
APPLICATION NO.	P08/W0848/RET
APPLICATION TYPE	Minor
REGISTERED	16 July 2008
PARISH	Great Milton
WARD MEMBER	John Nowell-Smith
APPLICANT	Messrs PLH, DR and RR Alden
SITE	'The Triangle' adjacent to A418 and A40
PROPOSAL	Retention of earth bunds
AMENDMENTS	
GRID REFERENCE	461966/205003
OFFICER	Susannah Mangion

1.0 INTRODUCTION

- 1.1 The application is before the Planning Committee as the officer's recommendation conflicts with the views of Great Milton Parish Council.
- 1.2 This retrospective application seeks permission for the retention of earth bunds which have been constructed along the western boundary of the site. The application has been submitted further to an earlier withdrawn planning application (reference P06/W0019/CM) which was submitted to Oxfordshire County Council (OCC) for determination. There is understood to be a current planning enforcement investigation relating to the development held by OCC.
- 1.3 Although the previous application was submitted to OCC, the applicants' agent has argued that the current application should be determined by South Oxfordshire District Council. He maintains that the development has been undertaken primarily as a landscaping measure to deter unauthorised entry onto the application site and to reduce fly-tipping from the traveller site. The application may therefore be considered an engineering operation which SODC is able to determine.

2.0 PROPOSAL

- 2.1 The site lies in the Oxford Green Belt. It forms part of the triangle of land created by the A40(M) and A418 junction. A travellers' site lies to the west of the application site and the Wheatley motorway service area lies to the east. The site is level and mostly open although a former track with field hedges to either side crosses the site. There are existing unauthorised low bunds to the north of the site adjacent to the lay-by area and to the south of the site adjacent to the A40(M). These bunds are understood to date from approximately 1998 and appear to be immune from enforcement action. The site is separated from the adjacent traveller site by a two metre high close-boarded fence, a 'landscape belt' and a one metre high post and rail fence. The applicants advise that the boundary fences are often poorly maintained by OCC and that some of the planting to the 'landscape belt' has been unsuccessful due to frequent damage to the trees. The location of the site is shown on the plan attached at Appendix 1.
- 2.2 The landscape of the local area has been substantially altered from its natural topography due to cuttings and embankments involved in the construction of the A40 and the M40; the former railway line; the construction of the golf course at Waterstock; and as a result of the bunds associated with the nearby motorway service area.

- 2.3 The retrospective proposal seeks the retention of earth bunds along the western boundary of the site adjacent to the travellers' site. According to the applicants the purpose of the bunds is to provide a substantial physical barrier to prevent unauthorised fly-tipping and to deter unauthorised access to the site, particularly from the adjacent traveller site. Although part of the site benefits from an Established Use certificate for the storage of construction materials, the site is currently almost entirely empty.
- 2.4 The bunds are understood to have been constructed of approximately 800 cubic metres of good quality subsoil and topsoil. The base of the earth bunds is approximately 9 metres wide and the top of the bunds are approximately 2.5 metres wide. The bunds occupy an area of approximately 0.2ha within a site of approximately 3 ha. The bunds are covered in vegetation, mainly comprising weed growth.
- 2.5 At the time of the earlier application (P06/W0019/CM), the creation of the bunds was ongoing. Details from the application file indicate that the material used in the construction of the bunds was brought onto the site from October 2005 and the bunds were completed by October 2006. The material used in the construction of the bunds was top and sub soil imported from the BOC site, Chinnor Road, Thame.
- 2.6 The proposed plans are **attached** as Appendix 2.
- 2.7 The construction of the earth bunds requires the benefit of planning permission as case law suggests that earth bunds are not usually considered to be a means of enclosure as referred to under Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995.
- 3.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**
- 3.1 Great Milton Parish Council:
Approve – improvement to surrounding landscape.
- 3.2 Waterstock Parish Meeting:
Object to the application and would like to see enforcement action pursued to ensure the removal of the waste. The bunds represent a landscape change which is not permissible within the Green Belt unless there are very special circumstances. The Parish is conscious of the damaging effect of unlawful deposition of waste and do not wish to see a precedent being set for the acceptability of unlawful waste deposits. The existing damage to the local landscape does not justify further harm. There is sympathy with the problem of fly-tipping on the site but it is unclear how the bunding prevents it as the profile of the bunds makes them easy to cross. A better solution could be achieved with improvements to the fencing and additional planning. Planting would be more successful on original soils than if planted into the mounded, imported waste.
- 3.3 Wheatley Parish Council:
No strong views.

3.4 Oxfordshire County Council:

Object. A report recommending refusal of a previous application for the same development (P06/W0019/CM) was withdrawn prior to consideration by OCC's Planning and Regulation Committee. The report recommended refusal for the following reasons:

1. The proposed development is contrary to the Oxfordshire Structure Plan policy G4 in that there are no very special circumstances for its construction in the Green Belt.
2. The proposed development is contrary to the Oxfordshire Structure Plan policy WM3 in that the disposal of waste is not into a mineral working for beneficial purpose.
3. The proposed development is contrary to Oxfordshire Minerals and Waste Local Plan Policy W7 in that there is no need for disposal of waste at this site which could not be met at other landfill sites.

OCC advise that there has been no change in circumstances or significant changes in policy since OCC considered the application in 2006 and the objections remain.

3.5 Landscape Consultant:

The bunding at the nearby motorway service area (MSA) site is of relevance to the current application. The Planning Inspectorate levelled criticism at the County Council with regard to the bunding at that site, given its Green Belt designation. Therefore the agent's assertion that bunding is an acceptable way of screening development sites in this area is incorrect.

Although the bunds are lower and the site smaller than at the MSA site, the issues raised are similar. Namely, allowing the bunds to remain might affect openness or be an aid to concealing development which might also affect openness of the Green Belt.

The adjacent travellers' site is used to support the application, to screen the 'eyesore' and to reduce unauthorised fly-tipping and other antisocial behaviour on the site. The bunds have not prevented fly-tipping, whereas a strong fence would be more likely to succeed.

Although owning land adjacent to the travellers' site must be onerous, its presence should not aid the promotion of the current proposal. If the County Council is responsible for maintenance and screening of the travellers' site, it should erect a more robust fence and replant the buffer zone.

The agent's letter suggests the applicants could erect a fence or wall of up to 2 metres in height but are willing to retain lower bunds as an alternative. This argument is inconsistent.

Bunds are generally unacceptable, particularly where they might conceal development. The fact that they may be inconspicuous is not a good argument as this argument could be repeated to the detriment of the countryside and landscape.

The bunds are not a visually appropriate device to screen the site notwithstanding the incidence of bunds in this area, many of which do not reflect the 'grain' of the existing landscape.

3.6 Oxford Green Belt Network:

Refuse the application and remove the waste material used to form the bunds. Bunds are an unsuitable solution to problems such as fly-tipping as they create an artificial landscape feature which detracts from the openness of the Green Belt and infringes Green Belt policy. Feel that a reinforced fence covered in fast-growing, 'deterrent' shrubs would provide a more suitable secure barrier between the application site and the travellers' site.

4.0 **RELEVANT PLANNING HISTORY**

- 4.1 P91/N0421/EU: An Established Use certificate was granted on 21 February 1992 for use as a civil contractor's depot. The certificate relates to part of the site only and was for storage to a height not exceeding 10 feet.
- 4.2 An Enforcement Notice dated 13 December 1993 was served, requiring the following:
i) cease importation of all waste materials to the land
ii) cease crushing and screening of waste materials on the land.
- 4.3 P93/N0422/LD: On 16 November 1994 a Certificate of Lawful Development was refused for the storage of inert waste material. An appeal was withdrawn on 16 May 1995.
- 4.4 P94/N0728/LD: A Certificate of Lawful Development was refused on 22 June 1995 for the storage of civil contractor's materials and ancillary machinery to a height not exceeding 10 feet.
- 4.5 NE98/011: A planning enforcement investigation was undertaken alleging the creation of a contractor's compound including portacabins and the creation of an earth bund. The investigation was closed on 10 March 1999.
- 4.6 NE99/013: A planning enforcement investigation was undertaken alleging the storage of concrete beams contrary to Established Use certificate P91/N0421/EU. The investigation was closed on 6 September 2000.
- 4.7 P06/W0019/CM: A planning application seeking permission for the construction of earth bunds was withdrawn prior to determination on 12 April 2006.

5.0 **POLICY & GUIDANCE**

- 5.1 South Oxfordshire Local Plan 2011 policies:
G2 – Protection and enhancement of the environment
C1 – Landscape character
GB3 – The use of land in the Green Belt
GB4 – Visual amenity (Green Belt).
- 5.2 Government Guidance:
PPG 2 – Green Belts
PPG 18 – Enforcing planning control.
- 5.3 South Oxfordshire Landscape Assessment.
- 5.4 Oxfordshire Structure Plan 2016 policies:
G4 –Green Belt
WM3 – Landfill.
- 5.5 Oxfordshire Minerals and Waste Local Plan 1996 saved policy:
W7 – Landfill.

6.0 PLANNING CONSIDERATIONS

6.1 The main issues in this case are:

- whether the creation of earth bunds represents appropriate development in the Green Belt
- the landscape impact of the earth bunds
- neighbour impact of the earth bunds
- waste management and waste disposal issues.

6.2 Green Belt

Policy GB3 of the SOLP 2011 states, 'within the Green Belt the carrying out of engineering and other operations and the making of any material change in the use of land will not be permitted unless the openness of the Green Belt is maintained and there is no conflict with the purpose of including land within the Green Belt'.

This reflects advice contained in paragraph 3.12 of PPG2 which states, 'The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt.'

- 6.3 The purposes specified for the retention of the bunds are to provide a physical boundary to the site to prevent easy access from the travellers' site for fly-tipping (particularly involving vehicles) and to deter unauthorized access. The discouragement of fly-tipping is an understandable objective. However, there are currently two fences between the bunds and the traveller site. Concerns have been raised by Waterstock Parish Meeting that the bunds do not actually provide an acceptable means of preventing fly-tipping on the site. In particular it has been pointed out that it is not difficult to walk over the bunds. Furthermore access to the site is achievable in a number of places which may lead to incidents of fly-tipping. Waterstock Parish Meeting has also suggested that the derelict and uncared for appearance of the site may contribute to the occurrences of fly-tipping on the site. The development cannot be justified in terms of its contribution to reducing fly-tipping on the site.
- 6.4 With regard to policy GB3, the bunds represent sizeable, additional barriers along the western boundary of the site which have a negative impact on the openness of the Green Belt. As such, the development represents 'inappropriate development' in the Green Belt. No very special circumstances have been presented to justify making an exception to planning policy.
- 6.5 Part of the land benefits from an Existing Use certificate but the land is currently disused. The applicants have advised that prospective occupiers of the land are concerned about the ease of access to the land by unauthorised persons. The land is located between two developed areas within the Green Belt, namely a travellers' site and motorway service area. The applicants have pointed out that there are examples of bunds at the motorway service area and the front of the traveller site. These bunds screen unattractive developments. This application, however, seeks the retention of bunds around a mostly empty site. The damaged character of the locality is not a justification for disregarding Green Belt policy and permitting development that adversely affects its openness. Although the area is not attractive, to permit the retention of bunds within the Green Belt may set an undesirable precedent for similar development. Although public views into the site are limited as a result of the established low bunds and vegetation growth along the road frontage of the site the development remains unacceptable in principle.

6.6 The applicants have advised that they would be willing to undertake planting to assimilate the bunds into the landscape. However, landscaping on bunds is often unsuccessful, with particular problems arising from the nature of the material used in the construction of the bunds. In any case, planting would not disguise such an alien landscape feature as is evident from the existing bunding adjacent to the lay-by area.

6.7 The development does not maintain the openness of the Green Belt and is contrary to the advice contained in PPG2 and policy GB3.

6.8 Landscape impact

Policy G2 states, 'The district's countryside, settlements and environmental resources will be protected from adverse developments and opportunities sought to enhance the environment wherever they arise.'

Policy C1 states, 'The conservation and where possible, enhancement of the landscape of the district will be sought. Development that would adversely affect the distinctive features of the landscape character areas will not be permitted.'

6.9 The site lies within the character area described as The Clay Vale within the South Oxfordshire Landscape Assessment (SOLA). It is characterised by undulating semi-enclosed vale. The intrusion and disruption to the natural pattern and character of the rural landscape in the locality is acknowledged and has arisen due to the motorway service area, M40 and A40 and the nearby golf course at Waterstock. However, the SOLA recommends intervention to reconstruct a more sympathetic character and to mitigate adverse impacts on the surrounding landscape. Landscape enhancement priorities specified in the SOLA include improving landscape structure along main roads to mitigate adverse impacts on the surrounding countryside and strengthening the typical pattern of field boundaries with strong hedgerows. The retention of the substantial earth bunds creates further damage to the landscape character of the area in direct contrast with the recommended landscape enhancement strategy.

6.10 The council's landscape consultant has indicated that the bunds are not a visually appropriate device to screen the site. The development is contrary to policies G2 and C1 of the SOLP 2011.

6.11 Neighbour impact

There are a number of travellers' homes within close proximity to the earth bunds. However, the bunds sit below the level of the boundary fence and do not have a material impact on the occupiers of these homes.

6.12 Waste management and waste disposal

OCC has advised that the waste sub soil and top soil used in the construction of the bunds could easily be incorporated into existing waste disposal sites. The bund does not meet a need for landfill facilities that cannot be met elsewhere in the county. Therefore the development is contrary to policy W7 of the Oxfordshire Structure Plan 2016. OCC has also advised that the development is contrary to policy WM3 of the Oxfordshire Minerals and Waste Plan in that the disposal of waste material is not into a mineral working for beneficial purposes.

7.0 **ENFORCEMENT CONSIDERATIONS**

7.1 As this application is retrospective, the refusal of planning permission will result in consideration being given to pursuing formal enforcement action in respect of the development. The decision as to whether or not to take enforcement action is delegated to officers. PPG18 encourages local authorities to pursue enforcement action

where it is expedient to and planning harm is identified. Action should be proportionate to the breach of planning control and should take account of the general public interest in preventing inappropriate development.

8.0 CONCLUSION

8.1 The retrospective proposal fails to comply with the relevant development plan policies.

8.2 The retention of the earth bunds fails to maintain the openness of the Green Belt and therefore represents inappropriate development in the Green Belt, contrary to policy GB3 of the SOLP 2011 and the aims of PPG2. No very special circumstances have been put forward to justify the development and to warrant overriding Green Belt policy. The development does not enhance the landscape character of the area and gives rise to the creation of additional unnatural landforms within an already damaged landscape. The development is contrary to policies G2 and C1 of the SOLP 2011. The bunds, which have been constructed of waste material, do not comply with policy WM3 of the Oxfordshire Structure Plan 2016 or policy W7 of the Oxfordshire Minerals and Waste Plan. However, the bunds do not harm the amenity of the occupiers of homes on the adjacent traveller site.

9.0 RECOMMENDATION

9.1 **It is recommended that planning permission be refused for the following reasons:**

- 1) The retention of the earth bunds fails to maintain the openness of the Green Belt and represents inappropriate development in the Green Belt, contrary to policy GB3 of the South Oxfordshire Local Plan 2011 and the aims of PPG 2.**
- 2) The development does not enhance the landscape character of the area and represents the creation of unnatural landforms within an already damaged landscape and is contrary to policies G2 and C1 of the South Oxfordshire Local Plan 2011.**
- 3) The bunds, which have been constructed of waste material, do not comply with policy WM3 of the Oxfordshire Structure Plan 2016 or saved policy W7 of the Oxfordshire Minerals and Waste Plan 1996.**

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