDC issued by the Council in respect of a mounded enclosure at a polo ground (ref 22/03407). However, that appears distinct because the Council state that, in conjunction with a gate, the bund there created and entirely bordered a compound. Furthermore, on the evidence before me, there is little to show the height, width or profile of the landform in that instance. If it was similar in scale and relied on comparable engineering operations, it is unclear from the documentation as to how the Council might have come to the conclusion that it was 'minor' in nature. It is not possible to draw comparisons, or otherwise, to the details of the case before me.
19. The Council's reason for refusal of the LDC here contended that the works were part and parcel of unauthorised development such that permitted development rights could not apply because of Article 3(5) of the GPDO. However, there is little before me to suggest any of the works were concerned with an unlawful building or use of the land to engage the Article 3(5) provisions. While that claim appears misplaced, it does not alter my finding on the main issue.

² See *Prengate Properties Ltd v Secretary of State for Environment* [1973]

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for a soil enclosure 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).

R Hitchcock

INSPECTOR