



**Town and Country Planning Act 1990
(as amended)**

**Section 174 Appeal against
Enforcement Notice**

**Charnwood Borough Council
Enforcement Notice ref. E/21/0048**

Appeal Statement

Appeal on behalf of Mr G. Mattu

**Brand Hill House
Brand Hill
Woodhouse Eaves
Leicestershire
LE12 8SX**

18 December 2024

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1. INTRODUCTION

- 1.1 This statement supports an appeal under Section 174 of the Town and Country Planning Act 1990. It provides the appellant's statement and grounds of appeal.
- 1.2 The appeal is made in respect of Enforcement Notice ref. E/21/0048 ('the Notice') served by the local planning authority, Charnwood Borough Council ('the LPA'), at Brand Hill House, Brand Hill, Woodhouse Eaves, Leicestershire ('the Site').
- 1.3 The Notice was served on Mr Gurdev Singh Mattu of Brand Hill House, Brand Hill, Woodhouse Eaves, Leicestershire on 22 November 2024. This appeal is made on behalf of Mr Mattu ('the appellant').
- 1.4 The appellant is joint owner and occupier of the domestic property of Brand Hill House and its grounds, along with the woodland to the northeast (Hunger Hill Wood) and the adjoining open land to the southeast ('the paddock'). The ownership includes the land subject to the Notice.
- 1.5 The plan at **Appendix 1** (Site Location Plan ref. 101-925(P)100A) shows Brand Hill House and the adjoining land in applicant's ownership edged in blue. A track connects a vehicular access point on the public highway at Brand Hill to Hunger Hill Wood via the paddock. The track also has a branch connecting to Brand Hill House.
- 1.1 There are 3 vehicular access points to the land in the appellant's ownership numbered on the plan at **Appendix 2**. Access points 1 and 2 provide access to Brand Hill House. The access numbered 3 on the plan provides access to paddock and woods to the south and east of the property and also has a section linking to the south driveway to Brand Hill house.
- 1.6 The enforcement notice was served on 19 November 2024, shortly after the refusal of Charnwood BC planning application ref. P/24/0258/2 on 08 November. The notice requires removal of the additional section of track that connects between the track to the woodland and the south driveway to Brand Hill House and ceasing the use to access the house. It therefore covers the same development as planning application ref. P/24/0258/2. The application site boundary is shown on Site Location Plan 101-925 (P)100A. The plan included within the Notice showing the land to which the notice relates edged red identifies that it covers the same land. It comprises the land between public highway at access point 3 from Brand Hill Road, up to where the additional section of track connects to the driveway to the house
- 1.7 As the notice would take effect if not appealed before 3 January, the appellant has therefore lodged this appeal against the notice and included an appeal on ground (a), rather than appealing the refused planning application. The planning application documents pertaining to application ref. P/24/0258/2 therefore form part of this appeal.
- 1.8 We also note that the enforcement notice refers to lighting bollards alongside the track. This lighting was in the form of a small number of low-level bollards and not considered

to be obtrusive. The impact when viewed from the road when the electric gates are open for a short time to allow vehicles to enter or leave during the hours of darkness, would be almost negligible. However in appeal decision into the retention of the residential track and gates (reference appeal ref. APP/X2410/W/22/3308383, dismissed 20 March 2023 and mentioned below), the Inspector did raise some issues and the appellant has taken the view that the residential extension to the track can be used without the lighting and in the circumstances has confirmed that it has been removed. This will be noted by the Inspector when he/she undertakes the site visit. As such the lighting bollards are not included in the Ground (a) appeal.

1.9 This statement of case has been prepared by Matthew Wedderburn MRTPI, planning consultant and senior associate at Knights with input and review by Rob Pattinson, planning solicitor and partner at Knights.

1.10

2. THE ENFORCEMENT NOTICE

1.2 Enforcement Notice ref. E/21/0048 was served on 22 November 2024 and would come into effect on 3 January 2025 unless an appeal has been made beforehand.

1.3 The Notice describes the matters which the LPA consider constitute a breach of planning control under paragraph (a) of Section 171A(1) of the Town and Country Planning Act 1990 (as amended) as follows:

“Change of use of existing vehicle access point and part of an agricultural and forestry track to a mixed use of agriculture, forestry and residential, and installation of an additional section of track for residential use, low level lighting along the track and intercom system”.

2.1 The notice includes a plan showing the land to which the notice relates edged red.

2.2 The Notice specifies six actions to be undertaken within 2 months of 3 January 2025 (“what you are required to do”). These comprise:

- i. *“Cease the residential use of the vehicular access existing track and additional section of track. The additional section of track is hatched blue on the plan ref. 101-925(P)102D and attached as appendix 1.*
- ii. *Remove all hard surfacing, surface dressing base material, sub-base material and geotextile/textile matting from the additional section of track hatched blue on the plan ref. 101-925(P)102D and attached as appendix 1*
- iii. *Place topsoil to the same level as the neighbouring land on the area where the hard surfacing has been removed and reseed with a pasture grass mix.*
- iv. *Remove the low-level lighting bollards, disconnecting the electricity supply to the lighting bollards and remove any electrical servicing cables associated with the lighting bollards.*
- v. *Remove the intercom system, disconnecting the electricity supply to the intercom system and remove any electrical servicing cables associated with the intercom system.*
- vi. *Remove from the land any, plant, machinery, tools debris, waste and materials arising from undertaking steps 2 – 5.”.*

2.3 On the plan that accompanies the notice, the extent of the residential track required to be removed is shown hatched blue.

2.4 The appellant’s grounds of appeal in respect of the Notice and case in support of each of these grounds is set out below.

3. THE PLANNING HISTORY

- 3.1 The planning decisions that are considered most relevant to the current proposals are as follows.

Prior notification application ref. P/16/2384/2

- 3.2 Whilst the access point from the public highway to the Paddock (access point 3) was already present this prior notification application was for “*Installation of compacted loose stone to provide an all-weather track for access (Submission of details)*”. It was approved on 18 October 2016 and firmly establishes the principle of vehicular access via a track up to the woodland. The works to construct the track seen today, including the section linking to the house, were subsequently undertaken in April 2017, albeit the track to the woods is in a slightly different position to the alignment shown on the plan which accompanies prior approval decision P/16/2384/2.

Planning application ref. P/22/0771/2

- 3.3 This application was for “*use of existing vehicular access point and track for access to dwelling and for the creation of a section of track and lighting (retrospective)*”. It was refused on 29 July 2022 and subsequent appeal ref. APP/X2410/W/22/3308383 was dismissed 20 March 2023.

Certificate of Lawful Development ref. P/23/1857/2

- 3.4 This Certificate of Lawful Development was granted consent on 20 December 2023 and confirms that the timber entrance gates, the adjoining sections of fence and the track leading from Brand Hill to the woods are all lawful. It demonstrated that:

- The gates along with their posts and associated fencing were erected in April 2016.
- The works to create the Track, including the section linking to the house, were undertaken in April 2017¹.

- 3.5 The gates, the adjoining sections of fence and the track to the woods were therefore shown to have been in place for over 4 years.

- 3.6 It should therefore be noted that the gates were erected separately to, and around a year in advance of, the creation of the track linking to the house. The gates were put in place as part of what was then an access point serving the lawful use of adjacent land as woodland and paddock.

Planning application ref. P/24/0258/2

- 3.7 This revised application sought planning permission (i) for the use of the existing vehicular access point and track for access to Brand Hill House and (ii) the formation

¹ The automation of the gates and the installing of the intercom was undertaken subsequently, in September 2017

of the additional section of track that connects to the south driveway to Brand Hill House. It therefore comprises similar proposals to planning application ref. P/22/0771/2, but without the lighting previously included and an additional landscaping scheme. The entrance gates, adjoining sections fence and the track leading to the woods were also now accepted to be lawful. The application was however refused under delegated powers on 08 November 2024.

- 3.8 The enforcement notice was served on 19 November 2024, shortly after the refusal of planning application ref. P/24/0258/2. As the notice requires removal of the additional section of track that connects between the track to the woodland and the south driveway to Brand Hill House and the use of the track to access the house to cease, it covers the same development as planning application ref. P/24/0258/2.
- 3.9 The notice would take effect if an appeal was not lodged before 3 January 2025. The appellant has therefore lodged this appeal against the notice and included an appeal on ground (a), rather than appealing the refused planning application. The planning application documents pertaining to application ref. P/24/0258/2 form part of this appeal.
- 3.10 The application site boundary is shown on Site Location Plan 101-925 (P)100A and is the same boundary as shown on the plan included within the notice showing the land to which the notice relates edged red. The site comprises the land between public highway at the access point from Brand Hill Road (access point 3), up to where the additional section of track connects to the driveway to the house.
- 3.11 The planning case for the proposals under Ground (a) is set out below.
- Application ref. P/13/2245/2
- 3.12 It is the case that there was also an earlier previous application for '*Creation of access and associated gates*'. This was refused in a decision dated 20 December 2013. It sought permission for the construction of two 1.8-metre-high stone walls, each around 16 metres in length and an access drive of a relatively circuitous route.
- 3.13 Rather than a new gateway feature, the current proposals are for residential access via the existing timber entrance gates confirmed to be lawful in Certificate ref. P/23/1857/2.
- 3.14 Furthermore, the proposed route is a simple, direct one, via an initial section of the lawful track to the woodland and then via a further section of track linking to the driveway to the house.

4. GROUNDS OF APPEAL

4.1 With reference to the grounds upon which an appeal against an enforcement notice can be made, as set out in section 174(2) of the 1990 Act, the appellant's grounds of appeal in this case are as follows:

- Ground (a) *"that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted"*;
- Ground (c) – *"that those matters (if they occurred) do not constitute a breach of planning control"*;
- Ground (d) *"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"*;
- Ground (f) – *"that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach"*;
- Ground (g) – *"that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed"*.

4.2 The appellant's grounds in this appeal are set out in section 5 below.

5. GROUND (A): THAT, IN RESPECT OF ANY BREACH OF PLANNING CONTROL WHICH MAY BE CONSTITUTED BY THE MATTERS STATED IN THE NOTICE, PLANNING PERMISSION OUGHT TO BE GRANTED

- 1.1 The notice requires removal of the additional section of track that connects to the south driveway to Brand Hill House and to cease the use of the track for access the house.
- 1.2 This is the same development as proposed in retrospective planning application ref. P/24/0258/2.
- 1.3 The following planning application documents pertaining to application ref. P/24/0258/2 form part of this appeal and are submitted for consideration by the appointed Inspector:
- Site Location Plan ref 101-925 (P)100A.
 - Proposed Site Plan ref 101-925 (P)102D.
 - Curtilage Plan 101-925 (P)105
 - Planning and Heritage Statement (Knights)
 - Transport Technical Note (SCP)
 - Proposed Soft Landscape Plan N1123(08)001rev# (Influence)
 - Landscape and Visual Appraisal, ref. INF_N0976_R01A (Influence)
 - Landscape and Visual Appraisal Addendum INF_N1123_R01 (Influence)
 - Arboricultural Impact Assessment (Hillfort Tree Care)
 - Tree Protection Plan MAT.001, (BJ Collins)
 - Preliminary Ecological Appraisal, (BJ Collins)
 - BNG Assessment
 - BNG Statutory Metric Calculation, (BJ Collins).

The Site And Surroundings

- 5.1 The site subject to the enforcement notice is shown in red on the plan accompanying the notice and comprises the land between the public highway and the third most southerly access point from Brand Hill road (access point 3), up to where the additional section of track connects to the south driveway to the house. The site area is 542.7sqm.
- 5.2 Access 3 forming part of the site has solid timber gates with short lengths of fencing to each side. It sits immediately to the south of another access point with iron gates leading into the grounds of Brand Hill House.
- 5.3 The gates to the highway are set within a narrow belt of trees and shrubs alongside the road. The track then enters the open grassed area of the paddock, before a spur

swings north to connect with the immediate grounds of Brand Hill house. The row of trees at the edge of the paddock, to the north of the section of track linking to the house, is subject to a Tree Preservation Order.

- 5.4 The site is located in the corner of the paddock, which is a large open area where the grass is cut periodically. There is a disused stables-type building located around 75m to the northeast.

Heritage Matters

- 5.5 This statement of case is accompanied by a Heritage Appeal Statement by Dr J. Edis of specialist heritage consultants HCUK. The is sets out the detail of the appellant's position on the significance of any heritage assets affected and any potential impact of the proposals on their significance.
- 5.6 Whilst the Heritage Appeal Statement sets out the appellant's position on the key heritage-related matters, additional details are provided below in order to help describe the context.
- 5.7 The site is located in Woodhouse Eaves Conservation Area. We also note Charnwood House to the northeast is a listed building although, given the intervening properties (Dormer House and Brand Hill House) and the trees, asset out in the HCU Statement we do not consider this listed building or its setting would be in any way affected by the proposals.
- 5.8 A number of properties in the Woodhouse Eaves area were requisitioned by the MoD in World War II. These included Brand Hill House and also the adjacent land referred to here as The Paddock. The area was known in the 1940s as Brand Hill Camp. It included a number of Nissen Huts located in the Paddock, accommodating staff from the Royal Signals ('Y Group') and remains of previous structures and other remains can be seen at ground level to the south east of the paddock (see the HCUK Statement for further details). Vehicular access to the Paddock has been present since that date, continuing to be used since for access to the field and to Hunger Hill Wood. The HCUK Statement also includes extracts from historical mapping from the 1930s and 1950s that shows a pre-existing track linking between Brand Hill House and the paddock, in a location close to the present track.
- 5.9 After WWII, Brand Hill House was bought by the Health Service and became one of a number of 'Recovery Homes' in Woodhouse Eaves where, on release from hospital, patients of various ages could recover from illness. Brand Hill House was sold by the Health Service in 1986 to private ownership. The current owners purchased Brand Hill House along with the adjoining paddock and woodland on 26 September 2013.
- 5.10 Brand Hill House and its grounds, along with Hunger Hill Wood to the northeast and the Paddock to the southeast all lie within Woodhouse Eaves Conservation Area ('the Conservation Area'), as designated in July 1993.

- 5.11 A Conservation Area Character Appraisal is dated April 2009. This report describes the building styles and materials that are characteristic of the Conservation Area. The accompanying Heritage Appeal Statement by HCUK considers this appraisal and then addresses whether there is impact upon the significance of heritage assets.

The Proposed Development

- 5.12 The Notice requires removal of the additional section of track that connects between the track to the woodland and the south driveway to Brand Hill House and ceasing the use to access the house. This appeal on ground (a) is therefore retrospective and for:
- the retention of the section of track that connects between the track to the woodland and the south driveway to Brand Hill House;
 - the continued use of the existing vehicular access point and track for access to Brand Hill House.
- 5.13 If planning permission is granted on appeal in relation to the change of use, it is the case that the access point and part of the track would then be lawfully used as part of a mixed use comprising residential, forestry and for access to the paddock.
- 5.14 The proposals are shown on Proposed Site Plan ref 101-925 (P)102D. The section of track that links the drive to the house is around 15m in length, 3.5m wide and was formed by excavation of 300mm of topsoil, laying a geotextile membrane, with a 250mm compacted base course, topped off with a 50mm depth of crushed stone, also compacted.
- 5.15 The application includes Proposed Soft Landscape Plan N1123(08)001B which proposes an area of landscaping along the left-hand side of the track entering the site.
- 5.16 In addition, the proposals include the removal of the adjacent longstanding access to the south driveway to Brand Hill House and its replacement with native hedging extended across this area. The small post mounted lights are in the process of being removed. These elements can all be secured via condition.

The Development Plan and other material considerations

- 5.17 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: *“for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”*. The Development Plan is therefore the starting point for the determination of planning applications.
- 5.18 The Development Plan for the appeal site comprises comprises the Charnwood Core Strategy (adopted November 2015), the Borough of Charnwood Local Plan (adopted 12 January 2004) (saved policies), the Minerals and Waste Local Plan (2019) and the Woodhouse Neighbourhood Plan.

- 5.19 The *other “material considerations”* to which Section 38(6) refers would include national policies and emerging local policies. The National Planning Policy Framework (“the NPPF”) (as revised) was published in December 2023 and represents national planning policy. It is noted that a further revised version of the NPPF will be published imminently. This will be reviewed on publication and if required representations made in connection with the same.
- 5.20 A revised Charnwood Local Plan is currently at examination and Main Modifications were consulted upon on 17 July - 4 September 2024. The weight to be given to these policies would be subject to the approach set out in NPPF paragraphs 48 – 50.
- 5.21 The Enforcement Notice makes reference to the following policies:
- Core Strategy policies CS2, CS11, CS12, CS13, CS14
 - Saved policies CT/1 and CT/2, EV/1
 - Policy H3 of Neighbourhood Plan
 - Policy C1 DS5, EV1, EV4, EV6 and EV8 of the emerging Local Plan
- 5.22 Reference also made in the Enforcement Notice to NPPF paras 186 and 208
- 5.23 These policies will be considered further below.
- 5.24 As noted above a planning application for “*use of existing vehicular access point and track for access to dwelling and for the creation of a section of track and lighting (retrospective)*” was submitted in 2022 and subsequently dismissed at appeal².
- 5.25 We consider however that there are a number of key relevant material changes to the proposal and further material planning considerations, relative to this previous application:
- Certificate of Lawful Development ref. P/23/1857/2 was granted consent on 20 December 2023 and confirms that the gates, fence, access and track leading to the woodland that would form the access point are all lawful.
 - Landscaping is proposed alongside the track at the entrance to the site.
 - The small post-mounted lights alongside the track are not part of this appeal and are in the process of being removed.
 - Access point 2, the previous southerly access to the house would be closed, removed and replaced by native hedging.

² Planning application ref. P/22/0771/2, refused 29 July 2022 and appeal ref. APP/X2410/W/22/3308383, dismissed 20 March 2023.

- 5.26 As such we consider the inspector is free to come to a decision to support this ground (a) appeal, notwithstanding the previous decision.
- 5.27 For completeness we also note that the planning officer considering retrospective planning application ref. P/24/0258/2 was initially minded to support the application. Please see **Appendix 3** for details.
- 5.28 In the appeal decision related to the previous proposals, the Inspector identified the following main issues at paragraph 8:
- the effect of the development on the character and appearance of the area, including the Woodhouse Eaves Conservation Area.
 - the effect on highway safety with regard to vehicular and pedestrian visibility.
- 5.29 We agree that the key issues in respect of this ground (a) appeal are also (i) impact on the character of the area, (ii) impact on the Conservation Area (we deal with the issue of the Conservation Area separately as additional national and local policies on heritage apply) and (iii) highway safety.

The effect of the development on the character and appearance of the area

- 5.30 With regard to the character and appearance of the area, the most relevant planning policies are:
- CS policy CS 2 - High Quality Design requires that new developments “*respect and enhance the character of the area*” and refers to matters including layout and materials.
 - CS policy CS11 - Landscape and Countryside seeks that new developments protect landscape character and reinforce a sense of place and local distinctiveness.
 - LP policy CT/1 - General Principles for Areas of Countryside, Green Wedge and Local Separation. This states planning permission will be granted for small-scale new built development, where there would not be a significant adverse environmental impact
 - LP policy CT/2 - Development in the Countryside states that proposed development should “*not harm the character and appearance of the countryside*”.
 - NP policy H6 - Design Standards requires new development enhance and reinforce the local distinctiveness and character of the area.

- 5.31 Firstly, we would stress that the physical development included in this planning application is limited to the creation of the short section of track (around 15m) linking the track to the woods to the driveway to the house. The gates, fence, access and track leading to the woodland were all confirmed to be lawful by the LPA as previously indicated.
- 5.32 The additional section of track is of a construction and appearance that is common in respect of farm or woodland tracks in the countryside (indeed it was constructed at the same time and to the same specification as the track to the woodland). It is around 3.5m wide and formed of crushed stone. As such it has a simple functional appearance, distinguishable from typical domestic driveways, these being more typically formed of materials such as tarmac, block paving, or coloured gravel.
- 5.33 We note that the officer's report (paragraph 9.2.6) accepts that *"the proposed development would result in very little change to the visual appearance of the countryside or views up Brand Hill at this location"*. It is also conceded here that the appearance of the track would mean *"it would not be readily viewed as part of the traditional domestic curtilage"*.
- 5.34 Whilst we note the planning inspector who considered the previous appeal concluded that the development would result in significant harm to the character and appearance of the area³, that conclusion was however based upon a number of factors which have now altered in respect of the current case.
- 5.35 Firstly, the Inspector discusses the wooden gates off Brand Hill at paragraph 14 of the appeal decision, commenting that they contribute to the *"change in character that I found here"* and considering that *"more utilitarian designed gates" might be expected"*.
- 5.36 As set out above, the gates are confirmed to be lawful and their appearance is therefore now irrelevant to any consideration of whether the proposed development would be harmful to the character of the area.
- 5.37 It is the case however, that when the gates are closed, views of the track and any vehicles upon it are fully screened at the point of access.
- 5.38 At paragraph 13, the Inspector states that: *"Although at my site visit the track itself was not clearly visible from the highway, I was able to clearly view cars going back and forth in both directions as I stood on the track, which was not screened by existing trees so any activity here would be noticeable. At night, a time the previous use was unlikely to attract any activity, there is now a need for illumination, so the application includes details of external lighting. Both, the increase in activity from the use and the lighting introduces a more domestic character, visible to highway users, where previously the domestic curtilage of the house was screened by existing boundary"*

³ Although at paragraph 14 it was also concluded that the harm to the significance of the Conservation Area would be 'less than substantial'.

trees and hedges. This encroachment of the domestic curtilage is harmful to the existing character and appearance of the open countryside.”

- 5.39 The Inspector concedes here that the track was not clearly visible from the highway. With the gates closed it would not be visible at all. The gates would only be opened when a vehicle needed to enter or leave the site. The Inspector’s perception of a more domestic character appears to be derived as a result of the view of the vehicles when the gates are open, as they approach (the gates) from the house along the driveway to leave the property, or have entered the site, but the gates have yet to close.
- 5.40 The fact that when standing on the track (presumably with the gates open) “*any activity here would be noticeable*” was a concern of the Inspector “*as the location is not screened by existing trees*”.
- 5.41 The documents submitted with this planning appeal include a Landscape and Visual Appraisal, a Landscape and Visual Appraisal Addendum and Proposed Soft Landscape Plan N1123(08)001rev#. The plan supplies details of additional landscaping to replace the access point 2 to the north and along the left-hand side of the track entering the site. This landscaping adjoining the track would screen vehicles driving along the residential connection, or after accessing the site, as soon as they pass on the other side of the proposed landscaping, during the short period prior to the gates closing. As the LVA Addendum concludes the landscaping would “*mitigate views of vehicle movements*”.
- 5.42 Given the nature of the landscaping, the domestic curtilage would not as a result be extended in any visual sense and the curtilage of the house will remain screened by existing boundary trees and hedges as well as the proposed new planting.
- 5.43 Furthermore the appellant is in the process of removing the lighting, which takes away another element of the “*domestic character*” referred to by the previous Inspector.
- 5.44 The officer’s report in respect of planning application P/24/0258/2 at paragraph 9.2.6 suggests that “*The comings and goings along the track and through the gates where associated with the dwelling would result in additional incremental change to the rural character of the site*”.
- 5.45 Whilst the Inspector in the previous appeal decision also considered the residential use resulted in an increase in activity that would have a harmful impact on the character of the area, the level of this additional use had not however been quantified. Having considered the level of such activity, we consider that this conclusion in terms of impact cannot be reasonably sustained.
- 5.46 Brand Hill House is a single residential property and the appellant confirms the following:
- There are six vehicles owned by people who reside at the house and are generally parked here

- On a typical weekday, three of these vehicles would typically leave the property once and then re-enter, whilst a fourth vehicle might typically leave and then re-enter on two occasions.
- On a typical weekend day four vehicles might be expected to leave and return once.
- There might typically be one other vehicle movement such as a visitor or a delivery (weekdays and weekends).
- The property however also has a north driveway and use of this other access (Access 1) is more convenient if approaching from the north or on egress if heading north. The applicant confirms that each access is used approximately 50% of the time.

5.47 It is therefore estimated that vehicular movements using access point 3 in connection with the residential occupation of the property total around 3 inward movements and 3 outwards movements per weekday and 2.5 inwards and 2.5 outwards per weekend day.

5.48 We consider that level to which Access 3 is used would not lead to any discernible change in the character of the area.

5.49 In conclusion, we therefore consider that the proposed development would not have a harmful impact upon the on the character and appearance of the area and we consider the proposals would accord with CS policies CS 2 and CS11 and CT/2 and NP policy H6.

The impact of the development upon highway safety

5.50 The proposed development seeks retrospective consent to utilise access point 3 for vehicular access to Brand Hill House. With regard to highway safety issues, the most relevant planning policies are:

- Paragraph 114 of the NPPF requires that safe and suitable access can be achieved
- NPPF paragraph 115 states “*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*”.
- CS policy CS18 - The Local and Strategic Road Network seeks to maximise the efficiency of the local and strategic road network.

- Saved Policy TR/6 of the Borough of Charnwood Local Plan says permission will not be granted for development “*where the impact of traffic generated by an individual proposal or the cumulative impact together with other committed and allocated development in the locality would result in unsafe and unsatisfactory operation of the highway system*”.
- Neighbourhood Plan Policy T1 - Traffic Flow & Volume Management refers to the highway network and “*the Highway Authority’s role in maintaining and improving all elements of the highway network., seeking improvements where possible*”.

5.51 The Inspector who considered the planning appeal relating to planning application ref. P/22/0771/2 did not identify significant highway safety issues and as such concluded there were not benefits arising from the proposals that would outweigh the significant harm he found in terms of impact on character and appearance.

5.52 In considering highway issues, it is noted that at the time of the previous appeal decision, Lawful Development Certificate ref. P/23/1857/2 had not been issued. This changes the situation as the gates and track as constructed and leading to the woodland are lawful. Access 3 is a lawful access point but it is adjacent to an already existing and also lawful access point to Brand Hill House (access 2), with potential for conflict to arise between vehicles seeking to use each access at the same time (See plan at **Appendix 2**).

5.53 This appeal on ground (a) is accompanied by a Transport Technical Note by specialist transport consultants SCP ref. MD/220198/3, dated 15 March 2024.

5.54 This assesses the impact of the proposals in highway terms. The proposed development and the relationship to access point 2 to Brand Hill House is considered and at paragraph 14 it is noted “*the only transport effect of the current proposal to link the access to Brand Hill House would be to transfer the associated vehicle movements from the existing access immediately to the north to the now approved access to the south, allowing the former to be closed and reducing the number of accesses along Brand Hill*”.

5.55 SCP considered the proposals would represent a significant improvement in highway terms for the following reasons:

- Given the close proximity of two existing access points, the closure of access 2 and its replacement via the access 3 would remove the potential for conflicts between the two.
- Access point 3 to be retained is set back further from the kerb-line and would remove / reduce the obstruction of the highway by vehicles waiting to enter the site whilst the gates are opened and provide better pedestrian visibility.

- The gates at Access point 3 are electric powered and can be opened remotely, whilst access 2 has gates that are manually operated and more time consuming. The replacement access would therefore reduce waiting time on the highway.
- Access 2 to be replaced has a visibility splay in the more critical direction to the north that is significantly constrained (2.4m x 10m) whilst the replacement access provides an improved visibility splay (2.4m x 28m) which could be further improved (to 2.4m x 43m) to achieve suitable visibility for the 30mph speed limit of Brand Hill, by lowering or cutting back slightly the boundary hedges, which could be secured as a condition. The visibility splays are shown on drawing reference SCP/220198/D01/C included at Appendix G of the SCP report.
- SCP drawing No. SCP/220198/D01/C shows that Access 3 offers visibility splays of 2.4m by 43m in either direction.

5.56 Leicestershire County Council Local Highway Authority were consulted on planning application P/24/0258/2 and the consultation response dated 28 June 2024 is attached at **Appendix 4**. This concludes *“The LHA is satisfied that the proposed access is of a better design and safer than the access that is proposed to be closed as it offers greater vehicular and pedestrian visibility along with having gates setback further from the carriageway”*.

5.57 The officer’s report in respect of planning application P/24/0258/2 also accepts that the proposed access is of a better design and safer than access 2 that is proposed to be closed (paragraph 9.9.5).

5.58 The Highway Authority response also states *“the closure of any access onto the public highway represents a highway safety gain”*. The disuse of the adjacent access to the north can be secured as a condition to be attached to planning permission for the development. Plan ref 101-925/(P)102D also sets out that the gates and posts of access 2 are to be removed and replaced by suitable planting to match the adjacent vegetation and adherence to this plan can be secured by such a condition.

5.59 In addition, at **Appendix 5** to this statement is a letter by Mervyn Greenhalgh, a local resident who carries out regular management work within the Hunger Hill woods, removing fallen trees and keeping paths clear. He makes the following point *“Removal of the spur between the driveway and the gravel access from gates to woods will create difficulties for myself as I store my equipment close to the Mattu’s house, as leaving my mower and quad bike in the woods risks vandalism or theft⁴. The removal of the spur would be unnecessarily inconvenient, as it would require me to exit through the Mattu’s metal gates and re-enter through the double wooden gates”*.

⁴ Reduction of crime, anti-social behaviour and the fear of crime are also relevant material considerations here under Section 17 of the Crime and Disorder Act 1998.

- 5.60 As this observation shows, there is also a further highway benefit in retaining the vehicular connection from the paddock to the curtilage of the residential property as the vehicles used for maintenance work within the woodland and the Paddock when not in use can be parked within the residential curtilage, with a direct access for the maintenance of the woods/paddock, without a loop via the public highway.
- 5.61 The proposed development therefore offers clear highway safety benefits and would accord with policy CS18, LP policy TR/6 and NP policy T1.
- 5.62 The Highway Authority response proposes a number of draft conditions. These include that the area between the back of the footway and the gates be surfaced with tarmac or other hard bound material. It is hereby confirmed that these draft conditions are acceptable to the applicant⁵
- 5.63 In conclusion we consider that the proposed development offers clear highway safety benefits and would accord with policy CS18 and NP policy T1 and LP policy TR/6.
- 5.64 We also note that the officer's report in respect of planning application P/24/0258/2 agrees at paragraph 9.9.7 that the development does not conflict with paragraph 115 of the NPPF i.e. that there is no basis to resist the proposed development on highway grounds.

The effect of the proposed development upon the Conservation Area

- 5.65 The accompanying Heritage Appeal Statement by Dr J Edis of HCUK considers the potential for impact upon the significance of heritage assets. It reviews the Woodhouse Eaves Conservation Area Character Appraisal of April 2009.
- 5.66 HCUK consider the appeal site is a transitional area where the domestic curtilage merges with the countryside, and, having reviewed its historical evolution, consider it has been capable of absorbing the change over a longer period without harm to the significance the conservation area.
- 5.67 The historical existence of a track between the house and paddock at this point is noted and that the additional section of track has an appearance similar to the main track leading from the road to Hunger Hill Wood, rather than a tarmac surface like those closer to Brand Hill House. HCUK conclude that the additional section of track has not affected any characteristic of the conservation area identified in the Council's appraisal and has not eroded the quality of the area.
- 5.68 Paragraph 1.18 of the HCUK Appeal Statement asserts that the Council is attaching a far greater sensitivity to the appeal site and its surroundings than is actually the case.

⁵ Condition 1 should be updated to refer to drawing 101-925/(P)102 rev D rather than rev C. This was updated at the planning officer's request to show the section of driveway to be removed and replaced with landscaping

We conclude that the significance of the Conservation Area would not be affected and its character would be preserved

- 5.69 HCUK conclude there is no harm to consider in discharging the duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposed development should therefore be considered to be in accordance with CS policies CS 2 - and CS14, LP policy EV/10 and NP policy H6
- 5.70 NPPF Paragraph 207 and 208 require decision makers to carry out a '*heritage balance*' in all cases where a proposed development would result in harm to a designated heritage asset. The heritage balance entails weighing the severity of identified harm against the importance of any public benefits that would be derived from the proposals.
- 5.71 Whilst HCUK do not consider that such harm would arise and no need to consider a balancing exercise in which harm is weighed against public benefit, we are aware the Council's position is that harm would arise. We note that the officer's report in respect of planning application P/24/0258/2 suggests that harm would arise and indicated at paragraph 9.3.9 that "*the harm identified to the character of the conservation area is considered to be minor and less than substantial*". In the event that the Inspector concludes '*less than substantial harm*' would be caused to the significance of the designated heritage asset, a heritage balance exercise is set out below.

Biodiversity

- 5.72 Charnwood Core Strategy policy CS13 states "*Where there are impacts on biodiversity we will require adequate mitigation; or as a last resort, compensation which results in replacement provision that is of equal or greater value and potential than that which will be lost, and is likely to result in a net gain in biodiversity*".
- 5.73 The site is not subject to any statutory nature conservation designations, nor are there any internationally or nationally significant nature conservation sites considered to be impacted by the proposed development.
- 5.74 Planning application P/24/0258/2 was accompanied by a Biodiversity Net Gain (BNG) report and BNG metric calculation.
- 5.75 The track was created within a small area of the paddock, a habitat described in BNG terms as 'other neutral grassland'.
- 5.76 The application was calculated to result in a habitat loss of 0.005ha (from 0.054 ha to 0.049 ha) of 'other neutral grassland' and a commensurate increase in the amount of 'artificial unvegetated, unsealed surface'.
- 5.77 The pre-development on-site baseline was calculated at 0.24 habitat units and the post-development impact of the proposals would be a reduction of 0.04. A post

development gain of 0.07 habitat units is therefore required in order to mitigate the loss and also achieve a 10% net gain in biodiversity.

- 5.78 The appellant has therefore purchased off-site habitat credits from the Environment Bank. Please see the documentation provided at **Appendix 6**⁶.
- 5.79 The proposed development would therefore accord with Policy CS13 of the Core Strategy.
- 5.80 We also note that the officer's report in respect of planning application P/24/0258/2 has considered this approach and at paragraph 9.5.6 concludes "*Overall and subject to conditions and the completion of a legal agreement to secure the off-site credits, the proposed development will avoid unacceptable impacts on protected species and their habitats and will achieve a biodiversity net gain overall in accordance with Policy CS13 of the Core Strategy and Emerging policy EV6 of the Draft Local Plan*".
- 5.81 We note a separate legal agreement will not be required to secure BNG as off-site habitat credits have now been purchased and evidence has been provided to that effect⁷.

Impact on trees

- 5.82 The site lies in a Conservation Area where trees are protected and in addition the row of trees to the north of the section of track linking to the house are covered by a Tree Preservation Order.
- 5.83 Saved policy EV/1 of the Borough of Charnwood Local Plan says existing features in and around sites such as trees, hedges should be used as the focus around which new development is designed. NPPF paragraph 136 states that existing trees should be retained wherever possible.
- 5.84 The ground (a) appeal is for retrospective approval, seeking consent to continue to use the existing access point (Access 3) for vehicular access to Brand Hill House and to retain the short length of track connecting to the existing southern driveway to the house.
- 5.85 No trees were felled or affected by the creation of the additional short length of track and no other works that may impact upon trees are proposed.

⁶ Appendix 6 comprises appellant's invoice from the purchase and a copy of the Habitat Management and Monitoring Plan, full details to follow but a Long Lease from Habitat Bank, Certificate of Purchase and Natural England Gain Site Register reference are anticipated shortly at time of writing.

⁷ In order to add BNG sites with units for sale onto the national register, they must be legally secured through either a conservation covenant or a section 106 agreement.

- 5.86 The proposed development should therefore be considered to be in accordance with Saved Policy EV/1 of the Borough of Charnwood Local Plan and NPPF paragraph 136.

Flood risk

- 5.87 The physical works are limited to a small length of track formed of crushed rock. This is permeable and any excess will drain to the immediately adjacent areas of vegetation. Greenfield run off rates will therefore not be exceeded and any excess run off is not expected to go beyond the site area.
- 5.88 It is therefore considered that the development would not increase flood risk and complies with Core Strategy Policy CS16.
- 5.89 We note the officer report in respect of planning application P/24/0258/2 at paragraph 9.8.3 agrees with this position.

Residential amenity

- 5.90 With regard to residential amenity the officer report notes at paragraph 9.7.4 that there are no other dwellings in proximity to the site and says "*Given the number of vehicular movements are not likely to increase as a result of the development and would instead be relocated slightly further south along Brand Hill, it is not considered that the proposed use or development would give rise to any harm to neighbouring amenity nor the amenity of those that reside in Brand Hill House*".
- 5.91 The officer concludes the proposed development in respect of existing and future occupiers accords with policies CS2 of the Core Strategy, saved policy EV/1 of the Local Plan and emerging Plan policy DS5.
- 5.92 We concur with this position.

Assessing The Heritage Balance

- 5.93 NPPF Paragraph 207 and 208 requires decision makers to carry out a '*heritage balance*' in all cases where a proposed development would result in harm to a designated heritage asset.
- 5.1 The impact upon the significance of any heritage assets affected is considered in the accompanying Heritage Appeal Statement by HCUK. They do not consider that such harm would arise and no need to consider a balancing exercise in which harm is weighed against public benefit.
- 5.2 We are however aware that the Council's position is that harm would arise. We note that the officer's report in respect of planning application P/24/0258/2 suggests at paragraph 9.3.9 that "*the harm identified to the character of the conservation area is considered to be minor and less than substantial*".

- 5.3 In the event that the Inspector *concludes 'less than substantial harm'* would be caused to the significance of the designated heritage asset, a heritage balance exercise is set out below. This entails weighing the severity of identified harm against the importance of any public benefits that would be derived from the proposals. NPPF Paragraph 208 states "*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*".
- 5.4 The Enforcement Notice, which makes no suggestion that any heritage assets are affected (other than the conservation area) or that there are any setting-related issues.
- 5.5 Firstly, were the Inspector to consider that the development would lead to some harm to heritage assets, within the broad category of *'less than substantial'* harm, it can be of assistance to define where on the scale of *'less than substantial harm'*, the identified level of harm lies. This then aids weighing the harm against such benefits.
- 5.6 The officer's report in respect of planning application P/24/0258/2 suggests any harm to the character of the conservation area is considered to be *'minor'* (paragraph. 9.3.9). The section of track is of a construction and appearance that is common in respect of farm or woodland tracks in the countryside and in terms of additional activity there are typically 2.5 – 3 vehicular movements in each direction per day. Dr J Edis considers that no harm would arise, however we submit that if any harm does arise it must surely be very limited.
- 5.7 Any such harm should then be assessed against the public benefits, in accordance with NPPF paragraph 208.
- 5.8 There are clear public benefits that would arise from the appeal scheme.
- As set out above the vehicular access to be used for residential access here (access 3) is of a better design and safer than access 2 to the immediate north, as it offers greater vehicular and pedestrian visibility,. along with having gates set back further from the carriageway edge.
 - The closure of access 2 to the north would avoid possible vehicular conflicts with access 3 and a reduction in the number of access points also of itself a highway safety gain.
 - The proposed development also avoids vehicles used for maintenance work within the woodland and paddock having to use the public highway in order to then use access 2 to the residential property in order to leave machinery in a secure location when required.
- 5.9 As such the development subject to this Ground (a) appeal offers clear and substantive public benefits.

- 5.10 The appellant asserts that any less than substantial harm arising would be limited and towards the lower end of less than substantial harm. Accordingly, it is submitted on behalf of the appellant that any such heritage harm would be significantly outweighed by the public safety benefits set out above.
- 5.11 The Council's assertion that less than substantial harm to heritage assets would arise is not accepted, but even if that were the case, we submit that any such harm is outweighed by the public benefits of the proposals.
- 5.12 In accordance with NPPF paragraph 208 the benefits would outweigh any harm identified.
- 5.13 The proposed development should therefore be considered to be in accordance with CS policies CS2 and CS14 and NP policy H6.

Overall planning balance

- 5.14 After having undertaken this heritage balance exercise, all material planning issues should then be weighed up in advance of determination.
- 5.15 The appellant does not consider that the scheme would cause harm to the appearance of the countryside or to the Conservation Area. Furthermore, as detailed above, if it were considered that such harm does arise this must be limited and towards the lower end of the scale of less than substantial harm and seen in the context of the various benefits that will flow if access to the house via Access 3 is retained and the adjoining Access point 2 is closed.
- 5.16 As set out above, the new access offers greater vehicular and pedestrian visibility and allows vehicles to pull further off the highway and the gates to be opened more quickly, along with having gates setback further from the carriageway. The closure of the access to the north is also of itself a highway safety gain. The proposed development also avoids vehicles used for maintenance work within the woodland and paddock accessing via the public highway as previously indicated. Significant positive weight must be placed on these public safety benefits as set out above.
- 5.17 In respect of biodiversity, the purchase of off-site habitat credits from the Environment Bank will allow the proposed development to exceed +10% biodiversity net gain. The small increase should attract some limited positive weight.
- 5.18 Other relevant planning issues include trees, flood risk, residential amenity. No other harmful impacts are identified and the development would not have an impact on trees, would not increase flood risk and no neighbours would have any loss in residential amenity. As such these factors attract a neutral weight.
- 5.19 The appellant therefore asserts that the considerable benefits arising from the proposals would significantly and demonstrably outweigh any limited negative impacts.

5.20 As such it is considered the Ground (a) appeal should be allowed and planning permission granted for the formation of the section of track that connects to the driveway to Brand Hill House and the use of the most southerly vehicular access point and track for access to Brand Hill House.

6. GROUND (C) – THAT THOSE MATTERS (IF THEY OCCURRED) DO NOT CONSTITUTE A BREACH OF PLANNING CONTROL

- 6.1 Enforcement Notice ref. E/21/0048 describes the matters which the LPA consider to constitute the breach of planning control to include the installation of an intercom system.
- 6.2 The Notice specifies six actions to be undertaken within 2 months and these include *“Remove the intercom system, disconnecting the electricity supply to the intercom system and remove any electrical servicing cables associated with the intercom system”*.
- 6.3 We would emphasise the small scale of the intercom and the lack of resulting physical change to the appearance of the gates.
- 6.4 **Appendix 7** provides an image of intercom unit on the gates.
- 6.5 The Council wrote to the appellant on 15 January 2024 and noted that the Certificate of Lawful Development P/23/1857/2 granted on 20th December 2023 does not include the intercom or power supply. The applicant replied in a letter dated 22 January 2024 asking the Council to confirm why the installation of the intercom was considered to be development that would require planning permission, noting the small scale and the lack of physical change to the appearance of the gates.
- 6.6 In a further letter dated 24 January 2024, the Council advised that no further comment would be provided on the matter of whether the intercom and electricity supply are considered to be development.
- 6.7 In order to clarify the position, an application for planning permission was therefore submitted in February 2024 (ref P/24/0257/2) for *‘Retention of a power supply and an intercom installed on the entrance gates to a track in association with existing dwellinghouse (Retrospective)’*.
- 6.8 The application was however not validated and **Appendix 8** provides correspondence from the Council dated 5 March 2024. This is an email in the form of a standard letter stating that the application has not been validated. The reason set out confirms that the LPA does not consider the intercom to be development and that it does not of itself require planning permission.
- 6.9 The Council’s letter does nonetheless suggest that the proposal *“may be considered integral to an unauthorised change of use”* and implies that permission would be needed for the intercom if use of the gates as a residential access is not subsequently permitted.
- 6.10 The intercom keypad unit is affixed to existing wooden gates at Brand Hill. These gates also provide access to the paddock and Hunger Hill Woods. The gates are confirmed to be lawful via the Certificate of Lawful Development P/23/1857/2 granted 20th

December 2023 as attached at **Appendix 8**. This certificate includes the track to the woodland, the gates and adjoining fence.

- 6.11 The intercom and the power cable allow the gates to be electric powered and to be opened remotely. The notice requires removal of the intercom system, disconnecting the electricity supply to the intercom system and remove any electrical servicing cables associated with the intercom system. It is noted that it does not require removal of the powered closing mechanism.
- 6.12 At **Appendix 5** to this statement is a letter by Mervyn Greenhalgh, a local resident who carries out regular management work within the woodland, removing fallen trees and keeping paths clear. Mr Greenhalgh is responding to both to the suggestion that the intercom be removed from the gates and also the power supply. He makes the point that, were it not possible to use the intercom then for them to be opened manually, someone such as himself undertaking work in the woodland or paddock would need to park up on the highway and make a phone call to the house for someone to walk down and open the gates.
- 6.13 When leaving he may also need to call someone at the house and ask them to open/close the gates.
- 6.14 The intercom and the electric powered gates therefore reduce waiting time on the highway and therefore offer a highway safety benefit.
- 6.15 As Mervyn Greenhalgh identifies, the automatic closure mechanism also offers a security benefit as without this would be a greater risk that the gates be left open (to avoid the walk from the house and back each time to return a key). If the gates were left open, this may lead to a risk of trespass on private land or indeed criminal activity. Reduction of crime, anti-social behaviour and the fear of crime matters are relevant material considerations under Section 17 of the Crime and Disorder Act 1998.
- 6.16 The Council's position appears to be that the intercom system is an integral part of the unauthorised change of use as alleged in the Notice and that permission would be needed for it if use of access point 3 as a residential access is not permitted.
- 6.17 As set out above however, the intercom has a dual use and, if the residential use of the track ended and the linking section of residential track had to be removed, the intercom would still fulfil a required purpose in respect of opening the gates for the authorised use of the land relating to the paddock and woodland.
- 6.18 As such planning permission is not required for the installation and retention of the intercom system as set out in the Notice and we dispute there is any basis to require removing the intercom system, disconnecting the electricity supply to this and removing associated any electrical servicing cables with the intercom system as set out in the notice.

7. GROUND (D) - 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

- 7.1 Enforcement Notice ref. E/21/0048 describes the matters which the LPA consider to constitute the breach of planning control to include installation of an intercom system.
- 7.2 The Notice specifies six actions to be undertaken within 2 months and these include *“Remove the intercom system, disconnecting the electricity supply to the intercom system and remove any electrical servicing cables associated with the intercom system”*.
- 7.3 The intercom keypad unit is affixed to existing wooden gates at Brand Hill. Certificate of Lawful Development P/23/1857/2 granted 20th December 2023 (**Appendix 9**) states that works *“comprising of the development of a track and vehicle access point off Brand Hill to access paddock and woodland (more particularly described in the First Schedule) were substantially complete more than four years prior to the date of the application”*. The schedule refers to details including timber entrance gates. As such the entrance gates are lawful, as is the existing use of the woodland and the paddock.
- 7.4 As set out above in section 6.9 – 6.17 above, the intercom has a dual use and, if the residential use of the track ended and the linking section of residential track had to be removed, the intercom would still fulfil a required purpose in respect of the authorised use.
- 7.5 The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990. These include that development becomes immune from enforcement if no action is taken within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.
- 7.6 The automation of the gates and the installing of the intercom was undertaken in September 2017 (after the gates themselves had been installed in April 2016).
- 7.7 **Appendix 10(a)** is a letter from KC Automation confirming that the intercom on the access point 3 at Brand Hill House was installed on 7th September 2017. **Appendix 10(b)** is KC Automation’s invoice for this work, dated on the same day. No other changes to this intercom system have since been made.
- 7.8 Notwithstanding the case under Ground (c) above, if the intercom were operational development and therefore would ordinarily require planning permission, as the substantial completion of the intercom occurred more than 4 years ago, then in so far as its use relates to the lawful agricultural and forestry use of Access 3, the intercom is immune from enforcement action due to the passage of time.
- 7.9 As such, at the date when the notice was issued, no enforcement action could be taken requiring its removal.

8. **GROUND (F) – THAT THE STEPS REQUIRED BY THE NOTICE TO BE TAKEN, OR THE ACTIVITIES REQUIRED BY THE NOTICE TO CEASE, EXCEED WHAT IS NECESSARY TO REMEDY ANY BREACH OF PLANNING CONTROL WHICH MAY BE CONSTITUTED BY THOSE MATTERS OR, AS THE CASE MAY BE, TO REMEDY ANY INJURY TO AMENITY WHICH HAS BEEN CAUSED BY ANY SUCH BREACH**
- 8.1 Enforcement Notice ref. E/21/0048 describes the matters which the LPA consider to constitute the breach of planning control to include installation of an intercom system.
- 8.2 The Notice specifies six actions to be undertaken within 2 months and these include *“Remove the intercom system, disconnecting the electricity supply to the intercom system and remove any electrical servicing cables associated with the intercom system”*.
- 8.3 The intercom keypad unit is small and affixed to existing wooden gates that are already confirmed to be lawful via the Certificate of Lawful Development P/23/1857/2 that was granted consent on 20th December 2023 (**Appendix 9**).
- 8.4 As a result of its small scale, the intercom unit does not result in physical change to the appearance of the gates.
- 8.5 The intercom and the power cable allow the gates to be electric powered and to be opened remotely.
- 8.6 At **Appendix 5** to this statement is a letter by Mervyn Greenhalgh, who for many years has carried out regular management work within Hunger Hill Woods, removing fallen trees and keeping paths clear. He accesses the wood via these gates. Mr Greenhalgh makes the point that, were it not possible to open the gates remotely someone such as himself undertaking work in the woodland or in the paddock would need to park up on the highway and make a phone to the house for someone to come and open the gates. As Mervyn Greenhalgh identifies, the automatic closure mechanism also offers a security benefit as without this would be a greater risk that the gates are left open (to avoid the walk from the house and back each time to return a key). If the gates were left open, this may lead to a risk of trespass on private land or indeed criminal activity. Reduction of crime, anti-social behaviour and the fear of crime matters are relevant material considerations under Section 17 of the Crime and Disorder Act 1998.
- 8.7 Given the small scale of the intercom and its function in relation to gates that are lawful we do not consider that it leads to harm and there are highway safety and security benefits if it is retained.
- 8.8 We therefore consider the requirement in the notice to remove the intercom system, disconnect the electricity supply and remove any cables related to the intercom to exceed what is necessary to remedy any alleged breach of planning control here.

9. GROUND (G) - THAT ANY PERIOD SPECIFIED IN THE NOTICE IN ACCORDANCE WITH SECTION 173(9) FALLS SHORT OF WHAT SHOULD REASONABLY BE ALLOWED

- 9.1 Enforcement Notice ref. E/21/0048 describes the matters which the LPA consider to constitute the breach of planning control, it set out a list of actions required and then under the heading "Time for Compliance" it states "*2 months from the date of this notice*".
- 9.2 The requirements include to remove the surface of the additional section of track, including the base material, sub-base and geotextile matting.
- 9.3 After the excavation and removal from the site of the material the area the notice requires "*Place topsoil to the same level as the neighbouring land on the area where the hard surfacing has been removed and reseed with a pasture grass mix*".
- 9.4 A compliance period of 2 months from the notice taking effect is considered insufficient to arrange and complete all of these works.
- 9.5 This would require a suitable contractor to be identified and appointed, before the work can then be scheduled and completed.
- 9.6 The appellant considers if the notice were to be upheld this should be amended to completing the restoration '*by the start of the next growing season*' in order to provide necessary time to remove the track, replace with topsoil and to reseed.

10. CONCLUSION

- 10.1 The above statement sets out the appellant's grounds of appeal against the Enforcement Notice under Section 174 of the Town and Country Planning Act 1990.
- 10.2 For the reasons set out above we request that the enforcement notice be quashed.

11. THE APPEAL PROCEDURE

- 11.1 The Planning Inspectorate Procedural Guide for Enforcement Notice Appeals (as updated 12 September 2024) ('The Procedural Guide') states at para 4.3.1 "*With reference to the criteria for procedure determination, appellants must state on the appeal form which procedure they think is most appropriate for the appeal and the reasons for their preference*". A separate document published 21 April 2022 provides the "*Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals*"
- 11.2 With reference to the Procedural Guide, we consider that a hearing is the most appropriate format as the Inspector is expected to need to test the evidence by questioning. We consider this is particularly the case in respect of the Ground (a) appeal where the impact on the Conservation Area is one of the key issues and is a matter where asking questions of a heritage expert is likely to be of assistance. We would propose that heritage consultants HCUK (who provided the accompanying Heritage Appeal Statement) should attend the hearing.

December 2024

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