

PROOF OF EVIDENCE OF
TMOOTHY ANDEW SHATTOCK

ENFORCEMENT NOTICE APPEAL REFERENCE APP/X2410/C/24/3347294
LOCAL PLANNING AUTHORITIES REFERENCE E/18/0476

Land adj Moor Lane, Loughborough,
Leicestershire

Local Planning Authority: Charnwood Borough Council

Appellant: Mr and Mrs Gallagher

1. PERSONAL DETAILS

- 1.1. My name is Timothy Andrew Shattock. I am a Partner in APB Leicester (LLP) which is practice of Chartered Surveyors and have held this position for 14 years
- 1.2. I am a Chartered Surveyor of almost 40 years' experience I have been involved with the Site and the surrounding areas since Sowden Group ("the Company"), for whom I act and have acted for 36 years, first acquired its interest in the adjoining land in 2003. Since that time I have been involved in detail in all discussions with the local planning authority including the submission of a number of planning applications for a variety of uses
- 1.3. The evidence which I have prepared and provide for this appeal reference PP/X2410/C/24/3347294 in this proof of evidence is true and has been prepared in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
- 1.4. My proof of evidence sets out the factual history of the site known as Land off Moor Lane, Loughborough ("the Site") that is the subject of the enforcement notice issued by Charnwood Borough Council ("the Council") on 29 May 2024. It also comments on the technical information provided by BWB Consulting in relation to flood levels and the extent of earth to be removed from the Site to comply with the enforcement notice.
- 1.5. This Proof of Evidence is supplemental to my Statutory Declaration made on 2nd August 2023 (CD4.3.2).

2. THE SITE AND HISTORY OF WORKS

- 2.1. On 20 December 2013 planning permission ("the Permission") was granted by the Council for the erection of 38 dwellings to phase 1 and outline application for residential development and community building pursuant to application reference P/12/2130/2 made by the Company. The Permission related to the Site and other land. In so far as relevant to the Site, the Permission authorised the use of the Site for a community building and public park.
- 2.2. The Appellants operated a scrapyards business on their land, including the Site and a purpose of the joint planning application was to enable funds to be raised to relocate the Appellant's business to an alternative location.
- 2.3. The Company commenced development of its land in May 2014. This involved a large cut and fill exercise on Phases 1&2 to avoid retaining walls and a large cart away of material. after the Appellants had vacated their land, works were undertaken on the Site including the demolition of buildings, removal of concrete surfaces and the levelling of surplus inert materials from the Site and the company's sites.
- 2.4. The differences in the three parcels of land can be seen from a comparison of the Google Earth images from September 2011 and March 2015.
- 2.5. By November 2015, the company had effectively completed the levelling works on the Site. The Google Earth image from April 2016, at TS4 of my statutory declaration (which is incorrectly dated as 2015) shows how the Site was left. All trees and vegetation removed from the Site had been done so by that point in time.

- 2.6. As set out in my Statutory Declaration in 2018 discussions were ongoing with the Council about the provision of a community facility at the cricket club and the need for enabling development. As there had been no levels survey since 2004 (ie 14 years) and as the site had been an operational Waste Transfer for at least 10 of those years, I appointed BWB to carry out a topographical survey. This was carried out on 26th July 2018 and is what any competent developer would do as the site had changed in those intervening years.
- 2.7. This survey clearly shows that levels had increased before 2018. They also show two stockpiles of surplus material at the north end of the site in what I understood to be Flood Zone 3b. In November 2018 a meeting took place between the Company and the Council/ EA about these spoil heaps resulting in a letter from the Council dated 2nd January 2019. The Council claimed to have undertaken its own survey around this time but has never released (referenced in the Council's Hearing Statement (CD5.2) and the Council's letters dated 2 January 2019 (CD5.2.6) and 20 May 2019 (CD5.3.2)).
- 2.8. The subsequent 2019 works resulted from the conversations with the EA and the Council about removing the spoil heaps. This was very clearly a different operation to what had happened up to the 2018 survey. The only reasons further works were done was to appease the EA (ie removal of the spoil heap from Flood Zone 3b) and, as set out below, security concerns.
- 2.9. At that time there was a significant risk of travellers using the site (it was flat and level with the road). It was therefore decided to remove the spoil heap from the floodplain and create the shallow grade bund to protect site from travellers. The bund design was chosen to protect the site from it being removed in parts to allow vehicular access.
- 2.10. A letter dated 20 May 2019 from the Council to the Company demonstrates that, in May 2019, the Council was fully aware of the change in levels at the Site. I responded to the Council on the Company's behalf on 21st May 2019 stating that when the works (ie the bund work) were completed the site would be in a level condition consistent with the s 106 agreement – it was of course already level before that work. I can categorically confirm that no earth was brought onto the land from other areas of the site after the 2018 survey. Google Earth Images from the 2 years prior clearly show that. In my correspondence, I also reminded the Council that it should act quickly if it wanted to take transfer of the land as per the section 106 Agreement
- 2.11. The creation of the bund and removal of the spoil heap was completed in July 2019.
- 2.12. In September 2019 I attended a meeting at Charnwood BC's offices to discuss the site. CBC produced an agenda. There was no mention on the agenda of any issue with levels nor was it discussed at the meeting. The only thing of interest to the Council was acquiring the Site – I can only surmise that it was because everyone was happy with the levels if the Site was to be transferred to the Council.

3. GROUND (D) APPEAL

- 3.1. The above history, and all submitted evidence, demonstrates that ground levelling works were ostensibly completed by December 2015. These works were clearly a separate operation to the works undertaken on Site in June/July 2019 which related to the removal of the spoil heap and the creation of the security bund. The Council was fully aware of the levelling works undertaken by December 2015 as evidenced by its correspondence in early 2019.

4. GROUND (C) APPEAL

- 4.1. The Section 106 Agreement required the removal from the Site of “any buildings, materials and hard surfaced areas from the Site” and to “carry out site clearance and fencing of the same”. It clearly envisaged the removal of vegetation (clearance) and changes in levels (the ripping up of hard surfaced areas).
- 4.2. As such, it is considered that the works required by the Section 106 Agreement were consistent with what has been undertaken on Site, especially with regard to the removal of trees and vegetation.

5. GROUND (F) APPEAL

- 5.1. In relation to the requirement to replant trees and grassland, it is clearly the case that the removal of trees and vegetation, including grassland, was completed by December 2015. The removal of trees or vegetation is not development which requires planning permission and was not related to the works undertaken in June/July 2019.
- 5.2. Further, the Section 106 Agreement always envisaged that the Site would be cleared in accordance with the requirements of the Section 106 Agreement
- 5.3. With regard to the reduction of levels to the levels of the 2004 survey, this is manifestly excessive. Firstly, as evidenced by the 2018 survey, ground levels had already been increased, fully in the knowledge of the Council, and no enforcement action has been taken with regard to that increase. Therefore, it is considered that the notice cannot lawfully require a reduction to below the 2018 survey levels.
- 5.4. Secondly, as is clear from the enforcement notice, the main concern of the Council in relation to the reasons for issuing the enforcement notice is the alleged impact on the flood plain and loss of floodplain storage. It also raises concerns with biodiversity but, as set out above, the trees and vegetation were always envisaged to be removed and were removed before December 2015 meaning that such concern is without merit.
- 5.5. To understand the Council’s concerns with impacts on flooding, the Appellants have commissioned BWB Consulting to prepare the following documents which I attach at appendices 1 to 6:
 - 5.5.1. Existing Ground Models Comparison 244547-BWB-XX-XX-C-Y-0004 S2 P04 which shows two sections through the Site and identifies various levels taken from topographical surveys undertaken in 2004, 2018 and 2021 and LiDAR data from 2022. It also shows the 1 in 20 year flood level and the 1 in 100 year flood level (“the Sections”)
 - 5.5.2. Comparison of 1 in 100 year Floodplain for 2004 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0006 S2 P01 (“the 1 in 100 year flood level comparison 2004 and 2022”)
 - 5.5.3. Comparison of 1 in 100 year Floodplain for 2018 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0007 S2 P01 (“the 1 in 100 year flood level comparison 2018 and 2022”)
 - 5.5.4. Comparison of 1 in 20 year Floodplain for 2004 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0009 S2 P02 (“the 1 in 20 year flood level comparison 2004 and 2022”)
 - 5.5.5. Comparison of 1 in 20 year Floodplain for 2018 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0010 S2 P01 (“the 1 in 20 year flood level comparison 2018 and 2022”)

- 5.5.6. Required Earthworks to Revert Ground Levels Back to 2004 and 2018 244547-BWB-XX-XX-D-Y-0008 S2 P01 (“the Required Ground Levels Comparison”)
- 5.6. The Sections illustrate the change in levels over the period since 2004. They show that levels were changed within the 1 in 100 flood levels and within the 1 on 20 flood levels since 2004. The 2022 LiDAR data and the 2021 survey levels are broadly similar although there are some localised discrepancies, largely around the steepness of the gradient for the front of the bund and where the levels drop rapidly towards the north of the Site.
- 5.7. The Sections show that much of the groundworks since 2004 have been undertaken outside of the 1 in 20 year flood level and the 1 in 100 year flood level. It is understood that the Council’s primary concern was with the impacts on the functional floodplain. As such, it is considered that the 1 in 20 year flood level is key to understanding whether reducing ground levels to the 2004 levels would be necessary to address those concerns; plainly, it would only be necessary to reduce ground levels to 2004 levels in those parts of the Site that were raised up since 2004 to take them outside of the 1 in 20 year flood level (in the event that it was not concluded that the 2018 levels were now lawful).
- 5.8. The 1 in 20 year flood level comparison 2004 and 2022 and the 1 in 20 year flood level comparison 2018 and 2022 demonstrate, from an aerial perspective, the extent of area that the ground works have impacted on the 1 in 20 year flood level. In my view, it is clear that by reducing levels to 2004 levels only in those areas of the Site where works since 2018 have taken land outside of the 1 in 20 year flood level, the flooding impact reasons for the enforcement notice would be addressed. In the event that the 2018 levels are not concluded to be lawful, the reduction of ground levels should be limited to only those areas of the Site which have been taken outside of the 1 in 20 year flood level.
- 5.9. I have included the 1 in 100 year flood level comparison 2004 and 2022 and the 1 in 100 year flood level comparison 2018 and 2022 for completeness. The 1 in 100 year flood level comparison 2018 and 2022 demonstrates that the impact of the June/July 2019 works on Site had very limited impact on the land within the 1 in 100 year flood level. Any concern with the increase in flooding as a result of those works could be addressed by reducing the levels in those parts of the Site where the 2019 works have taken that land above the 1 in 100 year flood level.
- 5.10. Finally, the required groundworks show just how much earth would need to be taken from the Site if reverting to the 2004 levels. Although the accuracy of the calculations is somewhat questionable – it is felt that the LiDAR data may be picking up vegetation and be vulnerable to slight margins of error which are magnified when calculating to volumes over a large area – in accordance with the Required Earthworks to Revert Ground Levels Comparison, to reduce the levels to that of the 2004 survey would result in the removal of nearly 15,000 cubic metres of material. This would weigh some 22,500 tonnes. Allowing for 16 tonnes per vehicle, that would equate to 1,400 lorry movements. Even reverting to the 2018 levels would result in the removal of over 2,000 cubic metres of material. This would weigh some 3,000 tonnes. Again, allowing for 16 tonnes per vehicle, that would equate to 188 lorry movements.
- 5.11. It is clear that the Council has not appreciated or even attempted to understand the potential impacts of moving that amount of earth from the Site. Given the fact that limiting the reduction of levels to those parts of the Site which have raised land above the 1 in 20 year flood level would address concerns with the impact on the floodplain, it seems wholly unreasonable to require such a substantial amount of vehicle trips for

no benefit in most of the Site. This indicates that the steps are wholly excessive to remedy the breach of planning control.

6. SUMMARY AND CONCLUSIONS

6.1. I consider the facts to be very clear here:

- 6.1.1. Between May 2014 and December 2015, the ground levels were raised at the Site using inert materials from the demolition of buildings, the removal of concrete surfaces and some arisings from the company's land.
- 6.1.2. No works were undertaken at the Site from well before the July 2018 BWB Survey until spring/summer 2019;
- 6.1.3. Works comprising the removal of the spoil heap and creation of the security bund were completed in July 2019;
- 6.1.4. No works have been done on the Site since then;
- 6.1.5. The Section 106 Agreement required ground works to be undertaken and part of the Site to be cleared;
- 6.1.6. All trees and vegetation had been removed from the Site by December 2015. The requirement in the enforcement notice to replant those trees and grassland is clearly excessive as a result.
- 6.1.7. To remedy the breach of planning control, from the main concern of increasing ground levels in the floodplain, the necessary steps should be limited to reducing those areas of the Site where land which was formerly below the 1 in 20 year flood level has been increased in height since 2018 or, if the 2018 levels are not concluded to be lawful, to those areas of the Site where land which was formerly below the 1 in 20 year flood level has been increased in height since 2004;

APPENDICES

1. Existing Ground Models Comparison 244547-BWB-XX-XX-C-Y-0004 S2 P04
2. Comparison of 1 in 100 year Floodplain for 2004 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0006 S2 P01
3. Comparison of 1 in 100 year Floodplain for 2018 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0007 S2 P01
4. Comparison of 1 in 20 year Floodplain for 2004 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0009 S2 P02
5. Comparison of 1 in 20 year Floodplain for 2018 Survey and 2022 LiDAR 244547-BWB-XX-XX-D-Y-0010 S2 P01
6. Required Earthworks to Revert Ground Levels Back to 2004 and 2018 244547-BWB-XX-XX-D-Y-0008 S2 P01