

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

HEARING STATEMENT

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**

AUGUST 2023



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APPENDICES

- 1. Oakes Survey Services Survey 6 May 2004
- 2. BWB survey dated 26 July 2018 (including one with 2004 data overlaid)
- 3. Staniforth Plan showing survey dated 27 September 2022
- 4. S106 Agreement dated 16 December 2013

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 18 April 2023 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*”. It should be read in conjunction with the Appellant’s Grounds of Appeal dated May 2023.

1.2 Details of the Site and the history of the Site are contained in the Appellant’s Grounds of Appeal dated May 2023. The Council’s Enforcement Report for Delegated Authority to Take Formal Enforcement Action (“EN Report”) also contains some history of the Site but the following should be noted:

- As is clearly evident from the evidence, including the 2016 Google Earth aerial image and the December 2015 video, the engineering works did not start in 2019 but were completed by December 2015. Similarly, woodland and vegetation was all removed before 2016;
- The topography plan within the BWB Flood Risk Assessment is not dated 2013, but is dated 6 May 2004. A copy of this topographical survey is attached with this Statement at Appendix 1;
- Further topographical plans have been submitted dated 26 July 2018 with and without the 2004 data overlaid (Appendix 2) and dated 27 September 2022 (Appendix 3);
- The Council incorrectly makes reference to a “2018 aerial image” which, as a matter of fact, appears to be from 2011;
- The Council first contacted the Appellant in February 2017 about the relevening works;
- The November 2018 photographs show the relevening works already undertaken. Any further work on Site related to the security bund and removal of spoil heap in Spring/Summer 2019;

2. CONSIDERATIONS OF ISSUES

- 2.1 The Grounds of Appeal set out 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, including the following submitted with this Hearing Statement demonstrates that the levelling works were substantially completed more than 4 years ago:
- The 2018 topographical plan which shows, that by 2018, the levels of the Site had already increased, contrary to the Council's assertions;
 - The Statutory Declarations of Mr Coley and Mr Shattock (submitted with this Statement).
- 2.4 There can be no doubt that the levelling works were substantially completed more than 4 years ago having regard to the evidence submitted. However, it is noted that the courts have established that it is necessary to look at whether the operations have been substantially completed on a "holistic approach" (*Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL 22*).
- 2.5 Therefore, it is necessary to consider whether the removal of the spoil heap and the inclusion of a security bund should be considered part of the same engineering operations as the levelling of the Site meaning that the works were only substantially completed once the bund had been erected and the spoil heap removed. For the reasons given below, they are clearly separate works and the works of releveling were clearly substantially completed more than 4 years ago.
- 2.2.1 Firstly, the levelling works were completed by December 2015. The additional works of removal of the spoil heap and the creation of the security bund were undertaken in 2019, nearly 4 years later. This would clearly and compellingly indicate that they were not part of the same operations;
- 2.2.2 Secondly, the removal of the spoil heap and the creation of the security bund were undertaken for specific reasons unrelated to the releveling of the Site. The spoil heap was removed at the request of the Environment Agency and

the security bund was created to prevent fly tipping (which had become a significant problem) and unauthorised encampment on the Site. The levelling was undertaken to level the Site before December 2015 and for site clearance as envisaged by the S106 Agreement dated 16 December 2013 (attached as Appendix 4)

- 2.6 With regard to the Ground (c) appeal, it is clear that the works undertaken on Site were envisaged, and required, by the Section 106 Agreement. 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 relevelling, given the requirement to remove hard surfacing.
- 2.7 The Grounds of Appeal set out the basis for the Ground (f) appeal and the Appellant does not consider it necessary to make further comments in this regard until it has had sight of the Council’s Appeal Statement.

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 levelling the site were clearly different engineering operations to the provision of the bund and the removal of a spoil heap and were undertaken 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 appropriate ones.