



# **Charnwood Borough Council**

## **Town and Country Planning Act 1990**

### **Summary of Proof By**

**Miss S J Hallam**

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### **Team Leader Planning Enforcement**

**Raising of ground levels within the  
floodplain.**

**at**

**Land adj Moor Lane, Loughborough,  
Leicestershire**

**Local Planning Authority Ref No. E/18/0476  
Planning Inspectorate Ref No. APP/X2410/C/24/3347294**

## **1.0 The Appeal Site and its Location**

1.1 The appeal Site consists of a parcel of land on the northern side of Moor Lane, Loughborough (approximately 1.79 hectares). It previously comprised of a yard and skip storage associated with a scrap yard.

## **2.0 Relevant Planning History**

2.1 The Site formed part of application P/12/2130/2 (Phase 3) which included a Section 106 Agreement that included the delivery of a community building and public parkland on the Site. This unfortunately was not realised and therefore the land remained in the ownership of the appellants. The appellants more recently applied for outline permission (P/22/2096/2) for residential development on the Site for up to 28 dwellings that was refused consent 29 September 2023.

2.2 During the construction of the dwellings on phases 1 and 2 (southwest and southeast quadrants), the developers used the Site as a compound for the storage of building materials, plant and machinery and the storage of spoil.

## **3.0 Relevant Planning Enforcement History**

3.1 In 2018 it was brought to the attention of the Local Planning Authority (LPA) that soil was being stockpiled on the Site with concerns of land levels being raised. An informal land levels survey was undertaken which confirmed that levels on the site had significantly increased. Further visits were undertaken in May and June 2019 by the LPA and the EA in July 2019 all confirming the raise in land levels. The ground raising works were completed sometime after the 18 June 2019 but before 9 July 2019.

#### **4.0 CLEUD submission**

4.1 On 29 December 2021 the developer submitted a CLEUD application (P/21/2673/2) for engineering works including levelling of the land as they believed the works that had been undertaken to raise the land levels on the Site had been present and complete for in excess of 4 years and therefore had gained immunity. This application was refused 26 October 2022.

#### **5.0 Enforcement Notice**

5.1 An Enforcement Notice was issued on 18 April 2023 and took effect on 26 May 2023. This Notice was however withdrawn when concern was raised, by the Inspector.

5.2 In accordance with 171B(4)(b) of the Town and Country Planning Act 1990 an amended Notice was served on 29 May 2024 and is the subject of this appeal.

#### **6.0 Relevant Planning Policies**

6.1 The Environment Agency (EA) mapping details the Site to be located within Flood Zones 2 and 3. The Council's Strategic Flood Risk Assessment places the whole Site within Flood Zone 3b. Therefore, the whole site is located within the floodplain which is supported in Sarah Street's Proof on behalf of the EA.

## **7.0 Ground (C) appeal**

7.1 The appellants' argument is that the works undertaken formed part of the Section 106 agreement for application P/12/2130/2.

7.2 I do not agree with this argument. At no point does the Section 106 agreement require the raise in the ground levels (nor could it) or require for the clearance of the trees and vegetation on the Site.

## **8.0 Statement of Case - Ground (D)**

8.1 The appellants' argument is that that the ground raising works within the floodplain were a separate operation to the installation of the bund and removal of the spoil heap and were substantially completed many years before July 2019".

8.2 I strongly contend that the ground raising works have been a continual operation since the scrap yard was relocated and I have corroborative evidence to support the fact in the form of photographic evidence, informal land survey, appellants levels plans and LiDAR plans from the EA. Based on this information the ground levels have progressively been raised and even though some of these works may have been undertaken in excess of 4 years prior to the service of the Notice it was one continual operation and only substantially complete sometime between 18 June 2019 and 9 July 2019.

## **9.0 Ground (F) appeal**

9.1 The appellants argue that the steps required by the Notice are excessive:

- land levels should be returned to the 2018 survey levels.
- levels should only be required to be reduced in the areas of the site in the floodplain.
- the date on the aerial image in the Enforcement Notice is incorrect.
- the removal of the trees and vegetation was not a breach of planning control, and it is not reasonable or appropriate for the Council to require their replanting.

9.2 I contend that:

- the appellant must have been satisfied that the levels submitted in application P/12/2130/2 in plan No. NTT2147/Appendix D accurately reflected the levels for the site at that time. The levels have incrementally increased over the years since the scrap yard relocated without the benefit of planning permission. The ground levels therefore should be reverted back to those detailed on the plan submitted in 2021.
- the whole site is in the floodplain and therefore the raised levels over the whole site are covered by the notice.
- I agree the aerial image attached to the enforcement notice should be dated 2011 rather than 2018, and
- I contend that the trees and vegetation were removed to facilitate the raising of the land levels on the site and therefore in requiring the land levels to be put back to the original levels that the trees and vegetation should be reinstated.

## **10.0 Conclusion**

10.1 I consider that, given all due consideration of the facts of this case, its decision to serve an Enforcement Notice was justified, reasonable and robust and the Inspector is respectfully requested to dismiss the appeal.