



Charnwood Borough Council

Town and Country Planning Act 1990

Proof of Evidence By

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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 &
APP/X2410/C/24/3347295**

This statement and associated documents can be viewed on the Planning Enforcement page of the Council's website https://www.charnwood.gov.uk/pages/planning_enforcement or in reception at the Council Offices but this is via appointment only by calling 01509 634570

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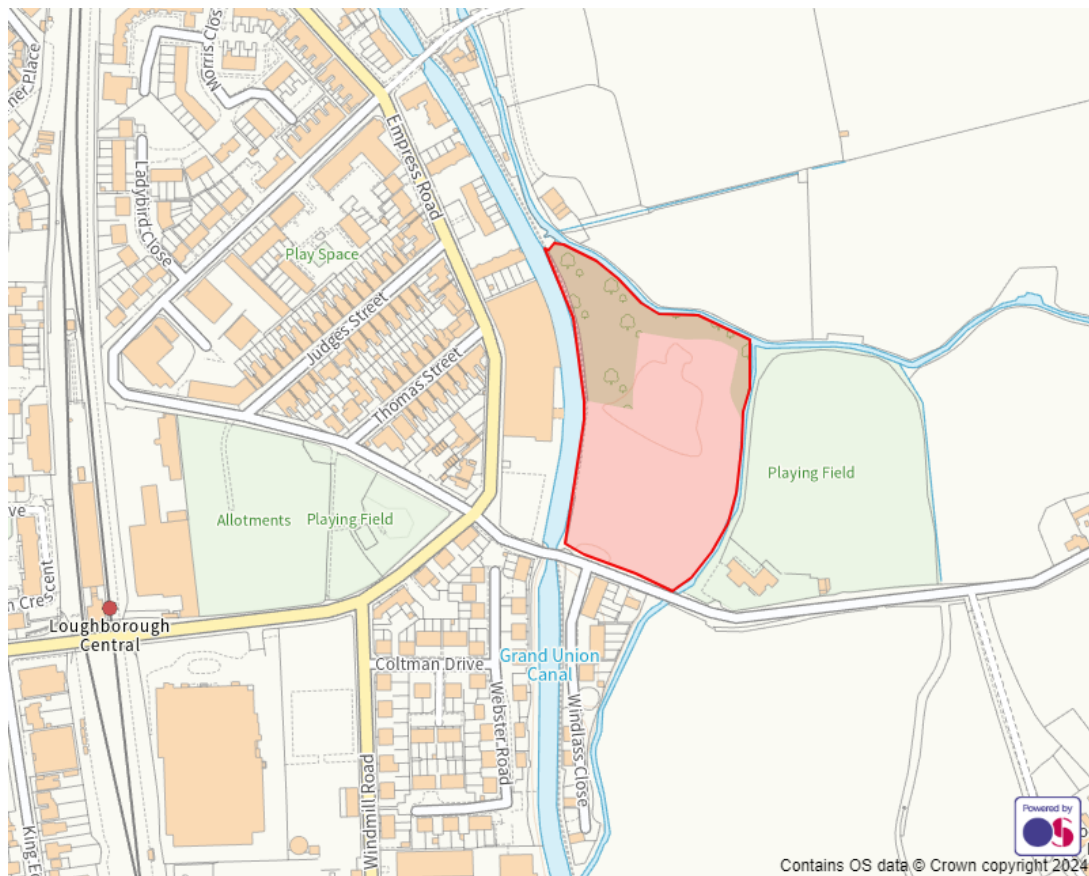
1.0 Introduction

- 1.1 My name is Sarah Hallam, and I am employed by Charnwood Borough Council as Team Leader for Planning Enforcement in Development Control, within Planning and Growth. I am a chartered member of the Royal Town Planning Institute and have a Masters in Urban and Regional Planning. I also have the Trevor Roberts Certificate of Continuing Education in Planning Enforcement and have twenty years' experience working in a planning enforcement role.
- 1.2 This appeal relates to the raising of ground levels within the floodplain on land adjacent to Moor Lane, Loughborough.
- 1.3 This proof of evidence is written in respect of all grounds of the appeal and should be read in conjunction with the proof of evidence from Sarah Street Environment Agency Flood Risk Advisor, Rupert Simms Principal Ecologist Charnwood Borough Council and James Anthony McCloy, Civil Engineer from McCloy Consulting.
- 1.4 The evidence which I have prepared and provide for this appeal reference APP/X2410/C/24/3347294 and APP/X2410/C/24/3347295 in this proof is true and has been prepared and is given in accordance with the guidance of the Royal Town and Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

2.0 The Appeal Site and its Location

2.1 The appeal Site consists of a parcel of land on the northern side of Moor Lane, Loughborough (approximately 1.79 hectares). Figure 1 below details the location of the site:

Figure 1 Site location plan with Site highlighted in red.



2.2 More detailed information regarding the appeal site and its location are included in the LPA's appeal statement (**CD 5.2**) for the previous appeal.

3.0 Relevant Planning History

- 3.1 The applications that are relevant to this appeal are included in the Local Planning Authority (LPA's) appeal statement (**CD 5.2**) for the previous appeal. It is however considered relevant to detail the following:
- 3.2 Planning permission P/12/2130/2 was granted for the erection of 38 dwellings to phase 1 (southwest quadrant) and outline permission for residential development (phase 2) (southeast quadrant) and community building (phase 3) (northeast quadrant). The decision notice (**CD 5.2.2**) along with the site location plan (**CD 5.2.3**) detailing the three quadrants are included in the core documents list.
- 3.3 As part of permission P/12/2130/2 a Section 106 agreement (**CD 5.2.12**) was entered into, and this agreement included the delivery of a community building and public parkland on the Site. In section 5.1.2 the Section 106 required that 'after the cessation of the scrap yard use to remove any buildings, materials and hard surfaced areas from the scrap yard area and the community building and public park land.'
- 3.4 The community building was never 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. The decision notice (**CD 5.4.1**) and proposed site layout (**CD 5.4.2**) are included in the core documents.
- 3.5 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.

4.0 Relevant Planning Enforcement History

- 4.1 In 2018 it was brought to the attention of the (LPA) that soil was being stockpiled on the Site as works were progressing on the southwest quadrant to construct the residential development. The developers had lawfully under the Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 4 – Class A - Temporary Buildings and Uses, been using the Site as a compound in relation to the construction of the wider residential development.
- 4.2 However, as the development progressed significant piles of soil had been stored on the Site. Photographs taken in 2018 show the stockpiles of soil (**CD 5.2.4**).
- 4.3 In 2018 an informal land survey assessment was undertaken by the LPA and at the time this confirmed that the levels had been significantly raised. Unfortunately, the survey results have been misplaced and only the results detailed in a letter dated 02 January 2019 (**CD 5.2.6**) sent to the developer are known. Within that letter it was advised that the southern area of the Site, adjacent to Moor Lane had been raised by approximately 327mm. The northern area of the appeal Site on the original levels survey showed the ground levels to be between 37.41m and 37.88m, a large part of this area had been raised to around 39.61m.
- 4.4 On 15 May 2019 a further site visit was undertaken, and photographs taken which confirmed that the developer was continuing to undertake earthworks on the Site and raise the land levels. Works were continuing and clearly were not complete at that time.
- 4.5 A further site inspection was undertaken 18 June 2019 and photographs (**CD 5.2.7**) taken showing the works in progress and the increase in land levels. The works to complete the land level changes on the site were completed sometime after the 18 June 2019 but the exact date is not known.

- 4.6 The EA conducted a site visit on 9 July 2019, took photographs of the site and included them in an Email to the LPA (**CD 5.2.8**). From reviewing the photographs taken by the EA, it appears to me that the works were substantially complete at that time.
- 4.7 I am of the opinion, based on the photographic evidence gathered at the site visits undertaken that the works to raise the land levels were not substantially complete until sometime after 18 June 2019 but before 9 July 2019.
- 4.8 The Google Earth image dated 21 September 2019 (**CD 5.2.16**) appears to show the groundworks at the Site to have been completed and all plant removed. The furrows / tracks left by plant are clearly visible in the image and there is a marked absence of vegetation.

5.0 CLEUD application

- 5.1 On 29 December 2021 the developers submitted a planning application for a CLEUD (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. For the purposes of that application the appellants stated that “since October 2017 no further releveling has been undertaken and the only ground works undertaken on Site relate to the removal of the spoil heap and the provision of a bund” [pg 3, para 11 – Statutory Declaration of Roy David Coley (**CD 5.2.9**) submitted for CLEUD application].
- 5.2 This application was refused 26 October 2022 and a copy of the decision notice (**CD 5.4.3**) and officers report (**CD 5.4.4**) is included in the core documents.
- 5.3 This decision was not appealed by the appellants. The Enforcement Notice was not served until 6 months after this decision which allowed the appellants’ ample opportunity to appeal the decision or submit a revised application.

6.0 Enforcement Notice

- 6.1 Planning permission has not been granted for the works undertaken to raise the ground levels that have taken place which are an engineering operation and amount to 'development' under Section 55 of the Town and Country Planning Act 1990. The works that have been undertaken are unauthorised and the EA consider that "ground raising has therefore removed floodplain storage from the natural floodplain of the Hermitage Brook and River Soar and will be diverting these flood flows elsewhere. This will have increased flood risk to third party landed" **(CD 5.5 paragraph 3.14)** Concern was originally reported by the Cricket Club adjacent to the site regarding increased flooding on their site. Therefore, as these works did not benefit from planning permission formal action was taken.
- 6.2 An Enforcement Notice was approved on 18 April 2023 and took effect on 26 May 2023. This Notice was however withdrawn when concern was raised, by the Inspector, as to whether Steps 2 and 3 detailed in the Notice provided a period for compliance.
- 6.3 In accordance with 171B(4)(b) of the Town and Country Planning Act 1990 an amended Notice **(CD 5.1.1)** with plan attached **(CD 5.1.2)** was served on 29 May 2024, that is the subject of this appeal.

7.0 Relevant Planning Policies

- 7.1 Copies of the relevant policies have been provided to the Inspector and were attached to the appeal questionnaire completed by the LPA. These policies form the basis for the reasons the LPA considered it expedient to take formal action. However, as there is no Ground A appeal it is not considered necessary to duplicate them in this proof.
- 7.2 According to Environment Agency (EA) online mapping, the Southwestern third of the appeal Site falls within Flood Zone 2 with the remainder falling within

Flood Zone 3. Both of these Flood Zones are considered to be in the floodplain as noted by Sarah Street's proof on behalf of the EA (**CD 5.5 paragraph 3.9**) The Council's Strategic Flood Risk Assessment (SFRA) places the whole of the appeal Site within Flood Zone 3b. For the purposes of this appeal the whole Site is located within the floodplain.

7.3 Figures 2 and 3 below detail the currently available maps for the Site.

Figure 2, Environment agency map for the Site

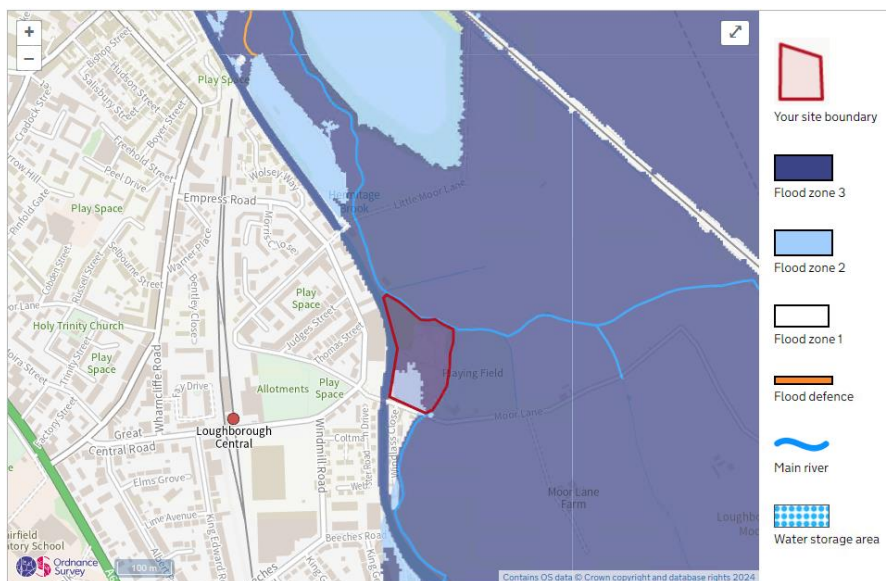
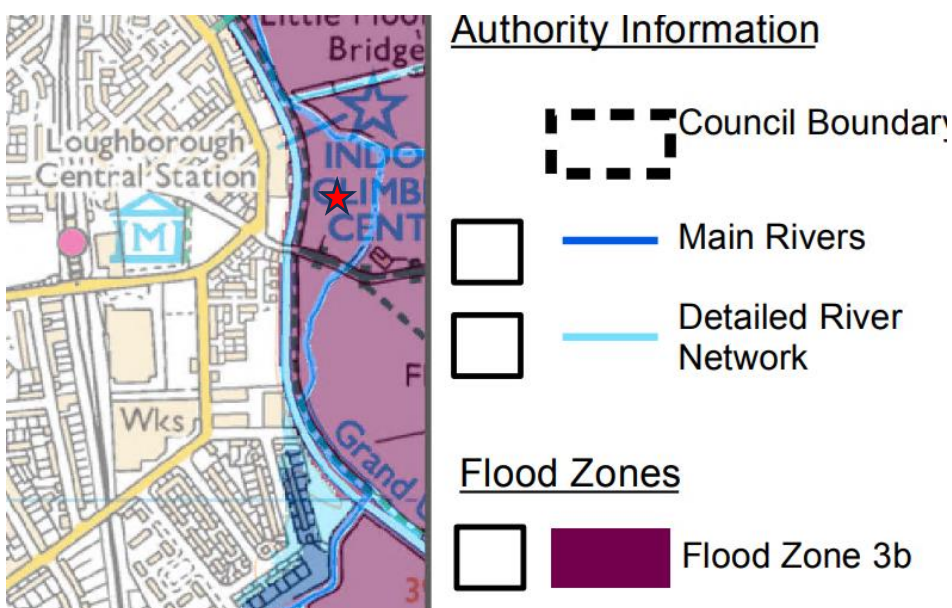


Figure 3 the Councils Strategic Flood Risk Assessment map for the Site



Red star details the location of the Site

8.0 Ground (C) Appeal

- 8.1 The appellants contend that the works undertaken formed part of the Section 106 agreement (**CD 5.2.12**) for application P/12/2130/2.
- 8.2 Under section 5 'the third owners covenants' 5.1.2 it states 'after the cessation of the scrap yard use to remove any buildings, materials and hard surfaced area from the scrapyard area and the community building and park land area' and at 5.1.3 it states 'to reserve the community building and park land and to carry out site clearance and fencing of the same in accordance with the specification before the occupation of the first dwelling'.
- 8.3 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. A separate planning permission under Section 57 of the Town and Country Planning Act 1990 would have been required for the ground level changes to the Site as these works are deemed to be development under Section 55 of the Town and Country Planning Act 1990. Section 55 (1) states:
"Development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."
- 8.4 The land level changes to the site are significant and were not permitted by the Section 106 agreement. These works amount to development, in their own right, and there is no planning permission which has been granted for the raising of the ground levels on this Site.

9.0 Ground (D) Appeal

The appellants' evidence.

- 9.1 The appellants contend that that the ground raising works within the floodplain were substantially completed by December 2015 as detailed in the appellants' Grounds of Appeal (**CD 4.2**) at pg. 4 paragraph 1.6 which states "that works of ground raising were substantially completed in December 2015 and the works undertaken in 2019 were not related to the raising of ground levels but to the installation of a security bund and the removal of a spoil heap". They go on to say "those works were entirely different operation to the ground raising".
- 9.2 The appellants refer in their inquiry statement (**CD 4.1**) at paragraph 2.3 to Statutory declarations of Mr Coley and Mr Shattock and the 2018 topographical survey which they state demonstrates beyond any doubt that the works were completed more than 4 years before the issue of the Enforcement Notice and so are immune from enforcement action.
- 9.3 Within Mr Coley's Statutory declaration (**CD 5.2.9**) at paragraph 8 pg. 2 he refers to a photograph taken 3 December 2015 labelled RDC4 and states "...showing the ground levelling works virtually complete". This photograph shows the Site ground levels to be significantly lower than the current Site levels. At pg. 3 paragraph 11 Mr Coley goes on to confirm that since October 2017 no further relevelling has been undertaken and the only ground works undertaken on Site relate to the removal of the spoil heap and the provision of a bund.
- 9.4 In the appellants' Grounds of Appeal (**CD 4.2**) at pg. 4 paragraph 1.6 they state "...the appellants' case is that works of ground raising were substantially completed in December 2015...". In their Inquiry Statement (**CD 4.1**) they don't refer to this date and at pg.3 paragraph 2.5 indicate "...it is clear that the ground raising works within the floodplain were completed many years before July 2019".

The LPA's evidence.

9.5 In this proof the evidence I wish to refer to is as follows.

- Site photographs taken by the LPA in 2017, 2018 and 2019 **(CD 5.2.14)**.
- An informal levels survey assessment undertaken by the LPA in 2018 and data included in a letter dated 02 January 2019 **(CD5.2.6)**
- Site photographs taken by the EA on 9 July 2019 **(CD 5.2.8)**
- LiDAR plans provided by the EA **(CD 5.3.1)**
- Land levels plans produced by the appellant which are the following:
 - Plan Ref. NTT2147/APPENDIX D Revision B Sept 2012 submitted in P/12/2130/2 **(CD 5.1.2)**.
 - Plan Ref. WMR-FEA-S1-XX-DP-A-1202 (no revision date or revision) submitted with application P/21/0476/2 **(CD 5.4.5)**.
 - Plan Ref. E2391 P001 Rev A dated 27 Sept 2022 **(CD 5.2.20)**, and
 - Plan Ref. WRL-BWB-00-01-DR-G-0001 S2 Revision P1 dated 26 July 2018 submitted with CLEUD application P/21/2673/2 **(CD 5.2.21)**.

Photographic evidence

9.6 The catalogue of photographs taken in 2017, 2018 and 2019 **(CD 5.2.14)** show the progressive changes to ground levels on the Site. In the final photographs (18 June 2019) these clearly show the raise in ground levels.

- Photographs dated 10 February 2017 (photograph Nos. 1-16) detail various mounds of materials on the Site.
- Photographs dated 25 October 2018 (photograph Nos. 17-22) detail the Site being used as the builders' compound with various materials, containers, and equipment evident on the Site.
- Photographs dated 23 November 2018 (photograph Nos. 23-40) detail large mounds of materials and soil on the Site. On this date the LPA undertook an informal land levels survey.
- Photographs dated 15 May 2019 (photograph Nos. 41-62) detail land level differences.

- Photographs dated 18 June 2019 detail areas of the site which had recently been driven over by a digger as the tracks can be observed imprinted in the soil with significant land levels differences observed in photograph Nos. 67, 70, 71, 72, 74, 75, 76, 77 and 78. In photographs Nos. 73, 78, 80 and 81 it can be seen heavy machinery used for the purposes of earth works / re-profiling (i.e. the bulldozer) operating on the Site. These photographs, in my opinion show significant earth works taking place which include the raising of the ground levels on the Site.

9.7 The appellants contend in their Grounds of appeal (**CD 4.2**) at pg. 4 paragraph 1.6 "... that works of ground raising were substantially completed in December 2015...". And "...it is clear that the ground raising works within the floodplain were completed many years before July 2019". I do not agree this to be the case based on the photographs taken (**CD 5.2.14**) which show earth moving operations including the raising of the land levels taking place over several years and clearly continuing on the Site in June 2019.

9.8 The appellant contends that the works taking place in 2019 were merely to install a bund and remove a spoil heap. I dispute this to be the case which I will detail in the proceeding paragraphs.

9.9 Photograph No. 71 (**CD 5.2.14**) was taken by a colleague on 18 June 2019. For ease of this discussion, it is included below:

Figure 4 Photograph taken by colleague 18 June 2019



I recreated the photograph so that I could better understand the actual location that the photograph was taken. My photograph is included below:

Figure 5 Photograph taken by me 31 July 2023.



On the plan below I have included a star detailing my approximate location on the site when taking the photograph. I also include an arrow detailing the direction the photograph was taken.

Figure 6 Details the location and direction of the photograph in figure 5.



9.10 Based on the above information I conclude that, when my colleague took the photograph on 18 June 2019, he was located well within the site. I therefore find it very difficult to attribute the works observed in the photograph to be for the creation of a bund for security reasons or for the removal of a spoil heap.

9.11 I contend that the works observed in the photograph No. 71 (**CD 5.2.14**) dated 18 June 2019 were ground raising operations that did not benefit from planning permission.

9.12 The EA conducted a site visit on 9 July 2019 and took photographs of the site (**CD 5.2.8**). At that time, from the photographs taken it can be seen the land levels rise significantly adjacent to the towpath. These photographs appear to show that the ground raising works were complete at the time of the EA's visit.

Informal land survey undertaken by the LPA

- 9.13 It is acknowledged that the data for the informal land survey undertaken 23 November 2018 has been misplaced but I have no reason to question the data included in the letter dated 02 January 2019 **(CD 5.2.6)** which highlights the levels on the Site had raised. The informal survey was undertaken by the late Edward Farndon who was a Team Leader Project Surveyor for the Council and was a chartered surveyor. I have no reason to question the authenticity of the data that he gathered.

LiDAR plans provided by the EA

- 9.14 The LiDAR plans **(CD 5.1.3)** provided by the EA detail land levels changes on the Site over the years. Further explanation of the LiDAR data and its accuracy is discussed in more detail in Sarah Streets proof **(CD 5.5)** in paragraphs 3.1 – 3.5. In addition, the validity of the LiDAR data compared with the appellants own topographical plans is discussed in detail in Mr McCloy's proof **(CD 5.6)** in which he concludes at paragraph 63:

“I am of the opinion that there has been extensive land raising at the site since the 2004 site survey was completed. This is clearly evident from the various site surveys and LiDAR surveys used for the purposes of this assessment.”

Appellants' land level plans

- 9.15 The land levels plan E/2391 P001 A **(CD 5.2.20)** details the 2018 levels in black and the 2022 levels in red which confirm levels over the site have increased. This is corroborated with the assessment undertaken by Mr McCloy **(CD 5.6)** in paragraphs 50-55 of his proof. This contradicts the appellants' contention that “..it is clear that the ground raising works within the floodplain were completed many years before July 2019”. And it conflicts with Roy David Coley's Statutory declaration **(CD 5.2.9)** pg. 3 paragraph 11 where he states that since October 2017 no further releveling has been undertaken and the only ground works

undertaken on Site relate to the removal of the spoil heap and the provision of a bund.

Summary of LPA's evidence

- 9.16 Based on the evidence detailed above the ground raising works have been one continual operation since the scrap yard relocated from the Site with the most noticeable raising activities taking place in 2019. The works to complete the raising of the ground levels were completed on the Site sometime after the 18 June 2019 but before 9 July 2019. The exact date is not known. The works, at the time of the service of the Enforcement Notice, had not gained immunity from enforcement action.
- 9.17 There is no planning permission on the file for these works to raise the ground levels.
- 9.18 The appellants, in their appeal statement, only appear to rely, for the levelling / ground raising operations, on evidence (photographs and whatsapp video (**CD 4.5**)) obtained in December 2015 which show the site virtually level with the towpath and road, save for the removal of the spoil heap and creation of the bund, which they contend was a totally separate operation.
- 9.19 I understand the bund is located close to the bridge and road edge, located roughly where the white mobile building and green portable toilet can be observed in the photograph dated 18 June 2019 (**CD 5.2.7**), but this is not clearly evident on site.
- 9.20 Based on the information that the LPA hold and detailed above the works to progressively raise the ground levels on the Site, even if some of these works have been undertaken over a period in excess of 4 years prior to the service of the Enforcement Notice were one continuous operation and only substantially complete sometime between 18 June 2019 and 9 July 2019. It is unclear when the operation first started but it is my belief that this was when the scrap yard

was relocated, and development works to build the residential development commenced.

9.21 Under Section 171B(1) of the Town and Country Planning Act 1990 “where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.” The immunity clock starts when the development is substantially complete which I contend was sometime between 18 June 2019 and 9 July 2019. Therefore, when the initial Enforcement Notice was served 18 April 2023 the works to increase the land levels on the site had not gained immunity. The LPA accepts that “substantial completion” is a matter of fact and degree. In this instance however I would contend that substantial completion of the works for the current site levels would have been when the topsoil was laid, sometime between 18 June 2019 and 09 July 2019 (**CD 5.2.15**).

9.22 In the *Ewen Developments Ltd v Secretary of State for the Environment and North Norfolk District Council (1980)* (**CD 5.8.1**) the Court of Appeal held that the whole of an embankment be removed even though only part of it had been constructed 4 years prior to the service of the notice.

9.23 I have put forward substantial evidence in this proof to support my contention that the ground raising works undertaken on the Site were a continual operation over several years and substantial completion was achieved sometime between 18 June 2019 and 09 July 2019.

9.24 In *Sage v Secretary of State for the Environment, Transport and the Regions and others (2003)* (**CD 5.8.2**), the Court of Appeal considered when the four-year period began under s.171B(1) of the Town and Country Planning Act 1990 applied in the context of a dispute as to whether a dwelling-house was immune from enforcement action. The Court held it the four-year period commenced when the building had been substantially completed.

9.25 The appellants' submission of an application in 2021 for 28 houses on the site, in my opinion, details what their intention was when raising the levels on the Site. In raising the ground levels outside of the floodplain levels (flood zones 2 and 3) would create developable land which would be of significant financial benefit to the appellants.

9.26 In light of the above I strongly contend the appellants' assertion that the works, at the time of the service of the Enforcement Notice, had gained immunity from enforcement action.

10.0 Ground (F) Appeal

The appellants' case as to why the steps in the Notice are excessive

- 10.1 The appellants contend that the steps required by the Notice are excessive.
- Step 1 – the appellants consider that the levels do not need to be reduced to the March 2013 revision of Plan No. NTT2147/Appendix D. They contend that the levels data in this plan were taken in 2004 and it is unreasonable to require the land levels to return to the 2004 levels. They contend that the land levels should be returned to the 2018 survey levels.
 - The appellants contend that as the allegation in the notice relates to ground levels “within the floodplain”, and as the EA flood maps only indicate part of the site being located within the floodplain then they should only be required to reduce the levels in the areas of the site in the functioning floodplain.
 - Steps 2 and 3, the appellants' question the date of the aerial image in the Enforcement Notice and suggest that this is in fact from 2011 and not 2018.
 - The appellants' highlight 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.

LPA's response to the requirement of returning the levels back to those submitted in application P/12/2130/2.

- 10.2 When the appellants submitted a ground levels plan for application P/12/2130/2 they must have been satisfied, at that time, that the levels submitted accurately reflected the levels for the Site at that time. This is the levels plan attached to the Enforcement Notice and which the LPA require the levels to be restored to.
- 10.3 The land levels have been incrementally changed over the years since the removal of the scrap yard, which was some years before 2018, the date which the appellant wishes to revert the land levels back to.
- 10.4 Since the scrap yard was removed and the land initially levelled out as detailed in Roy David Coley's Statutory Declaration (**CD 5.2.9**) Exhibit RDC4 the appeal Site was virtually level with the towpath and Moor Lane. Since then, and with reference to the plan NTT2147/APPENDIX D Revision B submitted in 2012 the ground levels in the Site have been significantly raised.
- 10.5 I do not agree that the levels taken in 2018 are the levels to which the land should be returned back to.
- 10.6 I also do not consider that requiring the ground levels to go back to the levels submitted in the P/12/2130/2 application is unreasonable and goes beyond what is necessary to resolve the breach. There have been no planning permissions granted for the raising or changing of levels on the Site in the period since the scrap yard was relocated therefore the works do not benefit from planning permission.

- 10.7 I understand that removing the excess materials from the Site will have an impact locally, while the works are taking place, but this should only be for a short period which is outweighed by the detrimental impact the current ground levels have on flooding and the displacement of flood waters.

LPA's response to the requirements to remove the raised levels within the floodplain.

- 10.8 The appellants contend that as the allegation in the notice relates to ground levels "within the floodplain", and as the EA flood maps only indicate part of the site being located within the floodplain then they should only be required to reduce the levels in the areas of the Site in the functioning floodplain. The EA mapping details the site to be in Flood Zones 2 and 3. Both Flood Zones are within the floodplain and within Sarah Streets proof (**CD 5.5**) paragraphs 3.7 – 3.12 she details that the whole of the Site is located within the floodplain. The Council's Strategic Flood Risk Assessment places the whole of the Site within Flood Zone 3b therefore the Council would contend that the whole Site is located within the floodplain.

LPA's response to the date on the aerial photograph attached to the Enforcement Notice.

- 10.9 In respect of the date on the aerial image included with the Enforcement Notice and referred to in Steps 2 and 3 of the Notice the appellants' question whether the image should be dated 2011 rather than 2018. I would agree with the appellants' and can confirm that the aerial photograph included with the Notice is in fact from 2011. I do not believe that this error would make the Notice invalid, and the date could be amended by the Inspector without causing any injustice to either party.

LPA's response as to whether the Section 106 agreement required the removal of the trees.

10.10 The Section 106 Agreement did not require the removal of trees and hedges on the Site. The LPA accept that the trees were not protected however there has been no evidence submitted to indicate that their removal was not to enable the raising of the land levels on the Site.

10.11 Under Section 173 (4)(a) of the Town and Country Planning Act 1990 it states:
“remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place”

10.12 The requirements to replant the lost trees and vegetation is to ensure that the land is restored back to the condition before the breach took place. Therefore, in requiring the land levels to be put back to the original levels the trees and vegetation should also be reinstated. Mr Simms, within his proof **(CD 5.7)** has detailed the habitats on the site prior to the ground works taking place.

10.13 I would respectfully request that this appeal be dismissed for the reasons outlined in this proof. I accept that the date on the aerial photograph within the Enforcement Notice is incorrect however I do consider this could be amended with no injustice to either party.

11.0 Conclusion

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

Documents referred to in proof

- CD 5.2.2** Copy of planning decision P/12/2130/2
- CD 5.2.3** site location plan detailing the three quadrants.
- CD 5.2.12** Section 106 Agreement attached to P/12/2130/2.
- CD 5.4.1** Copy of planning decision P/22/2096/2
- CD 5.4.2** proposed site layout.
- CD 5.2.4** Photographs take in 2018 showing the stock piles of soil.
- CD 5.2.6** Copy of letter dated 02 January 2019 regarding land levels check 02 January 2019.
- CD 5.2.7** Photographs taken 18 June 2019 showing land level changes.
- CD 5.2.8** Email from the Environment agency with photographs attached dated 9 July 2019.
- CD 5.2.16** Aerial photographs 2011, 2015, 2016 and 2019.
- CD 5.2.9** Statutory Declaration of Roy David Coley submitted for CLUED application.
- CD 5.4.3** Copy of decision notice P/21/2673/2
- CD 5.4.4** officers report for P/21/2673/2
- CD 5.1.1** copy of the Enforcement Notice
- CD 5.1.2** plan NTT2147/Appendix D Revision B.
- CD 5.2.14** Full suite of photographs held by the Council taken 2017, 2018 and 2019.
- CD 5.1.3** The Environment Agencies LiDAR plans for 2008, 2010, 2018 and 2022.
- CD 5.2.20** Levels plan Ref. E2391 P001 Rev A dated 27 Sept 2022.
- CD 5.4.5** Levels plan WMR-FEA-S1-XX-DP-A-1202 (no revision date).
- CD 5.2.21** Plan Ref. WRL-BWB-00-01-DR-G-0001 S2 Revision P1 dated 26 July 2018.
- CD 5.2.15** Photographs taken 18 June 2019 and 09 July 2019.

Figure 1 Site location plan with Site highlighted in red

Figure 2, Environment agency map for the Site

Figure 3 the Councils Strategic Flood Risk Assessment map for the Site

Figure 4 Photograph taken by colleague 18 June 2019

Figure 5 Photograph taken by me 31 July 2023.

Figure 6 Details the location and direction of the photograph in figure 5.