

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

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**FINAL COMMENTS**

**APPEAL AGAINST ENFORCEMENT NOTICE**

**ON BEHALF OF MR AND MRS GALLAGHER**

**SITE LAND ADJACENT TO MOOR LANE, LOUGHBOROUGH, LEICESTERSHIRE**

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

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**APPEAL REFERENCES: APP/X2410/C/23/3322569**

**AUGUST 2023**



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**File Ref: CAM/240059.1**

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## **INTRODUCTION**

- 1.1. These Final Comments are submitted on behalf of Mr and Mrs Gallagher (“the Appellant”) in relation to the enforcement notice appeal with reference APP/X2410/C/23/3322569 (“the Appeal”). They should be read in conjunction with the Grounds of Appeal dated May 2023 and Hearing Statement dated August 2023 both submitted on behalf of the Appellant.
- 1.2. These Final Comments respond to the Council’s Statements and Third Party comments submitted pursuant to the Appeals.
- 1.3. For the reasons given below, the Council’s Statements and the comments of Third Party do not demonstrate that the enforcement notice appeal should be dismissed.

## **2. THE COUNCIL’S STATEMENT**

- 2.1. It is clear that the Council’s Statement and supporting documents demonstrate that releveling was undertaken and completed more than 4 years ago. The key difference between the parties is whether the subsequent works, undertaken just under 4 years before the issue of the Enforcement Notice, encompassed in the creation of the security bund and the removal of the spoil heap were part of the same operation as the releveling works or separate operations. For the reasons given by the Appellant, it is considered that those works were entirely different operations. The Council’s Statement does not demonstrate that the works were all part of one operation.
- 2.2. With regard to specific comments on the Council’s Statement it should be noted that the location of the land in part of a floodplain is not relevant to the key issue in the case, namely whether the releveling works were undertaken more than 4 years ago.
- 2.3. In 2004, the date of the earliest survey, the Site was not relatively flat as suggested by the Council but subject to variation in height and, in addition to hardstanding, skip storage areas and open scrubland were buildings. The lawful use of the scrapyards and associated operations was well established at that point in time.
- 2.4. The Council to works being undertaken in 2018 and that it undertook a survey showing levels at that point in time. However, the Council has not submitted this survey and it is unclear why the Council has failed to do so. This survey could clearly be relevant and it is unacceptable for the Council to refer to it but not submit it. In any event, that survey demonstrates that the releveling works were undertaken before 2018 and therefore more than 4 years ago. This is corroborated by the Council’s letter dated 2 January 2019 (appendix 4 of the Council’s Statement).

- 2.5. The Council's reference in its paragraph 4.7 is factually incorrect in that no spoil was being moved onto the Site. The simple fact is that earth works on the wider development site were well completed by that point and there would be no reason to import or move to the Site any spoil or other materials. As set out in the evidence of the Appellant, the existing spoil heap at the Site was removed and the security bund was created in 2019 and it is this exercise the Council is referencing.
- 2.6. The Appellant has carried out surveys on the land and has randomly selected a cross section from these which shows clearly there is a bund which was formed at the time and as previously described (See attached "Indicative Cross-Section")
- 2.7. The Council is plainly wrong in paragraph 4.13 to suggest that the failure to appeal the Certificate of Lawfulness Application has any relevance to whether or not the releveling works were lawful. The Appellant did not and does not accept the Council's position on the lawfulness of the releveling works. The submitted evidence clearly demonstrates that the Council is wrong on whether the works were part of one, very long operation or comprised of entirely different operations with the releveling works substantially completed more than 4 years ago.
- 2.8. With regard to the Ground (c) appeal, to remove buildings, materials and hardstanding from the Site clearly necessitates works that would change levels of the Site. Similarly, carrying out site clearance would also encompass an element of releveling, as well as removal of all vegetation. These works were all envisaged and, indeed, required by the Section 106 Agreement.
- 2.9. In paragraph 7.2 the Council suggest that Mr Coley's Statutory Declaration dated 23 December 2021 stating that works of releveling were completed by October 2017 somehow throws doubt on the statement that the works were completed by 2019 in the Appel Statement. Clearly, both these statement are consistent (by use for the words "by") and these dates refer to the date at which the works would need to be completed to establish immunity from enforcement action for the respective application for a certificate of lawfulness and appeal of the enforcement notice.
- 2.10. The photographs submitted by the Council do not show that the works undertaken at the Site were part of one operation and, in fact, are entirely consistent with the Appellant's case that the releveling works were undertaken well before 2019 with only the provision of a security bund and the removal of a spoil heap undertaken in 2019.
- 2.11. The Council suggest that they are unable to make out a bund on Site. This is present and can be readily identified on the site visit.

- 2.12. The Appellant's case in relation to the security bund and spoil heap is clear as these works were undertaken less than 4 years ago but were not part of the releveling works that have gained immunity. It is considered that the Council could only require a return to the 2018 levels of the Site for this reason.
- 2.13. It is wholly unreasonable for the Council to require a return to the levels of the Site in 2004 (which formed the survey in the 2013 Flood Risk Assessment) and to require the return of vegetation to what was shown in a 2011 aerial image.
- 2.14. The removal of trees and hedges is clearly part of "site clearance" required by the Section 106 Agreement and the Council is entirely wrong to suggest otherwise.

### **3. THIRD PARTY COMMENTS**

#### **Loughborough Carillon Sports Club**

- 3.1. The Sports Club support the appeal in terms of the steps being excessive. As such, no further comments are made on those submissions.

#### **Environment Agency**

- 3.2. The submissions by the Environment Agency are consistent with the Appellant's case; that releveling works were substantially completed more than 4 years before the issue of the Enforcement Notice and that the subsequent bund and spoil heap removal were the only works undertaken less than 4 years before the issue of the Notice. This is because the Agency compares 2004 levels with 2021 levels.

### **4. CONCLUSIONS**

- 4.1. This Statement demonstrates that:
- No comments made by the Council or third parties challenge the conclusions of the Appellant in relation to the appeal;
  - The key issues is whether the releveling works were substantially completed more than 4 years before the issue of the Enforcement Notice or whether the subsequent bund creation and spoil heap removal were part of one, long operation with the releveling works. For the reasons given, the Appellant's evidence is clear that the works were not part of one, long operation;
  - The steps required by the Notice are excessive.
- 4.2. As such, the Inspector is respectfully invited to allow the appeal.