



# Appeal Decision

Hearing held on 20 February 2001

by **K.E.Hyland BA (Hons), FRTPI**

an Inspector appointed by the Secretary of State for the  
Environment, Transport and the Regions

The Planning Inspectorate  
Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ  
☎ 0117 987 8927

Date  
**15 MAR 2001**

**Appeal Ref: APP/K2800/C/00/1051978 & 1051983**

**Land to the south of the Harrington to Kelmarsh Road, Harrington, Northants, (Grid Ref E47650, N27930)**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr H Stretton and Mr W Stretton against the decision of Northamptonshire County Council to issue an enforcement notice.
- The Council's reference is E/98/4.
- The notice was issued on 11th September 2000.
- The breach of planning control alleged in the notice is the disposal of soils, road planings and other excavated material on the land for the purpose of waste disposal, thus constituting a change of use of the land without the benefit of planning permission.
- The requirements of the notice are (1) to cease the importation and deposit of waste materials on the land, (2) to remove all of the deposited waste material from the land to a licensed landfill site; and (3) to restore the land to the levels which existed prior to the importation and deposit of the waste materials.
- The notice requires compliance with Step 1 within one day and Steps 2 and 3 within 4 weeks.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (b), (d) and (f) of the 1990 Act.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld as corrected and varied.**

## **The Appeals on Ground (b)**

1. The nub of this ground of appeal was that no importation of waste materials had occurred during the period of the appellants' ownership. However, although it was contended that the land had never been used for the purpose of waste disposal, it was acknowledged that the material included in the bunds, shown in the Council's photographs, had been imported for the purpose of landscaping. It was admitted that this material had included sub-soils and possibly some bricks and rubble. It was also agreed that road planings had been brought on to the land. This was said to be for the purpose of repairing existing tracks and hardstandings. It was submitted that the concrete rubble evident on the grassed areas, in the Council's photographs dated 15.3.98 and 3.10.00, arose from the demolition of former buildings and hardstandings and had not been imported from elsewhere.
2. The Council contended that imported material, comprising brick and concrete rubble, sub-soils and some topsoil, had been deposited on the site around November 1997. They argued that the tipped material was obviously waste from the construction industry. Although most of it had been formed into bunds, there were quantities of concrete and brick rubble and

road planings that had not been incorporated into the bunds. They suggested that from a comparison of their photographs and the aerial photograph, it could be seen that this material was lying on areas where there had been no buildings or hardstandings.

3. From the evidence, I am satisfied that a significant volume of imported material, comprising soils, road planings and other excavated material, was deposited on the appeal site around the end of 1997. Whilst the material was primarily waste from the construction industry, it is apparent from the history of the site that it was used to form bunds, approximately 2m high in the approximate positions shown hatched on the plan submitted by the County Council, (their Appendix 15). I understand that the purpose of those bunds was to screen the then subsisting use of the land as a gypsy caravan site. Accordingly, as most of the imported material appears to have been incorporated within the bunds, I find that the allegation is incorrect in alleging a material change of use of the land, by the deposit of material for the purpose of waste disposal. I consider that it should properly have alleged the carrying out of engineering or other operations by the deposit of waste material for the construction of bunds.
4. Although it was initially claimed on the appellants' behalf that they were unaware of what they were alleged to have done, from the correspondence between the County Council and their agent, I am in no doubt that they understood that the County Council's action was directed primarily at the bunds. In that context, I am conscious that the material in the bunds was subsequently pushed out across the site and levelled in an attempt to persuade the Council to withdraw the notice. I also note that the fees for deemed application were paid in respect of the specific areas identified by the Council in the plan referred to paragraph 3 above. I conclude that the appellants have not been misled by the misdescription of the breach, and that it can be corrected without injustice, in accordance with my powers under Section 176(1)(a) of the 1990 Act as amended. The appeal on ground (b) therefore fails.

#### **The Appeals on Ground (d)**

5. At the hearing there was no dispute that the imported material used for the construction of the bunds was deposited on the land less than four years before the notice was issued. The appeal on ground (d) therefore fails.

#### **The Appeal on Ground (a) and the Deemed Application**

6. Having seen the appeal site and its surroundings and considered the respective representations and arguments, I find that the main issue in this appeal is whether the retention of the bunds would be seriously detrimental to the visual amenities of the area.
7. In that context, I note that the Inspector, who redetermined an earlier appeal relating to the use of the land as a gypsy caravan site, found that the bunds were alien and very unattractive features in the open landscape and were seriously harmful to the appearance of the area. He was also concerned that the raising of the earth around the trees on the western boundary could eventually lead to their loss. Although the bunds had been flattened by the time I inspected the site, from what I saw of the Council's photographs, I see no reason to disagree with the previous Inspector's conclusions on the visual impact. As the previously unlawful use of the land as a gypsy caravan site has been terminated, I see no overriding justification for the retention of bunds. I shall therefore dismiss the appeal on ground (a) and decline to grant planning permission for their retention.

### The Appeal on Ground (f)

8. From what I saw of the site, I am satisfied that the injury to amenity has been substantially remedied by the flattening of the bunds and the spreading of the tipped material over about 25% of its area at the western end of the site. Although the deposited materials include a mixture of soils, including sub-soils and clay, it would appear that much of the brick and concrete rubble has now been removed. The history of the site indicates that it has not been cultivated for very many years and given that there are said to be some areas of hardstanding beneath the tipped material, I see little amenity benefit in requiring its removal from the site. I shall therefore vary the requirements of the notice by deleting steps 2 and 3 and substituting alternative steps requiring the levelling of the remaining material and the removal from it of all brick, concrete and other materials measuring in excess of 10cm in any direction. To this extent, the appeal on ground (f) succeeds.

### Other Matters

9. I have taken account of all other matters raised, but find nothing of sufficient weight to alter the balance of my conclusions.

### Formal Decision

10. In exercise of the powers transferred to me, I direct that the enforcement notice be corrected and varied by:-

- (a) the deletion of the particulars in Paragraph 3 and the substitution therefor of the following  
*"The deposit of soils, road planings and other excavated material on the land for the purpose of constructing soil and rubble bunds, involving the carrying out of engineering or other operations, without the benefit of planning permission";*
- (b) the deletion from Paragraph 4(i) of the word "ten" and the substitution therefore of the word "four"; and
- (c) the deletion of Steps 2 & 3 from Paragraph 5 and the substitution therefor of the following  

"Step 2	<i>Spread and level the deposited material so as to ensure that it does not at any point exceed the height of the adjoining ground level by more than 25cm</i> <i>Time for compliance with Step 2: 4 weeks</i>
Step 3	<i>Remove from the deposited material, all brick, concrete and other materials not occurring naturally on the land, measuring in excess of 10cm in any direction, to an authorised waste disposal site.</i> <i>Time for compliance with Step 3: 4 weeks".</i>

Subject thereto, I dismiss the appeal, uphold the notice and refuse planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

### Right of Appeal to the High Court

11. Particulars of the right of appeal against this decision to the High Court are enclosed.

*K.E. Hyland*

Inspector

**APPEARANCES**

**FOR THE APPELLANT:**

**Mr C Beresford-Webb**

**Appellants' Agent**

**Mr J Stretton**

**Appellants' Father**

**FOR THE LOCAL PLANNING AUTHORITY:**

**Mr P Watson BA(Hons), MRTPI, DMS**      **Development Control Team Leader, Minerals & Waste  
Development Branch, Northamptonshire CC**

**DOCUMENTS**

**Document 1 List of persons present at the hearing**

**Document 2 Copy of letter from Kettering Borough Council dated 5<sup>th</sup> February 2001**