

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

GROUND OF APPEAL

APPEAL AGAINST ENFORCEMENT NOTICE

ON BEHALF OF MR AND MRS GALLAGHER

SITE LAND ADJACENT TO MOOR LANE, LOUGHBOROUGH, LEICESTERSHIRE

**ALLEGED BREACH OF PLANNING CONTROL – RAISING OF GROUND LEVELS
WITHIN THE FLOODPLAIN**

July 2024

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1. INTRODUCTION

- 1.1 This Statement submitted on behalf of by Mr Hugh Joseph Gallagher and Mrs Linda Gallagher (“**the Appellant**”) to support the appeal against the enforcement notice (“**the Enforcement Notice**”) issued by Charnwood Borough Council (“**the LPA**”) on 19 May 2024 which alleges the a breach of planning control on Land adjacent to Moor Lane, Loughborough, Leicestershire (“**the Site**”) by “*the raising of ground levels within the floodplain*”. The reasons for issuing the Enforcement Notice given by the LPA includes “*It appears to the Council that the above breach of planning control has occurred within the last 4 years*”.
- 1.2 The Enforcement Notice has been issued following the withdrawal of a previous enforcement notice issued by the LPA on 18 April 2023 (“**the Previous Notice**”) and for which the Appellant had made an appeal. The appeal against the Previous Notice (“**the Previous Appeal**”) had reached ‘Final Comments’ stage with the Planning Inspectorate considering the necessity to upgrade the Previous Appeal to a public inquiry to enable the testing of the evidence. However, concerns were expressed as to the validity of the Previous Notice and the LPA therefore withdrew the Previous Notice.
- 1.3 The Previous Appeal, and the stage it reached, has meant that the evidence submitted and the issues between the parties are easily ascertained. To avoid duplication, attached to these Grounds of Appeal are the following documents:
- a. Appellant’s Hearing Statement for the Previous Appeal dated August 2023 (**Appendix 1**)
 - b. Appellant’s Final Comments for the Previous Appeal dated August 2023 (**Appendix 2**)
 - c. The LPA’s Appeal Statement for the Previous Appeal from August 2023 (**Appendix 3**)
 - d. The LPA’s Final Comments for the Previous Appeal from August/September 2023 (**Appendix 4**)
- 1.4 Details of the Site and the history of the Site are contained in the above documents and it is important that all documents are reviewed and carefully considered by the Inspector.
- 1.5 The LPA’s Appeal Statement from the Previous Appeal appears to indicate that the Council accepts that the works comprised in the alleged breach of planning, namely the raising of ground levels, were substantially complete by 21 September 2019 (see

paragraph 4.7) or by 9 July 2019 (see paragraph 4.8). In fact, in the LPA's Final Statement from the Previous Appeal, the LPA state its position that the works were substantially completed "between June and July 2019" (see paragraph 3.2).

- 1.6 As can be seen from the Appellant's documents submitted pursuant to the Previous Appeal, the Appellant's case is 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. Those works were entirely different operations to the ground raising.

2. GROUNDS OF APPEAL

Ground (d)

- 2.1 The Appellant's case that the works are immune from enforcement action and that the ground (d) appeal should therefore be allowed.
- 2.2 It is accepted that the engineering works are development in accordance with section 55 of the Town and Country Planning Act 1990 (as amended) ("the Act") but that they are immune by virtue of Section 171B of the Act which provides that where the breach of planning control "*consisting in the carrying out without planning permission of...engineering...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*".
- 2.3 The evidence submitted demonstrates beyond any doubt that the works were completed more than 4 years before the issue of the Enforcement Notice, ie before 29 May 2020, even the LPA's evidence which, in the Council's Final Comments from August/September 2023 is stated as between June and July 2019.
- 2.4 As such, there can be no doubt that the works were substantially completed more than 4 years ago.
- 2.5 With regard to when the works were completed, as set out in the Appellant's Hearing Statement pursuant to the Previous Appeal, based on an holistic approach to considering the nature of the works it is clear that the ground raising works undertaken by December 2015 were a completely different operation to the installation of the security bund and removal of spoil heap undertaken in 2019.

Ground (c)

- 2.6 As set out in the Appellant's documentation submitted pursuant to the Previous Appeal, it is clear that the works undertaken on Site were envisaged, and required,

by the Section 106 Agreement dated 16 December 2013. Clause 5.1.2 of the s106 Agreement requires the removal of “any buildings, materials and hard surfaced areas from the Site” and clause 5.1.3 required site clearance. It is considered that those required works necessarily incorporate releveling, given the requirement to remove hard surfacing.

Ground (f)

2.7 The steps required by the Enforcement Notice are clearly excessive:

- The survey referenced as being 2013 is in fact based on topographically data from 2004. It is entirely unreasonable to require the Site to be returned to 2004 levels given the Site history here and it is considered reasonable for the Site to be returned to the levels in 2018. To go further would go beyond what is necessary to address the breach of planning control;
- The Enforcement Notice has repeated the error in the Previous Notice of referencing aerial images from 2011 as being from 2018. By 2015 (as evidence by the aerial photographs from 2015 attached to the Statutory Declaration of Mr T. Shattock submitted pursuant to the Previous Appeal), the trees were removed in accordance with the requirements of the S106 Agreement and, in any event, the removal of trees is not “development” for the purposes of the Town and Country Planning Act 1990. As such, it is entirely excessive to require the planting of trees and grassland.

3. CONCLUSION

3.1 For the reasons identified above, the Inspector is respectfully invited to allow the appeal on ground (c) on the basis that the levelling works form part of the development governed by the Planning Permission and the Section 106 Agreement or, failing that on ground (d) given that the engineering operations comprised in raising the levels clearly substantially completed more than four years ago. In the event that the above grounds are unsuccessful, the steps required by the Notice are clearly excessive and the ground (f) appeal should be successful in reducing the steps to proportionate and necessary ones.