



Appeal Decision

Site visit made on 3 October 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/P1045/C/22/3313538

Land at Darley Moor Motor Cycle Road Racing Club, The Darley Moor Sports Centre, Darley Moor, Ashbourne, Derbyshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Eddie Nelson (Darley Moor MCRRC) against an enforcement notice issued by Derbyshire Dales District Council.
 - The notice, numbered ENF/21/00044, was issued on 18 November 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the engineering operations comprising the formation of a Bund.
 - The requirements of the notice are to permanently remove the bund (shown in the area hatched blue on the attached plan) from the area shown edged red on the attached plan.
 - The period for compliance with the requirement is 8 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by (a) the addition of the words *'and return the land to its previous levels and contours prior to the unauthorised development taking place'* to the end of Section 5.1 a) and (b) the deletion of 8 weeks and the substitution of 6 months as the time for compliance.
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (b)

3. The appellant makes reference to a smaller, pre-existing, bund that was previously present in the same location as the bund subject to the notice. This has in effect been added to in the process of creating the appeal bund. The appeal under ground (b) is made on the basis that the formation of a bund has not in fact occurred, but that instead there has been an extension to the pre-existing bund. However, the new bund is substantially larger than what existed previously in terms of its overall size and scale. Given the substantial increase in scale, and as a matter of fact and degree, I am satisfied that in this instance the development can reasonably be described as the 'formation of a bund'. Therefore, the notice correctly describes the breach of planning control that has taken place. As such, the appeal on ground (b) fails.

Ground (a)/the deemed application for planning permission

4. The main issue is the effect of the development on the character and appearance of the area.
5. The bund is of a substantial height, length and depth and appears as an engineered man-made feature within the landscape. As the topography of the surrounding area is relatively flat, the bund interrupts views across the landscape that would previously have been possible. This includes views from a number of public rights of way which pass near to it, including a footpath which intersects the bund itself. Whilst there are other similar bunds associated with the racetrack, the presence of these does not negate the clear harm that has resulted from the erection of the new bund itself. Although there was the aforementioned pre-existing bund present in this location, that bund was substantially lower in height and general size. Based on the evidence before me, it was not as visually imposing and not comparable in terms of its impact on the surrounding area or on views taken across the landscape. The development has for these reasons resulted in significant harm to the character and appearance of the area.
6. It is stated by the appellant that the purpose of the bund is to provide noise attenuation. However due to its positioning in relation to the motor cycle racetrack and the nearest dwellings, it does not serve to attenuate noise emanating from the activities that take place on the racetrack. Instead, it is said to seek to reduce noise occurring from the use of the nearby grass track which is also used for motor racing purposes. The grass track is however not on land owned by or under the control of the appellant, nor is it operated by them. It appears to operate only infrequently and there is no suggestion from either the Council or interested parties that its use has historically caused significant noise issues. It would further appear that the grass track is operated under permitted development rights and could move position, as it is suggested by interested parties has been the case in the past.
7. The Noise Assessment (NA) submitted by the appellant suggests a reduction of around 13db could occur as a result of the bund being in place. However, noise level measurements have not been taken at a time when the grass track was in use, and therefore the NA is of limited assistance in providing any kind of definitive indication of what noise reduction might be achieved. But, in any event, this is in the context of there being no evidence of any identified noise generation emanating from the grass track racing of a significance that might warrant attenuation. There is also the apparent possibility that the grass track could move elsewhere which may impact upon the effectiveness of the bund. Therefore, the submissions made provide very limited justification for the bund on noise attenuation grounds.
8. Landscaping the bund would result in some visual improvement to it and also offer biodiversity enhancement, but it would not overcome the harmful impact arising from its overall height and bulk. Any disruption that would result from its removal in terms of heavy goods vehicle movements, footpath closures or damage to the perimeter of the racing circuit does not justify the retention of a development that causes the level of harm I have found. The appellant considers that the surrounding area does not fall within the threshold of being a valued landscape for the purpose of paragraph 174 of the National Planning

Policy Framework (the Framework). But even if it does not, this does not mean that the retention of what is a harmful development should be permitted.

9. For these reasons I conclude that the bund has caused significant harm to the character and appearance of the area. Consequently, it has failed to accord with policies S1, S4, PD1 and PD5 of the Derbyshire Dales Local Plan 2017, where they collectively seek to protect character and appearance, and with the development plan taken as a whole. There is also a conflict with the aims of the Landscape Character and Design Supplementary Planning Document 2018 and the Framework in the same respects. This harm and the resultant conflict with the development plan is not outweighed by the other considerations put forward by the appellant in support of the development. The appeal on ground (a) therefore does not succeed.

Ground (f)

10. Section 173(4) of the Town and Country Planning Act 1990 (as amended) (The Act) sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice seeks to remedy the breach of planning control in accordance with s173(4)(a). Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive.
11. The ground (f) appeal is made in two parts. The first part is made because the appellant considers that the requirement of the notice to remove the bund in its entirety instead of requiring it to be removed to the level of the pre-existing bund is excessive. This part of the ground (f) appeal succeeds, as in order to remedy the breach of planning control that has occurred, it is only necessary to reduce the bund to the size which pre-existed. To level the ground completely would exceed what is necessary to remedy the breach, and consequently go beyond the purpose of the notice. Having sought the views of the parties on this matter, I am satisfied that the requirement of the notice can be varied in this respect without causing injustice to any party.
12. The second part of the ground (f) appeal is made on the basis that the requirement to remove the bund from the area shown in red (the entire motor cycle road racing club site) is excessive, and that a lesser requirement would suffice. The lesser requirement put forward is that the material from the bund would instead be spread over the site shown within the red line. Only limited details have however been provided in this respect and I share the concerns of the Council regarding the absence of any details as to what type of material is contained within the bunds. Whilst the appellant states that it is topsoil and stone, they have provided nothing to demonstrate that this is the case and photographic evidence provided by an interested party suggests that there may actually be other material present within the bund.
13. The uncertainty in this respect means that it is not clear what type of material would be retained on the site if the requirement was amended as requested by the appellant and if or how it could be used. As such, it would not be appropriate to change the requirement in the manner they have requested. The notice is therefore not excessive in its requirement in that regard and this part of the appeal made under ground (f) fails.

Ground (g)

14. The appellant states that they have been advised by a local waste disposal contractor that it is not reasonably possible to remove the bund from the site within eight weeks. Winter weather conditions are likely to affect both the appeal site and the permitted sites required to accept the material to be exported, which are often temporarily closed during the wetter months. It may also be necessary to erect a weighbridge and wheelwash, which may require planning permission in their own right. The contractor advises that six to ten months would be the minimum period to successfully complete the requirements of the notice.
15. The Council considers there to be no reason that the appellant cannot make the necessary arrangements for the material to be removed within the time period specified on the notice. Nevertheless, they do state that they would expect the removal of the material to be capable of being reasonably commenced within two months of an appeal decision upholding the enforcement notice and to be completed within six months.
16. Even considering the matter relating to winter weather conditions, a period of six months is set out by the appellant to be achievable to meet the requirements of the notice. This period would strike a reasonable balance between allowing time for the works to be carried out and removing the harm that has been caused by the breach of planning control that has occurred. The appeal on ground (g) therefore succeeds and I shall vary the notice accordingly.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed partially on ground (f) and on ground (g) only. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Graham Wraight

INSPECTOR