

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

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**INQUIRY STATEMENT**

**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**

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**August 2024**

## **CONTENTS**

- 1.0 Introduction
- 2.0 The Appellant's Case
- 3.0 Conclusions

## 1. INTRODUCTION

- 1.1 This Inquiry Statement is 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 Appellant’s Grounds of Appeal and appendices detail the Site and the history of Site together with the documents submitted in support of the Appeal. In summary the documents that will be relied on are those contained in the following:
- a. Appellant’s Grounds of Appeal
  - b. Appellant’s Hearing Statement for the Previous Appeal dated August 2023 and its appendices (Appendix 1 of the Appellant’s Grounds of Appeal)
  - c. Appellant’s Final Comments for the Previous Appeal dated August 2023 and its appendices (Appendix 2 of the Appellant’s Grounds of Appeal))
  - d. The LPA’s Appeal Statement for the Previous Appeal from August 2023 and its appendices (Appendix 3 of the Appellant’s Grounds of Appeal))
  - e. The LPA’s Final Comments for the Previous Appeal from August/September 2023 and its appendices (Appendix 4 of the Appellant’s Grounds of Appeal))
- 1.3 In addition to the above documents, the Appellant will submit with its Proofs of Evidence a surveyor’s report comparing the Topographical Surveys from 2004, 2018 and 2022. Whilst the Topographical Surveys have been submitted with the Appeal, it is considered that a further report can only be of valuable assistance to the Inspector and all parties in understanding the Site and its history.

## 2. THE APPELLANT’S CASE

### **Ground (d)**

- 2.1 As set out in the Grounds of Appeal (and its appendices relating to evidence submitted pursuant to the previous appeal), the Appellant’s case is that the works are immune from enforcement action.

- 2.2 It is accepted that engineering works are development in accordance with section 55 of the Town and Country Planning Act 1990 (as amended) (“the Act”) but it is considered that the works 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 (including the statutory declarations of Mr Coley and Mr Shattock and the 2018 topographical survey) 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. It is noted that even the Council’s submissions (it’s Final Comments from August/September 2023) completion is stated to have occurred 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 a holistic approach to considering the nature of the works it is clear that the ground raising works within the floodplain were completed many years before July 2019.
- 2.6 The ground raising works within the floodplain were a completely different operation to and completed 4 years before the installation of the security bund and removal of spoil heap undertaken by the Appellant in 2019. Those works undertaken in 2019 were for specific reasons relating to the prevention of fly tipping and unauthorised encampment on the Site (in relation to the security bund) and at the request of the Environment Agency (in relation to the removal of the spoil heap).

**Ground (c)**

- 2.7 It is clear that 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 a change in ground levels, given the requirement to remove hard surfacing.

**Ground (f)**

- 2.8 The steps required by the Enforcement Notice are clearly excessive:

Step 1 – reduce the levels on the Land to the levels in accordance with the Topographical Plan submitted on the 12 March 2013

- 2.9 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. Further, it is clear that the Council has not considered the potential environmental consequences of requiring the ground to be restored to 2004 levels in terms of the need to remove soils and earth off site with the associated impacts on nearby residential developments, the highway infrastructure and general carbon creation by a substantial level of vehicular movements and also in terms of whether the result would be to increase ground levels in some parts of the Site which would have a greater impact on flood risk.
- 2.10 It is also noted that the allegation relates to ground levels “within the floodplain”. In accordance with the available data, only part of the Site is located in a functional floodplain. It is considered that the requirement to reduce the levels should be restricted to those areas of the Site in the functional floodplain to address the allegation.

Step 2 – re-plant the area of trees and grassland that have been lost due to the development works undertaken and Step 3 – replant trees that have been destroyed or die within 6 years of planting

- 2.11 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 (and replanting in accordance with Step 3).

**3. CONCLUSION**

- 3.1 The Inspector will be respectfully invited, based on the evidence presented, to allow the appeal on ground (c) on the basis that the changes in ground levels were required pursuant to the Section 106 Agreement or, failing that, on ground (d) given that the

engineering operations comprised in raising the ground levels were 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 allowed to reduce the steps to proportionate and necessary ones required to address the alleged breach of planning control.