



# Charnwood

## **STATEMENT OF CASE**

on behalf of

### **Charnwood Borough Council**

in respect of a Planning Appeal made under Section 174

of the

Town and Country Planning Act 1990

by:

**Wealth Property Ltd & Mr Asphal Singh Babbar**

against an enforcement notice served by Charnwood Borough Council:

Without planning permission the material change of use of land and buildings, from industrial and agricultural use to sui generis use including industrial, agricultural, residential (building conversion and caravan), vehicle sales, MoT station, vehicle repairs and servicing, vehicle restoration, vehicle body repairs, storage, tyre fitting, siting of caravans and portable structures/ buildings, storage, manufacturing and retail; and facilitating development including the installation of fencing, hardstanding, closed circuit television, lighting, and ground works.

at

**Land at Syston Mill, Mill Lane, Syston, Leicestershire, LE7 1NS**

**PLANNING REFERENCE: E/21/0183**

**APPEAL REFERENCE Nos.: APP/X2410/C/24/3354976 & APP/X2410/C/24/3354977**

9<sup>th</sup> January 2025



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This statement and associated documents can be viewed on the Council's website

[Public Inquiry: Land at Syston Mill, Mill Lane, Syston - Charnwood Borough Council](#)

or in reception at the Council Offices but this is via appointment only by calling 01509 634570



## 1. Introduction

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- 1.1 This statement has been jointly prepared by Sarah Hallam, Team Leader for Planning Enforcement and Liam Ward, Principal Planning Officer on behalf of Charnwood Borough Council. The experience and qualifications of these individuals are included below:

Sarah Hallam Chartered member of the Royal Town Planning Institute with a Masters degree in Urban and Regional Planning and the Trevor Roberts Certificate of Continuing Education in Planning Enforcement. I have over twenty years' experience working in a planning enforcement role.

Liam Ward Member of the Royal Town Planning Institute with a Masters degree in Planning and Development and over 30 years of experience working in a planning environment. I have participated in over 200 planning appeals as well as judicial reviews, examinations in public, and public inquiries.

## 2. The Unauthorised Development

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- 2.1 This appeal relates to an Enforcement Notice dated 23 September 2024 that was served for the material change of use of land and buildings, from industrial and agricultural use to sui generis use including industrial, agricultural, residential (building conversion and caravan), vehicle sales, MOT station, vehicle repairs and servicing, vehicle restoration, vehicle body repairs, storage, tyre fitting, siting of caravans and portable structures/buildings, storage, manufacturing and retail; and facilitating development including the installation of fencing, hardstanding, closed circuit television, lighting, and ground works. A copy of the Notice, along with the site location plans attached to the Notice have been provided with the Council's appeal questionnaire.



### 3. The Appeal Site and its Context

- 3.1 The appeal site (“the Land”) is outlined in red on the plan attached to the Enforcement Notice dated 23 September 2024.
- 3.2 The Land comprises of Syston Mill, a remote range of industrial buildings that served the former mill and agricultural land to the east, and across the watercourses from the River Wreake to the east, southeast and to the south. The mill buildings are largely surrounded by the River Wreake to the northwest, the railway line to the east and the River Wreake subsidiary watercourse to the south.
- 3.3 The Land is accessed via Mill Lane which leads from Fosse Way under the railway bridge to Mill House, then to the agricultural land to the west before finishing at the vehicle bridge to Syston Mill. The Land can also be accessed by way of public footpath 156 which leads from the railway bridge through the fields on the eastern side of Mill Lane and across the footbridges over the watercourses.
- 3.4 The Land is under the same ownership and within the same redline as shown on the Title Plan below

Figure 1 - Official Land Registry title plan (LT53188) for the Land.

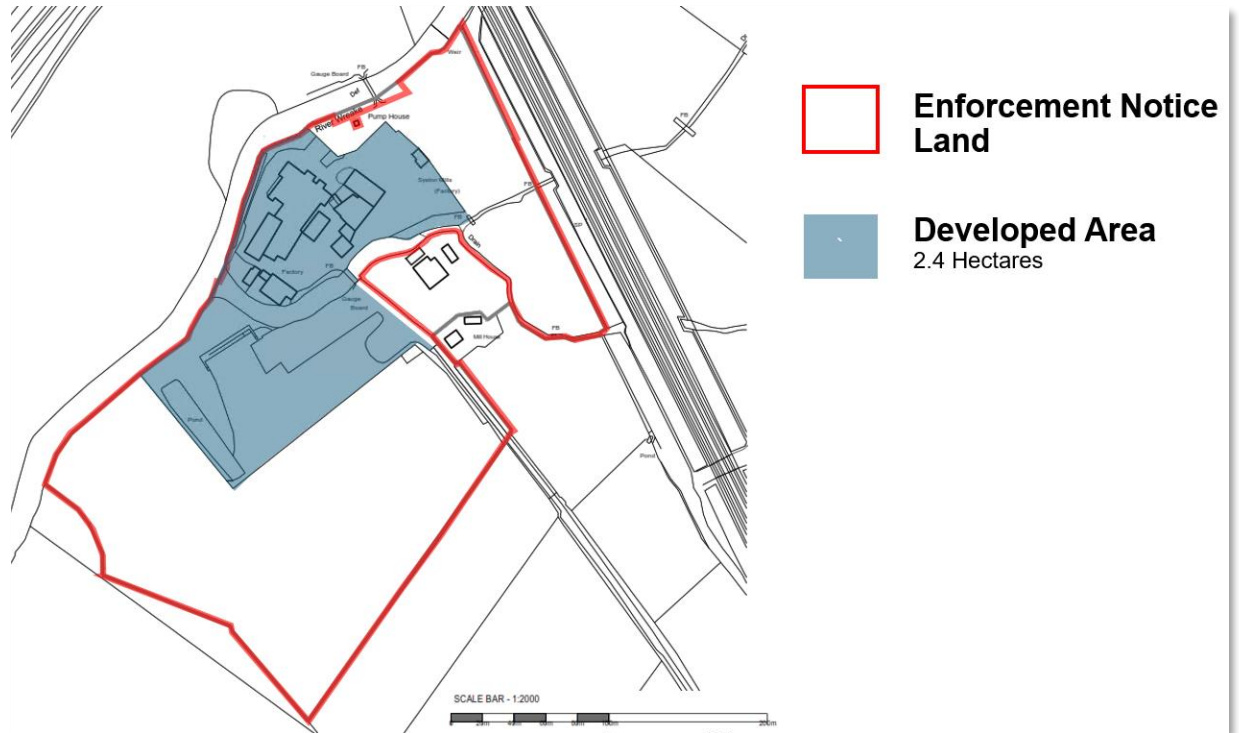




- 3.5 It is understood that the Syston Mill industrial buildings were principally occupied by an industrial business known as Stamina Components which manufactured footwear who it is believed vacated the site in 1999. Since then, knowledge of businesses who have occupied the buildings on the Land is limited but there is historical evidence of taxi businesses and a retail shop occupying some of the Mill buildings prior to the appellants purchase of the Land. The occupation of the buildings and land will be discussed in greater detail later in this statement. Since 1999 there have been no applications granted for the change of use of any of the existing buildings or the agricultural land to the east of the mill buildings that is now used for the parking and display of commercial vehicles for sale or for the land to the south/southeast of the mill buildings which is used for the parking and display of vehicles for sale.
- 3.6 In respect of the agricultural land located to the east, south and southwest of the mill buildings, the historical aerial photographs show the incremental increase in hard surfacing of the Land. Some parts of the Land are significantly covered in hardstanding and used for the parking, storage and sale of commercial and non-commercial vehicles. No planning permission has been granted for the built development that has been undertaken or the uses taking place on the Land.
- 3.7 The Land at the time the Enforcement Notice was served was being used for a sui generis use including industrial, agricultural, residential (building No. 10 and caravan), vehicle sales, MOT station, vehicle repairs, storage and servicing, vehicle restoration, vehicle body repairs, tyre fitting, siting of caravans and portable structures/buildings, storage, manufacturing and retail; and facilitating development including the installation of fencing, hardstanding, closed circuit television, lighting, and ground works.
- 3.8 The Land extends to approximately 7.6ha. with the unauthorised uses and built development covering approximately 2.4ha.



Figure 2 - Plan detailing the enforcement notice site area and the developed area



3.9 The Land is located outside the Limits to Development and within the countryside as defined in the Borough of Charnwood Local Plan. The Land lies within Flood zones 2, 3 and 3b as detailed on the map below.

Figure 3 -- Extract from the current Environment Agency floor map for the Land

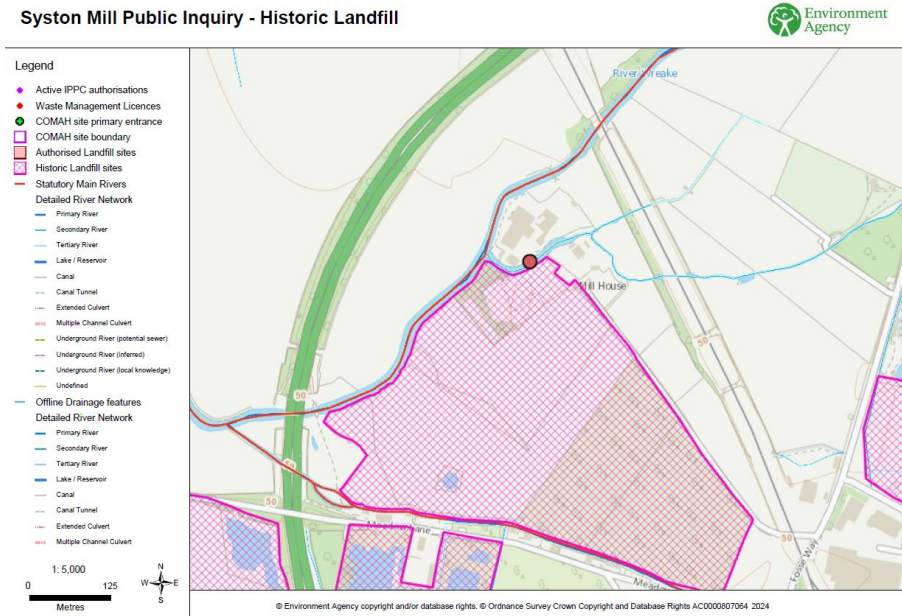


3.10 The Land is also within a Mineral Consultation Area where there has been extensive extraction of sand and gravel in the past, with some of the area used for landfill. The Land is therefore within a landfill buffer zone.



3.11 A significant portion of the Land is underlain by a historic landfill (Syston Quarry, Meadow Lane, Syston). The extent of the landfill is shown (pink hatched area) in the map below.

Figure 4 - Extract from the Environment Agency map of the extent of the landfill.



3.12 There is a pump house leased by the Environment Agency to the northeast of the former Syston Mill buildings and is excluded from the Enforcement Notice.

3.13 On the opposite side of Mill Lane is an existing scaffold business which has existed for several years and does not form part of this appeal. To the southeast of that business lies Mill House. These are outlined blue on the aerial photograph below and are not subject to this appeal.





Figure 5 - Google Earth aerial photograph taken 28.03.2022



- 3.14 The archive of historical aerial photographs dated from 2000 – 2022 of the Land are attached to this statement as Appendix A. They show the physical changes that have occurred over this time period.

#### 4. Relevant Planning Policies

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- 4.1 Rather than repeating the Development Plan policies which the council considers important to the determination of this appeal, we refer the reader to the Officer's Report which has been provided with the Council's appeal questionnaire. Since the date of that report some of the relevant policies have been replaced (NPPF) or gained weight (Local Plan). Other material considerations are also considered necessary in response to the grounds of appeal. The varied, or additional references are described below.



Draft Charnwood Local Plan 2021-2037 (submitted Dec' 21)

- 4.2 The draft Local Plan continues its path through Examination by the Inspectorate. In accordance with paragraph 49 of the National Planning Policy Framework (Dec '24) policies in emerging plans may gain weight as it reaches an advanced stage. Main modifications were the subject of a public consultation which ended in September 2024. Save in respect of its policies INF1 and INF2 there are no remaining unresolved objections. The table below sets out the main modifications to policies relevant to this appeal. At the time of writing these policies are considered to have significant weight.

*Table 1 - Effect of main modifications to relevant emerging Local Plan policies*

<b>Emerging policy</b>	<b>Main modifications to relevant policies</b>
DS1	Main modifications are proposed to DS1 to update the housing numbers and update the policy in relation to the relevant NPPF paragraph 11d. The changes are updates and do not amend the development strategy.
DS5	A main modification is proposed to add reference to EV6 in the policy. The change ensures cross-reference between policies. No amendments are proposed.
C1	Main modifications clarify instances where new burial space may be acceptable. For other forms of development, the policy is unchanged.
E1	No main modifications are proposed to the policy.
E3	Main modifications were made for clarification of the scope of the policy. The aim and substance of the policy is not changed.
T1	Main modifications were made for clarification of the scope of the policy. The aim and substance of the policy is not changed.
T3	Main modification to remove reference to the latest available guidance and replace with reference to scale and type of development. The aim and substance of the policy is not changed.
CC1	Main modifications were made to ensure the effectiveness of the policy by clarifying wording and to ensure consistency with national policy. The aim and substance of the policy is not changed.
CC2	Main modifications make a change to the wording to clarify the meaning, ensuring consistency with national policy. The aim and substance of the policy is not changed.



CC4	Main modifications do not change the existing substance of the policy.
CC5	Main modifications relate to the criteria which relate to major development. Cross reference is added to policy INF2.
EV1	Main modifications make a change to the wording to clarify the meaning, ensuring consistency with national policy. The aim and substance of the policy is not changed.
EV6	No main modifications are proposed to the policy.

4.3 The Council reserves the right to provide updates on the progress toward adoption of the Local Plan, as necessary and relevant to this appeal.

Ministerial Statement and NPPF (Dec '24)

4.4 A revised version of the National Planning Policy Framework was published on 12<sup>th</sup> December 2024 and accompanied by a Ministerial Statement. Of particular relevance to this appeal, and the principle of development at this location are the passages on “supporting a prosperous rural economy” at its paragraph 88-89.

Government circular 06/2005: biodiversity and geological conservation

4.5 This circular sets out the statutory obligations in respect of biodiversity and geological conservation and their impact within the planning system.

**5. Relevant planning and enforcement history**

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5.1 Rather than repeating the planning applications that are a material consideration for this case, we refer the reader to the Officer’s Report which has been provided with the Council’s appeal questionnaire.

5.2 Regarding the Enforcement history for this case contact was initially made with the landowners in May 2021 due to concerns regarding development works taking place on the Land which involved the hard surfacing of the Land and the use of the Land for the storage and display of vehicles for sale. At that time, it was advised that the works were unauthorised and did not benefit from planning permission. It was made very



clear, in an email dated 27 May 2021, a copy is attached to this statement at Appendix B to the landowner, that no further works should be undertaken until they had obtained the necessary consent.

- 5.3 On 08 July 2021 a Planning Contravention Notice (PCN) was served, a copy of which has been attached to the Council's appeal questionnaire. Repeated requests were made for the landowners to provide a response to the PCN but it was not until 07 July 2022 that a response was received, a copy of this is also attached to the Council's appeal questionnaire.
- 5.4 On 4 April 2022 the appellants submitted a planning application for a Certificate of Lawful Existing Development (P/22/0061/2) for the change of use of land to car sales / parking (Sui Generis) and associated works. For clarity this was for the area of the Land southwest of the former Syston Mill buildings. Copies of the design and access document submitted as part of the application and the amended site location plan are attached to this statement at Appendix C.
- 5.5 This application was refused permission on 08 June 2022 for the following reason:
- “Insufficient evidence has been provided to prove on the balance of probability that the Land has been used continuously for car sales / parking (Sui Generis) and associated works for more than ten years preceding the date of this Application”
- A copy of the decision is attached at Appendix D of this statement.
- 5.6 This decision was not appealed by the appellant indicating that the appellant accepted the Council's decision on the matter.
- 5.7 On 09 February 2023, a letter was sent to the landowners requesting further information following the review of their initial response to the questions asked by the PCN which had not been responded to in full. A copy of this letter is attached at Appendix E of this statement. A further copy of this letter was sent to the landowner's agent in March 2023, but no response was received from the questions raised.
- 5.8 In January 2024 a further letter was sent to the landowners raising concerns regarding additional unauthorised works and activities taking place on the Land. A copy of this letter is attached as Appendix F of this statement. There is no evidence of any response to this letter on the file.
- 5.9 On 15 February 2024 a further PCN was served, a copy of which was attached to the Council's appeal questionnaire. This was served on the landowners along with several other individuals who were known to the Council to be occupying the Land. Only one



response was received from the tenant at unit E1 and this response is attached to the Council's appeal questionnaire.

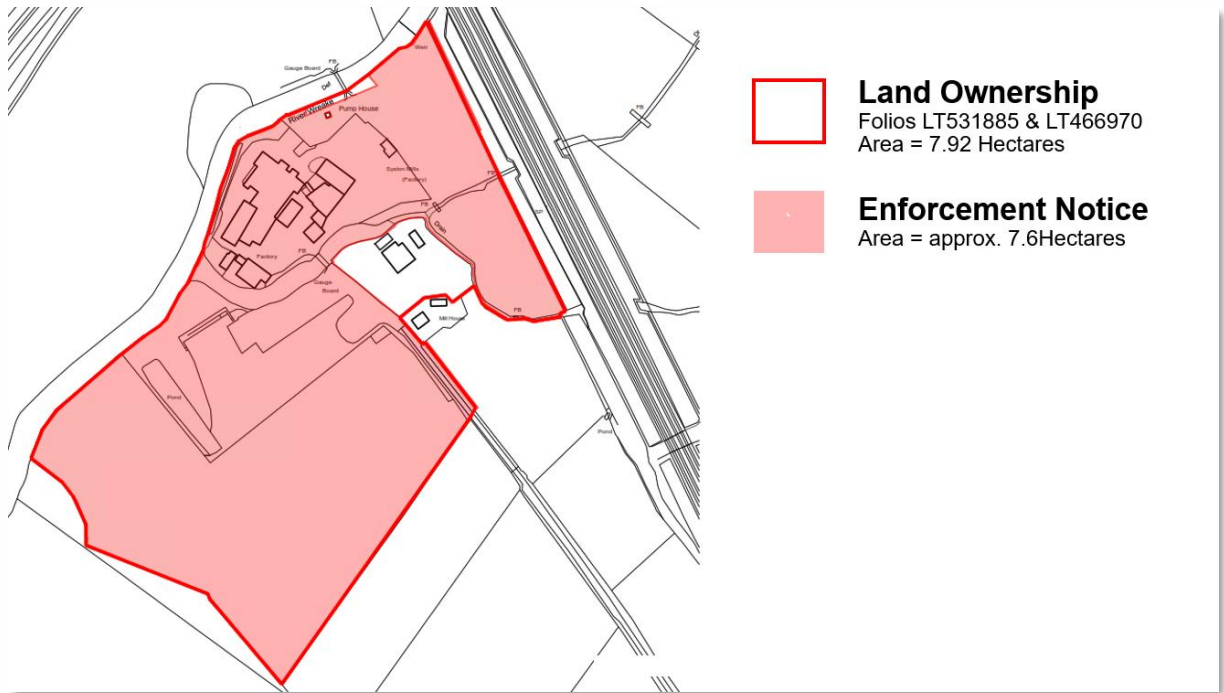
- 5.10 Records show that there has been a lack of action by the landowners throughout the Council's investigations into this matter. Works have continued even though the Council has made it clear the works are unauthorised and should not continue until the necessary consent has been obtained.
- 5.11 Considering the unauthorised works were continuing and due to the lack of action by the landowners to engage with the Council and address the breaches of planning control it was considered necessary and expedient to serve an Enforcement Notice which is the subject of this appeal.
- 5.12 Following service of the Notice the owners requested a meeting with the Council which took place on 22 October 2024. Here it was advised what the requirements of the Notice were and that they had the right to appeal the Notice.

### **The Enforcement Notice**

- 5.13 The Enforcement Notice was approved on 23 September 2024 and hand delivered to the tenants, a copy placed on the Land and copies sent in the post to the appellants on 30 September 2024. The Notice took effect on 5 November 2024. The reasons for serving the Notice are included within the Notice so it is not considered necessary to repeat them in this statement.
- 5.14 A copy of the Enforcement Notice is attached to the Council's appeal questionnaire.
- 5.15 The appellants have not appealed under Ground (e) and therefore they accept that the Notice was correctly served.
- 5.16 The Council would like to point out an error that has been noted within the Notice and this relates to steps 21, 22 and 23. Within these steps it states "outlined in purple on the plan attached to appendix 3" when actually it should state "outlined in green on the plan attached to appendix 3". The steps refer to the correct plan but reference the incorrect colour on the plan. The Council do not consider that if the inspector was to amend the wording in these steps that this would cause any prejudice to either party.
- 5.17 For clarity the map below details the area covered by the Notice along with the area of ownership.



Figure 6 - Relationship between land ownership and area covered by the Enforcement Notice



**Planning unit**

5.18 One of the main points of dispute between the parties is whether the Land is one planning unit or several separate planning units. The Council maintain it is one planning unit and the reasons for this will be discussed further in the following paragraphs. The appellants contend that the Land is made up of several separate planning units.

5.19 In the case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, a copy of which is attached at Appendix G Justice Bridge set out criteria for determining the planning unit. Three criteria were identified for determining the planning unit, which are set out below:

1. Whenever it is possible to recognise a single main purpose of the occupier’s use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation is considered as the planning unit.
2. Where there are a variety of activities, and it is not possible to say that one is incidental or ancillary to another and which are not confined within separate and physically distinct areas, the entire unit of occupation should be considered as the planning unit (composite site).



3. Where there are two or more physically separate and distinct uses, physically separate and distinct areas occupied for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

5.20 In assessing whether there has been a material change of use it is appropriate to consider the planning unit. The Council considers the 'Burdle principles' to be relevant in this case in determining the Land as a composite site and not several individual planning units.

5.21 The officers report details the initial reasons as to why the Council considers the Land to be a single planning unit and a composite site. However, in addition the Council would like to highlight the following:

- The Land is under the same ownership and under one title - Wealth Property Management
- The Land is managed by one entity – Wealth Property Management
- Electric Meter readings are collected by Mr Knapp on behalf of Wealth Property Management and collated for them.
- Wealth Property Management, and Addicted Vape Limited, companies related by directorship are registered for council tax purposes on several units on the Land.
- Arrangements for the emptying of the cesspits undertaken by Mr Knapp on behalf of Wealth Property Management.
- Services (electricity, water and waste removal (cesspit) are dealt with by the landowners rather than the individual tenants of each unit.
- The repair businesses provide their services to the vehicle sales businesses.
- On the Syston Mill (where the Mill buildings are located) part of the Land there are no physically distinct areas defining each unit, or areas designated to each unit for the parking of vehicles, customer parking etc., all areas are shared.
- The Land at the time of writing this report is being advertised as one single entity for sale.
- The appellants state that Land parcel 101 is in use as the parking area by Wealth Property Management. As Wealth Property Management do not occupy the Land and are located a significant distance away this would suggest that the parking area is for the use of the occupants and visitors of the vehicle sales businesses and those business occupying the Syston Mill buildings.
- In Mr Knapp's Statutory Declaration paragraph 9 he states "I can swear that all of the land in parcel 101 has been used as a parking area for the site" clearly indicating that it is used by occupiers and visitors to the whole Land.



- 5.22 The Council accepts that the areas identified by the appellant as parcels 102, 103, 104 and 106 are subdivided, some by fences. These parcels may physically look to be separate planning units however when holistically considering all the above the Council maintain the stance that the whole Land is one composite planning unit.
- 5.23 In this case with the landowners, Wealth Property Management owning the Land, managing the tenants who occupy the Land, covering the Council tax responsibilities for a significant portion of the units on the Land, managing the services such as dealing with the electric readings and the emptying of the cess pits all point to the Land being one planning unit, which is a composite site. In addition to this the uses on the Land are virtually all vehicle related uses, there is no subdivision of the outside areas for the Mill buildings/units for parking of vehicles, storage of waste etc. for each unit and there is one shared parking area (parcel 101) for the whole site. All these points direct the Council to the conclusion that the Land is one planning unit and a composite site.
- 5.24 The redline plan attached to the Enforcement Notice extends further than the area occupied by the unauthorised development. The red line has specifically encompassed all the agricultural land in the landowner's ownership to restrict them from undertaking further unauthorised works or moving the unauthorised operations to other parcels of land in their ownership and control.

### **Lawful use and current use of the Land**

- 5.25 Stamina Components (Syston) Ltd lawfully occupied the Land up to 1999 for industrial uses associated with the manufacture of shoe soles. Since 1999 there have been no planning permissions granted for the change of use of the Land or any part of the Land. The Council therefore are of the opinion that the lawful use of the Land is for an industrial use Class B2 with ancillary parking, offices and warehousing.

### Sui generis

- 5.26 The Land being one planning unit and a composite site contains a variety of mostly car related activities, including vehicle sales uses, which are a sui generis use, along with a residential use. The Council understand the residential use may have ceased following the service of the Notice. However, at the point of the service of the Notice the Council considered the Land fell within a sui generis use due to the residential and vehicle sales uses occurring on the Land.





### Time limits

- 5.27 The development works undertaken and the uses taking place on the Land commenced prior to 25 April 2024 and it is believed the built works were substantially complete before this date. Therefore in accordance with The Levelling Up and Regeneration Act 2023 the time limits for immunity, in this case are four years for built development unless the development facilitates the change of use (Murfitt principle) and 10 years for changes of use.
- 5.28 In *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC (1980)* attached as Appendix H established that where operational development is “part and parcel” of the material change of use “or integral to it” then the four-year bar will not necessarily apply, and the development works are subject to the ten-year time limit.
- 5.29 More recently the scope of the Murfitt principal has been considered through the judgment in the *Secretary of State for Levelling-up, Housing and Communities v Caldwell [2024] EWCA Civ 467* attached as Appendix J. This judgement concluded that for operational development to be within the scope of an enforcement notice enforcing against a material change of use, it must be subordinate or secondary to the change of use (that it must not be ‘fundamental’ to the change of use).
- 5.30 In this case the Council are of the opinion, considering the Murfitt principal and the Caldwell decision that the built development undertaken on the land is subject to the ten-year time limit.
- 5.31 Also, in this case various elements of the built development works have been continual operations over a number of years and therefore the ten-year time limit only starts ticking when the development works are substantially complete as detailed in 171B(1)(a) of the Town and Country Planning Act 1990.



## Response to the Appellants Grounds of Appeal

5.32 The Council's consideration of the reasons for taking enforcement action is set out in the Officer Report, and repetition is avoided herein wherever possible. The Appellant's "Grounds of Appeal" statement reaches different conclusions in its assessment of the same matters. The following sections of this Statement focus on the points of difference between the parties.

### 6. Ground (c) – no breach

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*that those matters (if they occurred) do not constitute a breach of planning control*

6.1 The appellant seeks to rely upon planning permission P/00/2521/2, by reference to the decision notice and to read from that decision that changes of use had been permitted. It is considered that this is a limited reading of the permission, which overstates its value in the current circumstances.

6.2 A copy of the decision notice and site location plan is attached as Appendix K.

6.3 In the case of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 176 (Admin) (27 January 2023) the Court considered how the meaning of a planning permission should be understood.

*As recently confirmed by the Supreme Court in Hillside, the interpretation of a planning permission depends upon the terms of the document recording the grant of that planning permission. It is a matter of law, applying the same general principles that apply to the interpretation of any document that has legal effect. It is an objective exercise that focuses on what a reasonable reader would understand the words used, considering in their particular context, to mean. The meaning of a planning permission should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application and physical inspection of the land to which it relates. In the case of a full planning permission, a reasonable reader would understand that detailed plans submitted with the application would have particular significance. (paragraph 68)*

6.4 The application form which accompanies the application, records that neither "change of use only" or "change of use involving new build / alteration" were being sought



permission for. Rather, the box ticked on the application form describing the type of permission sought was “new building / alteration, extensions or other works.” The cover letter submitted with the application describes the proposal as:

*“To undertake the improvements set out on the attached plans. This primarily relates to the re-roofing of parts of the property, replacement of doors and windows (which does not require permission) as well as the creation of new vehicular doorways to enable the easy subdivision of the space.”*

- 6.5 The meaning of planning permission P/00/2521/2 is not as the appellant suggests. It sought permission for physical alterations to the buildings only, and explicitly did not seek permission for any changes of use. It does not permit any changes of use.
- 6.6 The appellants Table 3 lists units, tenants and use classes which it considers not to be in breach of planning control and permitted by planning permission P/00/2521/2 but does not consider whether there have been any intervening uses since 2000. Most of the current uses on the Land commenced after the current owners purchased the Land in 2020. Therefore, the appellants assertion that planning permission P/00/2521/2 authorised these uses is irrational.
- 6.7 The site location plan submitted for this application included all the Mill buildings along with the small area of hard surfaced parking over the bridge, a copy of the site plan is attached at Appendix K. Suggesting at that time the Land was one planning unit.
- 6.8 The second condition on the planning permission required that, prior to commencement, a schedule of materials to be used should be submitted to and approved by the local planning authority. There is no record of this condition having been discharged, and therefore no evidence that the planning permission was lawfully implemented. It has now lapsed without being lawfully implemented.
- 6.9 The appellant’s Table 3 lists units, tenants and use classes which it considers not to be in breach of planning control. There is degree of overlap between that Table and the “Tenancy Summary 2023” included in the sales brochure by Galaxy Real Estate, a copy of which is attached at Appendix L. The tenants and businesses listed at units D, E2, 7 and 10 are common to both schedules, but all of the others on Table 3 are different tenants or vacant. Former tenants, listed on the sales brochure but not on Table 3 include a roofing company, a recruitment company and a few named individuals. Tenants during the past couple of years have operated businesses across multiple use classes.



- 6.10 The Council do not dispute that the Land has a lawful use for industrial use Class B2 with ancillary parking, offices and warehousing but at the time of the service of the Enforcement Notice there were other uses taking place, including car and van sales, office uses not related to the lawful B2 use and a residential use occurring in one of the office buildings. That is the reason for the Land being categorised in the Notice as a Sui Generis use.
- 6.11 The Council confirms that the Land is not subject to an Article 4 Direction and agrees that the appellants could benefit from The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) if the Land was not being used for a mixture of uses. The Land is however being used for a mixture of uses therefore the Council do not consider that the development works referred to in the Notice fall within the limits of the Town and Country Planning General Permitted Development Order and therefore the development works are unauthorised.

## 7. Ground (d) – cannot enforce

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*that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters*

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- 7.1 The appellant refers to 5 parcels (Land parcels 101, 103, part of 104, 107 and the ground floor of Unit 22) on the Land which they consider to be immune from enforcement action as they contend the uses have persisted for over 10 years.
- 7.2 Under 173 (4) (a) the effect of an enforcement notice is to require the Land to be restored to its condition before the breach took place.
- 7.3 It is therefore first necessary to review the evolution of the parcels of Land that the appellant considers have gained immunity. These will be considered in two parts, the Land (Land parcels 101, 103 and part of 104) to the southwest and south of the Syston Mill buildings and then the Land east (Land parcel 107 and the ground floor of unit 22) of the Syston Mill buildings.



Land (Land parcels 101, 103 and part of 104) south and Southwest of the Syston Mill buildings

- 7.4 The Council accepts that the historical aerial photographs from 1999 to 2011 show the Land outlined in white details hard standing that has been evident in excess of 10 years and therefore in 2011 had gained immunity for the parking of vehicles associated with Syston Mills. This is detailed below in Figures 7 and 8.

*Figure 7 - Aerial photograph from 01 January 1999 with approximate of hardstanding area outlined in white.*

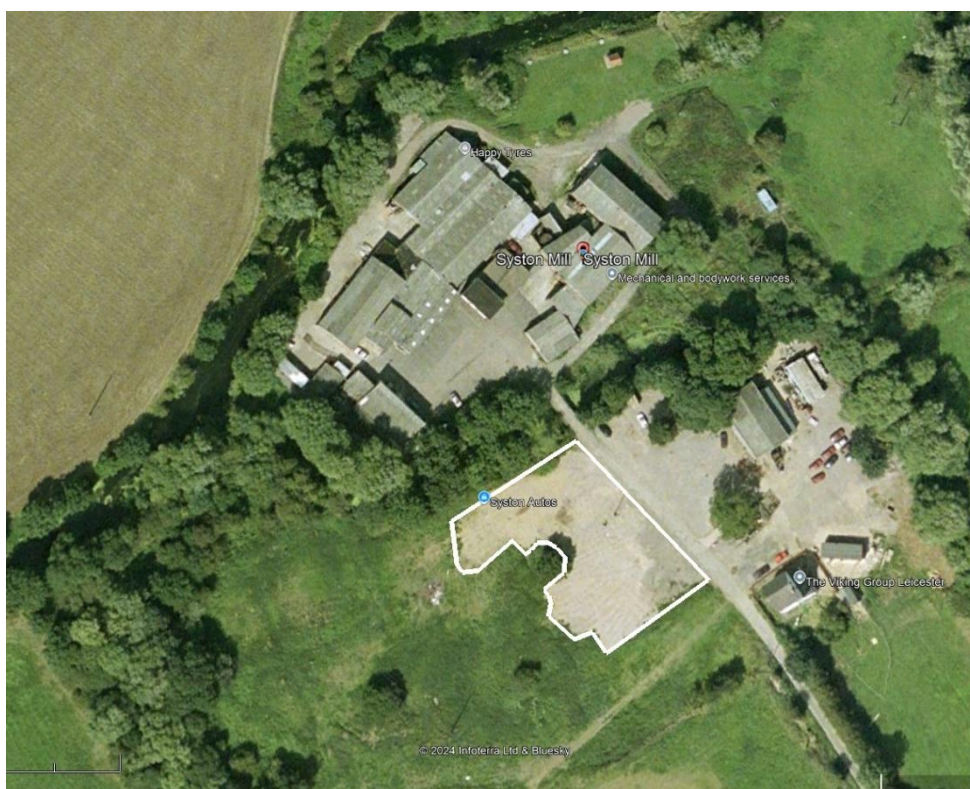




Figure 8 - Aerial photograph from 09 July 2011 with approximate of hardstanding area outlined in white.



- 7.5 However, since 27 September 2011 the hardstanding has significantly increased and the use of it has evolved over the years from general parking associated with Syston Mills for the parking of taxis, as evidenced by Mr Knapp in his statutory declaration, to now for the parking, storage and sales of vehicles. The Council contend that since the 2011 aerial photograph there has been a continual creep year on year (evidenced by historical aerial photographs attached at Appendix A) of hardstanding being installed over the agricultural Land, which was only substantially complete when the last area of hardstanding (Parcel 106) was installed which was sometime after 28 March 2022 (the last aerial image available) as this area of hardstanding is not present on this aerial photograph.
- 7.6 Therefore, at the time of the service of the enforcement notice all the hardstanding, along with the fences and other development works outside of the area of Land outlined in white had not gained immunity from enforcement action.
- 7.7 The appellant contends that parcel 101 has been used for parking since the 1980's. Within Mr Knapps Statutory declaration he states that the whole parcel 101 has been used for the parking of motor vehicles since the 1980's. Aerial photographs show this



is likely to be the case but do not support or dispute whether the use has changed from the parking of vehicles associated with an industrial use to that of vehicle sales.

- 7.8 The appellant contends that parcel 103 has been covered in hard standing for over 10 years. Mr Knapp in his statutory declaration indicates that it was used by Topps Taxis since 2013. The Council accept that this hard standing is evident in the 2015 historical aerial photographs but would argue that since sometime after 2011 (there are no historical aerial photographs to provide a narrower timeframe for when the creep of hard standing covering the agricultural land commenced) but before 2015 the creep of hardstanding on the agricultural land commenced with substantial completion occurring sometime after 28 March 2022. Therefore, the Council contends that immunity for the built development has not been gained on this parcel of Land.
- 7.9 In respect of parcel 104 the appellant contends that part of this is immune from action however has not yet defined the area that they consider is immune from action. The Council would argue that the only part of parcel 104 that has gained immunity is the Land located within the white line detailed on the plans included in Figure 7 and Figure 8.
- 7.10 In the appellants' Grounds of appeal, they provide Parcel ID Map (1) and outline Land parcels 101, 102, 103, 104, 105 and 106. This plan is not accurate to the areas of hardstanding that cover these parcels and therefore the Council anticipate that the appellant will wish to revise this plan before the Inquiry.

Land east of the Syston Mill buildings (Land parcel 107 and the ground floor of Unit 22)

- 7.11 The appellant contends that the ground floor unit and parcel of land 107 have been occupied by E-Lease Ltd for over 13 years.
- 7.12 The Council do not dispute that E-Lease Ltd have occupied the Land since 2013 as the Council's own Council tax records support this however since occupying the Land the area of land they occupy and park vehicles on has significantly increased over time.



Figure 9 - Aerial photograph from 03 March 2006 with approximate area E-Lease now occupy outlined in yellow.



Figure 10 - Aerial photograph from 01 January 2010 with approximate area E-Lease now occupy outlined in yellow.







Figure 11 - Aerial photograph from 27 September 2011 with approximate area E-Lease now occupy outlined in yellow.



Figure 12 - Aerial photograph from 21 April 2015 with approximate area E-Lease now occupy outlined in yellow.



Note – the parking area extended in the northern and southern areas.



- 7.13 As can be observed in Figure 11 and Figure 12 the area used for the parking of vehicles has extended further into the agricultural land. As the Council considers the Land to be a composite site and one planning unit, even though the appellant may be able to provide evidence as to the extensions to the hardstanding being evident for over 10 years, the Council would contend that this has not gained immunity. This is due to the various changes in uses that have occurred on the Land and the development works that have taken place in other parts of the planning unit. The Council would argue that immunity has not been gained for the use of the building and the development works undertaken by E-Lease Limited for the hiring, display and sale of vehicles on the Land.
- 7.14 The Council do not agree with the appellant that the Ground (d) appeal should succeed based on the information provided above.



## 8. Ground (b) – not occurred

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*that those matters have not occurred*

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- 8.1 The appellant in their Grounds of Appeal at paragraph 5.16 have detailed all the units where they consider there is no breach of planning control. The Council agree that the lawful use of the Land is for industrial use Class B2 with ancillary parking, offices and warehousing, and therefore if the Land was purely used for this use, with no unauthorised development works, then there would be no breach of planning control.
- 8.2 The Council accepts that some of the uses taking place on the Land fall within a B2 use, and such uses would include:
- Car repairs including body repairs and paint spraying
  - Tyre fitting
  - Car serving and MOT
  - Office use ancillary to a lawful B2 use
- 8.3 However, the vehicle sales that are taking place on the Land are a sui generis use and there was a residential use occurring in unit 10 therefore as the Land is one planning unit the use has materially changed from B2 with ancillary office/warehousing to a sui generis use which does not benefit from planning permission.
- 8.4 The Council does not agree that the units and parcels of land where the uses that are taking place, and fall within the lawful use of the Land can be excluded from the Notice, it would be for the appellant to cease the uses that do not fall within use class B2 with ancillary office/warehouse and revert the use of the Land back to the lawful use before the breaches took place.



## 9. Ground (a) – deemed planning application

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*that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.*

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- 9.1 In the appellant's "grounds of appeal" document (4<sup>th</sup> November 2024), paragraph 5.18 reads "... if planning permission is needed for any or some of the land uses, it should be granted..." This is followed by a reference to planning units, which the Council does not consider to be a correct interpretation of the facts. Table 6 then describes some parts of the area covered by the Enforcement Notice, and some proposed responses to that Enforcement Notice. The inference from that table is that the ground (a) appeal should relate only to the balance of the Land, after any of the remediation steps set out in the appellant's Table 6 had been taken. There appears to the Council to be a tension in paragraph 5.18 between a request for planning permission for "any or some of the land uses" and the balance of Land's unauthorised land uses after the steps described in Table 6 have been completed.
- 9.2 The Council wrote to the agent on 18<sup>th</sup> December seeking clarification about the scope of the ground (a) appeal.
- 9.3 Whilst it is within the Inspector's gift to vary the Enforcement Notice, the ground (a) appeal must, in accordance with section 174 (2) (a) and section 177 (5) of the Town and Country Planning Act 1990 (as amended) (TCPA), relate to the matters stated in the enforcement notice as constituting a breach of planning control. That includes areas which have been developed in addition to those labelled on the appellant's "Parcel ID Map (1)" and areas which are not visibly developed in the most recent aerial photography but have been developed on the ground.

### **What a planning permission would permit**

- 9.4 In accordance with section 177(1)(a) of the TCPA, the Secretary of State may grant planning permission in respect of the matters stated in the Enforcement Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters, or in relation to the whole or any part of the land to which the notice relates.
- 9.5 Pending clarification from the appellant about the scope of permission sought in the ground (a) appeal this Statement of Case attempts to address both interpretations of paragraph 5.18 in the "grounds of appeal" document described above.



## **EIA Development**

- 9.6 EIA development is defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, as amended (the “EIA Regulations”) as development: “likely to have significant effects on the environment by virtue of factors such as its nature, size or location”. EIA development falls into two Schedules of the EIA Regulations. EIA is mandatory for developments listed within Schedule 1.
- 9.7 Schedule 2 developments require EIA if they would lead to likely significant effects on the environment. In deciding whether a Schedule 2 development is EIA development, Regulation 5(4) states: “Where a relevant planning authority ... has to decide under these Regulations whether Schedule 2 development is EIA development, the relevant planning authority ... must take into account in making that decision- (a) Any information provided by the applicant; (b) The results of any relevant EU environmental assessment which are reasonably available to relevant planning authority...; and (c) such of the selection criteria set out in Schedule 3 as are relevant to the development.
- 9.8 Since the date of service of the Enforcement Notice two factors have informed the local planning authority’s view about whether the matters constituting the breach of planning control now merit a screening opinion from the Secretary of State.
- 9.9 Firstly, in respect of a separate enforcement appeal at a different location within the Borough, prompted by the appellant, the Secretary of State screened the raising of ground levels within the floodplain in a Countryside setting, and concluded on 26<sup>th</sup> November 2024 that the subject development was within the description at 10(b) of Schedule 2 of the EIA Regulations, and exceeded the threshold area of 1 hectare. The local planning authority had not previously considered that the subject development, nor the current appealed Enforcement Notice related to “urban development projects”, but this opinion from the Secretary of State appears to broaden the understanding of what a 10(b) development might include. The Inspector is invited to exercise the provisions of Regulation 40 of the EIA Regulations and to seek a screening opinion in respect of the subject appeals from the Secretary of State.
- 9.10 Secondly, the submission made by The Environment Agency to the current appeals, dated 16<sup>th</sup> December, draws attention to the relationship between the storage of vehicles close to the bank of the River Wreake and to the EA’s permitting process, as well as making reference to “controlled waters”. The EA commentary led the local planning authority to look for a definition of “controlled waters”. One reference to controlled waters is found in part 11(e) of Schedule 2 of the EIA Regulations. In this respect too we invite the Inspector to apply Regulation 40 and to seek a screening opinion from the Secretary of State.



*Table 2 - Extracts from Schedule 2 of the EIA Regulations 2017*

<p><u>Infrastructure Projects – 10 (b)</u> Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;</p>	<p>(i) The development includes more than 1 hectare of urban development which is not dwellinghouse development; or (ii) the development includes more than 150 dwellings; or (iii) the overall area of the development exceeds 5 hectares.</p>
<p><u>Other Projects – 11 (e)</u> Storage of scrap iron, including scrap vehicles</p>	<p>(i) The area of deposit or storage exceeds 0.5 hectare; or (ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters</p>

- 9.11 The Regulations do not define “urban development projects”. Although dealing with an earlier version of EIA Regulations the judgment in *Crematoria Management v Welwyn Hatfield Brough Council* (Appendix M) considers the meaning. The standard dictionary definition of the word “urban” is “in, relating to or characteristic of a town or city”. Clearly the appeal Land, and the adjacent commercial enterprise are not within an urban area, but its developed nature is characteristic of urban development and has an urbanising effect on its context. The relevant measured area should include hard surfaces. That measured area exceeds 1 hectare.
- 9.12 The term “controlled waters” is defined in the Water Resources Act 1991. The River Wreake, flowing around the Land, is a controlled water. In this case, scrap is being stored within 100m of that waterway.

Is the restoration of the Land EIA Development?

- 9.13 The Steps which the appellant is required to take are set out in the Enforcement Notice. Step 19 requires the removal from the Land all imported materials including hardstanding. Step 24 requires that the Land is restored to its former condition, and in accordance with the year 2000 aerial photography.
- 9.14 That aerial photography accords with the “Existing Site Plan” (drawing number 104/01 dated Nov 2000) submitted with planning application P/00/2521/2 in respect of the extent of development.
- 9.15 The areas affected by those steps are shown in green on Figure 13 below. The combined area measures 1.56 hectares. This exceeds the threshold of 1 hectare for urban development projects described in Schedule 2 part 10(b) of the EIA Regulations.



Therefore, the restoration of the Land required by the Steps in the Enforcement is considered to be EIA development.

*Figure 13 - Extent of increase in developed area (baseline aerial photography 2000 and planning permission P/00/2521/2)*



### Principle of Development

- 9.16 The principle of development in Charnwood is guided by the development strategy set out in Core Strategy policy CS1. It sets out a hierarchy of the most sustainable areas for growth, beginning with the urban area around Leicester, then Loughborough and Shepshed, cascading through the smaller settlements, with growth potential diminishing through the tiers. This approach to directing development toward the more sustainable locations is consistent with the NPPF, and does not hinder the growth of the Borough, provided that development proposals are aligned with the strategy. Policy CS1 has been considered by the Planning Inspectorate in multiple s78 planning appeals during the past year, and in each case found to be up to date.
- 9.17 Syston is listed as one of the third-tier settlements, where policy CS1 anticipates the development of approximately 7 hectares of employment land “within and adjoining” this group of Service Centres. The appeal Land sits outside all of the Limits to Development and is not adjoining the settlement of Syston.
- 9.18 Several policies from the Borough of Charnwood Local Plan (2004) were saved by the Secretary of State and continue to be components of the development plan. The application of Limits to Development is described in saved policy ST/2 of the Borough of Charnwood Local Plan 2004 as being to confine built development to sites within them, save for some exceptional circumstances. The appeal Land is in an area of Countryside. Saved policy CT/1 sets out general principles for development within the



countryside, saying that “Planning permission will be granted for the re-use and adaptation of rural buildings for uses suitable in scale and nature, and small-scale new built development, where there would not be a significant adverse environmental impact, and the proposal would” satisfy one of four criteria. The development at this Land does not satisfy those criteria. Policy CT/2 goes on to say that developments which are acceptable in principle in the countryside should not harm the character and appearance of the countryside and should safeguard nature conservation and amenity, amongst other considerations.

*Figure 14 - Extract from the "Proposals Map" associated with the Borough of Charnwood Local Plan 2004 (appeal Land shown in red - Limits to Development in black dashed line)*

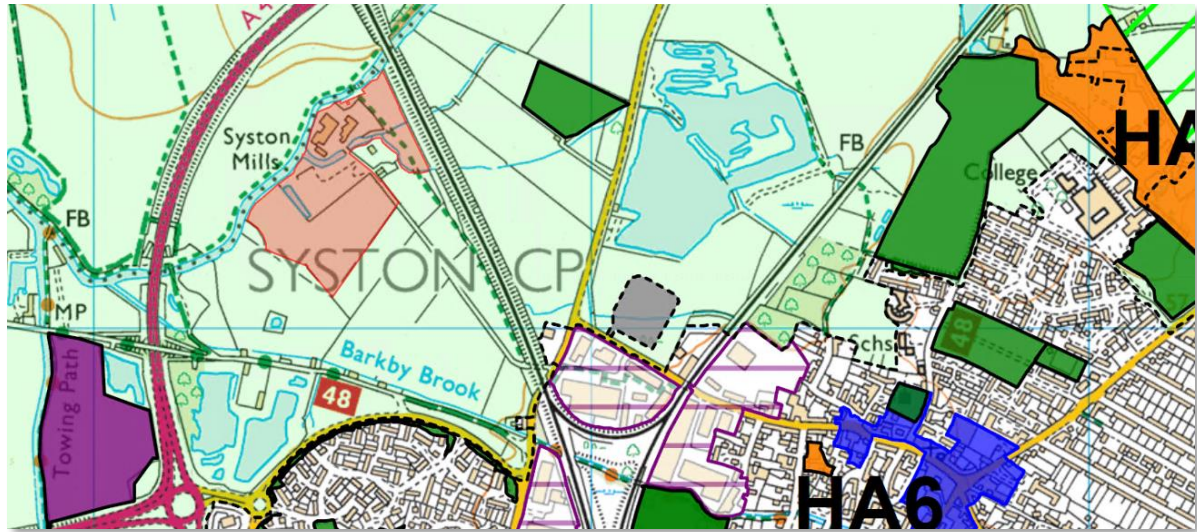


- 9.19 The emerging Local Plan sets out a development strategy for the Borough in its policy DS1 which is based upon urban concentration and intensification, with some limited dispersal to other areas of the Borough. Sustainable development which contributes toward meeting the employment needs of the Borough will be supported where it is located within the Limits to Development defined in this plan. The appeal Land is outside those Limits, and in the Countryside.





Figure 15 - Extract from the "Policies Map" associated with the emerging Charnwood Local Plan 2021-37 (appeal Land shown in red - Limits to Development in black dashed line)



- 9.20 In the Countryside development will be managed to protect its largely undeveloped character, in accordance with saved policy CT/1 and emerging policy C1 (as proposed to be modified). These policies support some forms of development. These include development related to land-based industries, community facilities, burial spaces, and re-use of existing rural buildings with small-scale new built development where there would not be significant adverse environmental effects.
- 9.21 Core Strategy policy CS10 (Rural Economic Development) offers support for the sustainable growth and expansion of businesses in rural areas, through the conversion of existing buildings and well-designed new buildings. In all cases the scale and character of the development should cause no detriment to the character and appearance of the countryside. Policy CS17 (sustainable travel) requires that new development contributes to a modal shift away from travel by private car. Policy CC5 (sustainable transport) (as proposed to be modified) in the emerging Local Plan shares that aim, requiring that development provides at least good accessibility to key facilities and services by walking, cycling and public transport, including for people with restricted mobility.
- 9.22 Policy E3 (Rural Economic Development) from the emerging Local Plan (as proposed to be modified) offers support for the sustainable growth and expansion of all types of business and community needs in rural areas through conversion of existing buildings and well-designed new buildings, where such development is not detrimental to the character and appearance of the Countryside in terms of scale, character or operational requirements.



- 9.23 Both local plan policies for rural economic development, CS10 and E3 echo the aims of the NPPF at its paragraphs 88-89, which supports a prosperous rural economy in similarly worded terms.
- 9.24 Offices are “main town centre uses” as defined in the NPPF, the Charnwood Core Strategy and the emerging Local Plan. Policies CS9 and T1 describe an aim to ensure that the vitality and viability of town centres is supported. Where main town centre uses are proposed they shall be subject to a sequential assessment, and only if suitable sites are not available should out of centre sites be considered. This approach is consistent with section 7 (Ensuring the vitality of town centres) of the NPPF.

#### Entire Area of Unauthorised Development

- 9.25 A retrospective application to retain the entirety of the unauthorised development would be contrary to the development strategy as defined in both the Core Strategy and the emerging Local Plan. The growth of the Borough is directed toward the most sustainable locations, with provision for growth of employment uses identified at multiple locations within and adjoining settlements.
- 9.26 The expansion of businesses in rural areas can be supported, but that support is qualified. Firstly, it relates to buildings. The conversion of, and even addition of well-designed buildings can be supported. This support is considered to extend to ancillary use of outdoor areas for circulation and parking. These ancillary uses must be supportive of the primary function of the business, and not the main, or separate use of the outdoor areas. For some of the more recent expansions of hardstanding it is not clear what the intended use is, but it is development not associated with existing or new buildings.
- 9.27 Secondly, there should be **no detriment** to the character and appearance of the countryside arising from the development. Policies CS10 and E3 are unequivocal. That impact on the character and appearance of the countryside will be considered in more detail later in this statement of case, but it is self-evident that harm has been caused by the unauthorised development at the car and van sales areas, and at the riverbank, which is not proposed to be mitigated in the grounds of appeal.
- 9.28 There is policy support in CS10 and E3 for the conversion and re-use of the existing mill buildings. The Grounds of Appeal at ground (a) are not explicit about the uses proposed in those buildings, but Tables 3, 4 and 5 purport to list current, and most recent uses of the various units created within the existing buildings by subdivision of the previously single occupant building. That previous occupancy was as a factory,



which is Use Class B2. Other B2 uses within those buildings would therefore have support from the planning history, and in local and national policy.

- 9.29 Office uses which might be ancillary to a B2 use could be permissible, but that is not the situation described in the Enforcement Notice, the Grounds of Appeal statement and the sales brochure by Galaxy Real Estate. Unit 10 is described by the appellant as “offices in use by Bogden Fehrer Ltd.” Table 3 also lists that company as the occupiers of units 7 and D, as well as the car sales area identified as Parcel 104. In the sales brochure Unit 7 is described as being 1300sqft, and unit D as being 6480sqft. Unit 10, as the office serving two car repair workshops, is a two-storey building, with a footprint of around 1500sqft, and total floor area of around 3000sqft. This office space, part of which was being lived in, is disproportionately large to be an ancillary space to the co-related car repair workshops and vehicle sales. In common with the other car display and sale lots, parcel 104 had a temporary office building.
- 9.30 Table 3 in the Grounds of Appeal statement list office uses in unit 10, first floor of unit 22 and unit 16. Where these are ancillary to the B2 uses on the Land these office uses are considered to be acceptable. If they are used as stand-alone business units, or as a main use for some of the appellant’s tenants, they would be “main town centre uses” as defined by the NPPF. Main town centre uses at the appeal Land would be contrary to Core Strategy policy CS9 (Town Centres and Shops) and policy T1 (Town Centres and Retail) and to section 7 (Ensuring the vitality of town centres) of the NPPF. A sequential test would be required to establish that there are no suitable sites available, or expected to become available in town centres, district centres, local centres, edge of centre locations before main town centre uses would be permitted at the appeal Land. No sequential assessment has been undertaken.
- 9.31 The use of parts of the Land for car and van sales and hire, offices not ancillary to B2 businesses, areas of hardstanding expanding into the countryside, and other uses of the Land at the time of service of the Enforcement Notice illustrate a mixed-use of the Land across a number of Use Classes. The combined sui generis use of the Land is a change of use of the Land from the previously lawful Use Class B2 use.

#### Reduced area of unauthorised development

- 9.32 Whilst the reference to Parcels in the appellant’s Grounds of Appeal has proven to be a useful tool it should not be relied upon as a comprehensive or accurate record of the developed parts of the Land. The figure below illustrates those parts of the Land which would remain to be considered by the Inspector in circumstances where the appellant



only wanted the ground (a) appeal to relate to those areas of Land remaining after the removal of parts of Land described in Table 6.

*Figure 16 - Deemed planning application (based on reduced area described in Table 6 of "Grounds of Appeal" and subject to change in response to appellant's clarification about the extent of the ground (a) appeal)*



- 9.33 A triangular area labelled “caravans” is shown in the “Parcel ID Map (1)” so it might be assumed that this is the part of the Land proposed for the storage of caravans, but this area has not previously been used for the storage of caravans. Table 6 refers to part of “Parcel 104” but the extent of this part is not explicit. The area described as “Parcel 103” is not shown as extending to the top of the riverbank along its northern edge, when on the ground it does. Parcels 102, 104, 105 and 106 on the Parcel ID Map (1)” do not extend as far west as the development on the ground. Parcel 106 does not extend to the riverbank at the north, west, and east, but the developed area does.
- 9.34 The deemed application on the reduced area remains as an application for multiple uses within a single deemed application, meaning that it too seeks permission for sui generis development. The consideration of planning policy relating to elements of development set out in the section of this report addressing the entire developed part of the Land apply equally to the reduced area which might be the subject of the deemed application, based on an interpretation of paragraph 5.18 in the “Grounds of Appeal”.

#### Conclusion – Principle of Development

- 9.35 The deemed application seeks permission for a change of use, in either interpretation of its objectives, from the previously authorised uses of agriculture and B2 (former mill building) to mixed uses across the Land. These include car repairs (use class B2), car sales (sui generis), caravan site (sui generis), general industrial (B2), MOT Centre (B2 or E), offices (E), residential (C3), and scrap yard / yard for breaking vehicles (sui



generis). The combined uses lie outwith any one of the use classes defined in the Town and Country Planning (Use Classes) Order 1987 (as amended), and the proposed use is therefore sui generis.

- 9.36 The deemed application also seeks retrospective permission for the expansion of built development, beyond the extent of development approved by application P/00/2521/2, into the Countryside in an area located well outside Limits to Development for any settlement, contrary to saved policies ST/2 and CT/1 from the Borough of Charnwood Local Plan. The development at this location is contrary to the development strategy for Charnwood expressed in policy CS1 of the Core Strategy, and DS1 of the emerging Local Plan, and is not at a location which supports sustainable forms of travel, contrary to CS17 and emerging policy CC5. The development is contrary to policy CS10 and CS11 of the Core Strategy, in that it is not a form of rural economic development supported, and that there has been detriment to the character and appearance of the countryside. For the same reasons it is contrary to policies C1, E3 and EV1 of the emerging Local Plan. Forms of development are proposed to be retained which are main town centre uses, contrary to Core Strategy policy CS9 and T1 from the emerging Local Plan.
- 9.37 The degree of harm to the landscape character of the countryside may differ somewhat between the different versions of the deemed application, as interpreted from the grounds of appeal, but the conclusions to the assessment against the key policies remain constant. Overall, the principle of the retention of the development, in whole or in the part described in Table 6 of the grounds of appeal, is contrary to planning policy locally and nationally.

### **Landscape and Countryside**

- 9.38 Section 15 of the NPPF sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services. Policy CS11 (Landscape and Countryside) of the Core Strategy sets out that the Council will support and protect the character of the Borough's landscape and countryside by requiring new developments to protect landscape character and to reinforce sense of place and local distinctiveness by taking account of relevant local Landscape Character Assessments. Emerging Local Plan policy EV1 (Landscape) (as proposed to be modified) adds a requirement to enhance the Borough's distinctive landscape.



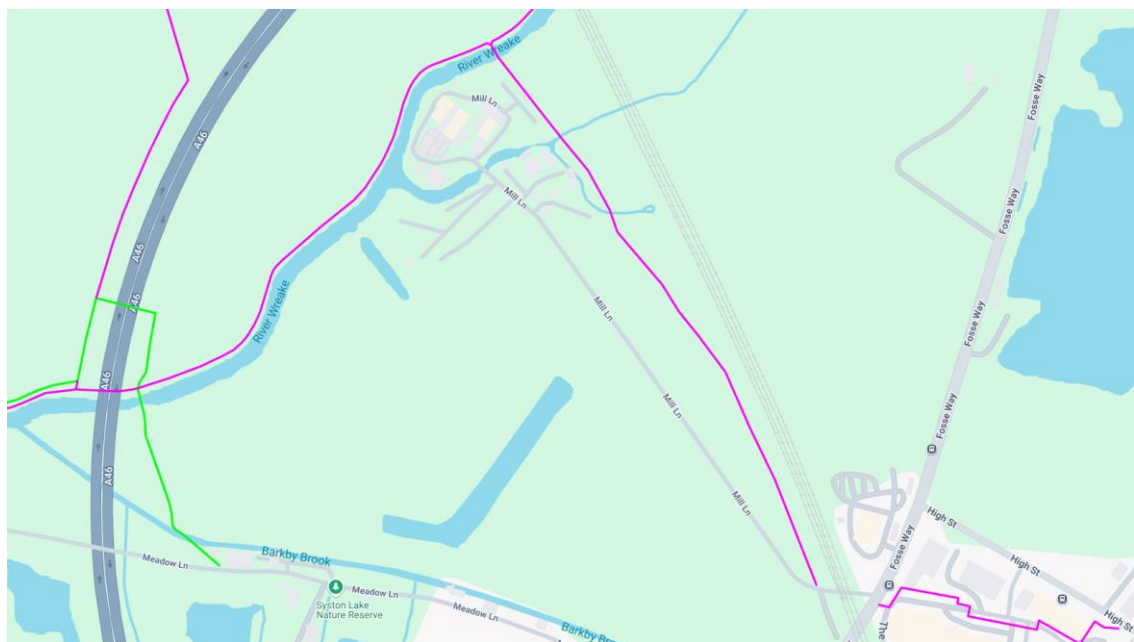
- 9.39 Syston Mill is located in the Soar Valley Landscape Character Area (Borough of Charnwood Landscape Character Assessment July 2012). The Land demonstrates many of the key characteristics of the Soar Valley, most notably:
- Flat wide river floodplain which experiences regular flooding
  - Major engineering features are the raised landscaped embankments of A6 and mainline railway and electricity pylons
- 9.40 The raised landscaped embankment of the mainline railway runs adjacent to the Land and there are electricity pylons in the adjacent pastoral fields and crossing the development Land.
- 9.41 The guidelines for the Soar Valley Landscape Character Area include:
- Conserve and enhance the pastoral landscape of the floodplain.
  - Maintain the current balance between the urban and rural character of the Soar Valley
  - Encourage public access along the length and across the width of the river corridor where it is compatible with the tranquil and pastoral quality of the Soar Valley landscape.
- 9.42 The Syston Mill development is not in keeping with these guidelines as the pastoral landscape of the floodplain has been developed in an ad-hoc manner, rather than being conserved and enhanced. The development does not maintain the current balance between the urban and rural character of the Soar Valley landscape, and it represents an unregulated incursion into the countryside.
- 9.43 PRoW I56 runs roughly parallel with the mainline railway, with access at the Mill Lane/Fosse Way junction close to the railway bridge. PRoW I56 runs adjacent to the railway and then crosses the River Wreake and runs along the river on the opposite side to Syston Mills. During a site visit by the Council's Landscape Officer on 17/12/24 the River Wreake was inaccessible from the PRoW due to overgrown, unmanaged vegetation. Another attempt was made to access this section of the PRoW via Syston Mill. The PRoW is also inaccessible from this point due to a padlocked bridge over the River Wreake. The PRoW has a very low level of use and therefore is incompatible with the landscape guidelines for the Soar Valley Landscape Character Area to encourage public access along the length and width of the river corridor.
- 9.44 Syston Mill is very close to the boundary with the Wreake Valley Landscape Character Area and therefore displays some of the characteristics of the area. The guidelines state:



*New development should preserve the open character of the Wreake valley, and have regard for the views across the valley.*

- 9.45 The development at Syston Mill is in breach of this guidance.
- 9.46 The eastern edge of “parcel 107” is alongside a Public Right of Way (PRoW) I56. A high, dilapidated wooden fence currently screens the parcel from the PRoW. However, the fence is broken in sections (site visit 17/12/24) providing a direct view of the hardstanding of Parcel 107. The area of hardstanding, and the urban character of the boundary fence are out of keeping with the rural landscape character of the development Land’s context.

*Figure 17 - Public Rights of Way (purple line)*



- 9.47 The developed area to the south of the tributary of River Wreake, described by the appellant as parcels 101-106, are highly visible from Mill Lane which leads off the Fosse Way. They are also visible from PRoW I63a which runs alongside the northern bank of River Wreake. The development of this area of land has caused significant unmitigated harm to the existing rural landscape character.
- 9.48 The development, as it has extended to the east around parcel 107, and to the south-west in parcels 101-106 has caused detriment to the character of the landscape and countryside, and is therefore contrary to saved Local Plan policy EV/1, Core Strategy policies CS10 and CS11 and to policies C1 and EV1 from the emerging Local Plan.



## Flood Risk

- 9.49 Section 14 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk and that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.
- 9.50 Saved policy EV/29 from the Borough of Charnwood Local Plan (2004) directs that planning permission will not be granted for development within 8m of the top of river bank which would obstruct access for future maintenance of the watercourse.
- 9.51 Policy CS16 of the Core Strategy directs development to locations within the Borough at the lowest risk of flooding, and supports developments that take the opportunity to reduce flood risk elsewhere.
- 9.52 Emerging Local Plan Policy CC1 directs development to areas with the lowest risk of development and encourages development to incorporate Sustainable Urban Drainage Systems (SuDS). Emerging Policy CC2 of the Draft Local Plan requires that development will include appropriate measures to manage flood risk.
- 9.53 The Land is wholly within flood zones 2, 3 and 3b, identified by the Environment Agency’s flood mapping.

Figure 18 - Extract from Environment Agency "Flood map for planning"



Figure 19 - Extract from Environment Agency "functional floodplain map" - Flood Zone 3b.







9.54 The Environment Agency points out that the definition of flood zone 3b was changed in 2022. Updated Flood Risk and Coastal Change guidance under paragraph 077 of the PPG defines flood zone 3b as:

*land having a 3.3% or greater annual probability of flooding, with any existing flood risk management infrastructure operating effectively.*

9.55 This equates to the 1 in 30 year outline which the current hydraulic model does not include. Therefore, the impact is likely to be greater than that indicated within the current hydraulic modelling and the SFRA. The EA would expect this revised definition to be represented in any site-specific flood risk assessment submitted by the appellant.

9.56 A development proposal, whether or not it is retrospective, should be accompanied by a flood risk assessment which considers the risk to the development, and caused or exacerbated by the development. The assessment should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking climate change into account, and with regard to the vulnerability of its users (see [National Planning Policy Framework Annex 3 – Flood Risk Vulnerability](#)).

9.57 The land uses observed at the Land generally fit within the Less Vulnerable classification. However, the use of one building as a dwelling is a More Vulnerable use, and if the proposal is for caravans to be used as permanent residential accommodation that would be a Highly Vulnerable classification.

#### Sequential Approach to the location of development

9.58 The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding. Avoiding flood risk through the sequential test is the most effective way of addressing flood risk. In preparing its local development plans the Council has undertaken Strategic Flood Risk Assessments, which inform the spatial strategy. Provision for the growth of the local economy has been identified in the land use planning associated with the extant and with the emerging Local Plan.

9.59 A Sequential Test ensures that a sequential, risk-based approach is followed to steer new development to areas with the lowest risk of flooding. Where it is not possible to locate development in low-risk areas, the Sequential Test should go on to compare reasonably available sites:

- within medium risk areas; and



- then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas.

9.60 No sequential test has been submitted in support of this deemed application.

9.61 In both interpretations of the scope of the ground (a) appeal described in the “grounds of appeal” paragraph 5.18 some parts of the deemed application seek permission for less vulnerable development within the functional floodplain, and/or more vulnerable and/or highly vulnerable uses within flood zones 3a and 2. Even if a sequential test demonstrates that there are no reasonably available sites available with a lower flood risk, an Exception Test may be required.

*Table 3 - Flood risk vulnerability and flood zone ‘incompatibility’*

Flood Zones	Flood Risk Vulnerability Classification				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compatible
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception test	✓	✓	✓
Zone 3a	Exception test	✗	Exception test	✓	✓
Zone 3b	Exception test	✗	✗	✗	✓
<b>Key</b>	✓	Exception test not required		✗	Development should not be permitted

9.62 An exception test should demonstrate that:

- development that has to be in a flood risk area will provide wider sustainability benefits to the community that outweigh flood risk; and
- the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

9.63 The proposal under consideration at this stage does not include an exception test.

9.64 Paragraph 181 of the NPPF guides decision makers on considerations relevant to the determination of planning applications seeking permission for development in areas at risk of flooding, or which have the potential to increase flood risk elsewhere. These include consideration of any flood resistance or resilience measures proposed, the use of sustainable urban drainage systems, and safe access and egress routes in case of emergency. Regardless of the vulnerability classification of uses at the site occupants could be trapped by rising flood waters, with no safe means of escape across the site, over the bridge, or along Mill Lane.



9.65 The existing dwelling house on the west side of Mill Lane (outside the Land and under different ownership) is a More Vulnerable use, which could be impacted by any flood water displaced by the development for which retrospective permission is sought. The scaffolding yard north of this dwelling is a less vulnerable use, which may also be impacted.

#### Riverbank Storage

9.66 Officers observed storage of scrap vehicles, caravans and related materials along the riverbank to north of the Syston Mill buildings. This storage is not considered to be historical and was not evident in aerial photography until recent years. This storage impedes access to the river for maintenance purposes, contrary to saved policy EV/29. Similarly the proposed caravan storage area would impede access, contrary to policy EV/29.

9.67 Although it is not only caravans being used as residences which are Highly Vulnerable, there is a risk of some of the materials being stored in this area being damaged or washed away in a flood. River Wreake is a controlled waterway, and the combined considerations of stored scrap vehicles being sources of pollution, the risk of detritus being washed away and the need to preserve a maintenance strip alongside the river contribute to questions of whether this aspect of the breach of planning control, and the deemed application represents Schedule 2 EIA development.

#### Land Fill and Hardstanding

9.68 The Council has no evidence of the types and sources of the materials used to restore the former quarry at the site, or those used to form the extensive areas of hardstanding around the site on both sides of the backwater. These materials may or may not introduce contamination concerns. The unmetalled surfaces will carry any pollutants in the fill material to the watercourse.

9.69 Given the numbers of cars and vans parked, and moving on the unmetalled areas there is likely to be some level of oil or fuel spillage, which finds its way through the hardstanding to the watercourse.

9.70 Whilst some of the areas around the units being used for car repair have metalled aprons, there is no evidence of any interceptors which would prevent leakages, or spills from making their way to the watercourse.

9.71 It is considered by the Council that the deemed application would need to be supported by a Phase 1 site investigation, and it will need to propose pollution prevention measures. At this date none of the required information is available.



### Flood Risk Conclusion

- 9.72 Overall, it is considered that the development at the Land is contrary to saved policy EV/29 of the 2004 Local Plan, policy CS16 of the Core Strategy, policies CC1 and CC2 of the emerging Local Plan and section 14 of the NPPF. No site-specific flood risk assessment has been submitted. Sequential and exception tests have not been undertaken, and there is no known need for the development to be located in a flood plain. There is also no evidence of the consideration of sustainable urban drainage systems.

## **Ecology and Biodiversity**

### Environment Act 2021

- 9.73 Amongst its measures the Environment Act requires developers to provide a net biodiversity gain of 10%. Exemptions from that requirement are set out in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024, and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024 (Commencement Provisions). These exemptions include planning permission relating to development to which section 73A of the 1990 Act applies (Commencement Provisions s2(2)).

### Biodiversity Net Gain

- 9.74 Paragraph 187 of the NPPF requires that planning decisions should contribute to and enhance the local environment in a number of ways, including provision of net gain in biodiversity. However, the legislative exemptions described above apply. Paragraph 193(a) advises that “if significant harm to biodiversity resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or as a last resort compensated for, then planning permission should be refused.”
- 9.75 Core Strategy policy CS13 sets out the Council’s requirement that development proposals must demonstrate no net loss in biodiversity. Clarification was published in the Council’s Biodiversity Planning Guidance (May 2022), which is a Council Cabinet approved document.
- 9.76 Emerging policy EV6, which attracts significant weight, supports new development proposals which will protect and enhance biodiversity networks. It requires proposals

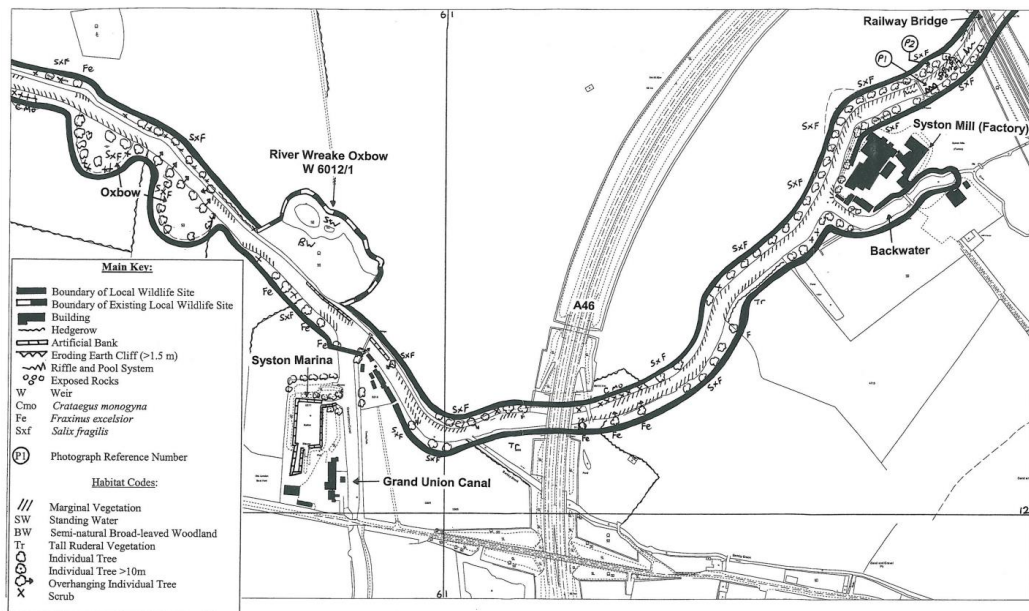


to be accompanied by a biodiversity impact assessment (BIA) which demonstrates how the proposal has been designed to minimise ecological impact and provide 10% net gain on the Land in the first instance. The requirement to provide a 10% net gain does not apply to this deemed application, because of the exemptions provided for in legislation.

### Baseline Ecology

- 9.77 The Council's ecologists were consulted. They note that no ecology surveys have been undertaken on the Land, but information from several sources was used to gather evidence.
- 9.78 River Wreake, along the northern boundary of the Land was notified in 2006 as a Local Wildlife Site (LWS) for its habitat quality, diversity and presence of red data book species. The citation shows this section of the river (River Wreake LWS citation, page 10) to have dominant crack willow *Salix fragilis* trees present on both banks with a small area of scrub, tall ruderal vegetation and marginal vegetation along the channel margins. The marginal backwater (SK 61462 12332) is connected to the river and within the LWS boundary. There is also a pond (SK 61408 12272) present on the map which is not connected to the river and outside the LWS boundary.

Figure 20 - River Wreake - Map Two (from Notification of site of importance for Local Wildlife Site Mar 2006)



- 9.79 A site visit by the Council's ecologists on 26<sup>th</sup> November 2024 showed that existing vegetation mainly consists of broadleaved woodland dominated by crack willow *Salix fragilis*, and semi-mature ash *Fraxinus excelsior* (SK 61422 12299 and SK 61433



12327) around the pond and river embankments. The understorey consists of occasional bramble *Rubus fruticosus*, hemlock water-dropwort *Oenanthe crocata* and nettles *Urtica dioica*. Areas of tall ruderal vegetation consisting of rosebay willowherb *Chamaenerion angustifolium* was present along the boundary of parcel 106 (SK 61415 12327). Scattered scrub was present along the bank of the backwater (SK 61514 12372) consisting of bramble and hazel. The field to the south of Syston Autos (SK 61520 12251) was flooded at the time and was grazed by horses, rushes were present at the time.

- 9.80 Google Earth satellite imagery was reviewed. The imagery from the mid-2000's clearly shows the character of the areas developed during later years to be similar to that of the surrounding landscape. This appears to consist of scattered trees, scrub and grassland. Therefore, the surrounding habitat can be used as a reference to develop an understanding of the habitat present at the time the planning breach took place.
- 9.81 A planning application for development of an adjacent site at the eastern side of Mill Lane, (Reference P/21/1925/2 and Appeal Decision APP/X2410/W/23/3318405 – Appendix O) was supported by an ecological assessment (Ecology Technical Note by FPCR, June 2022). The baseline ecology assessment determined habitats to consist of semi-improved neutral grassland in moderate condition (SK 61608 12307) with tall ruderal, native hedgerow with trees, scattered bramble scrub and line of trees.
- 9.82 A precautionary approach must be taken when making a baseline assessment, and this information is only used as a guide.

#### Land Degradation

- 9.83 Google earth imagery shows the extent of land degradation from the mid 2000's until 2022. The most recent imagery is shown from March 2022. Development occurred gradually over many years until 2024. This included the creation of new hardstanding, land level changes and the removal of vegetation to incorporate the development.
- 9.84 Developments appear to include the clearance of vegetation within the LWS and clearance of trees within the land south of the backwater. Additional areas have been cleared beyond those illustrated on the appellant's Parcel ID plan, with evidence of land level changes, with areas of hard standing laid, which are not apparent in the aerial photography.



Figure 21 - Recently developed area alongside River Wreake, south of the backwater



### Ecological assessment

- 9.85 In accordance with Schedule 14 of the Environment Act 2021, where a person carries out activities on land on or after 20<sup>th</sup> January 2020 which reduce the biodiversity value of the onsite habitat, the pre-development biodiversity value is to be taken to be its biodiversity value immediately before the carrying out of the activities.
- 9.86 A Biodiversity Impact Assessment (BIA) will be required to inform the baseline ecological value and assess the scale of biodiversity loss which has resulted from the unconsented development. The baseline assessment will be determined from desk-based mapping and using information from the surrounding habitats where possible but using a precautionary approach. The post-development assessment can be made using current information. The BIA needs to be accompanied by condition assessments and a statutory Metric spreadsheet.
- 9.87 As encroachment has occurred along the riverbank within 1m of the bank top, a Modular River Physical (MoRPh) survey will also be required of the River Wreake and connecting waterbodies.

### Protected Species

- 9.88 A recent PINS decision in respect of APP/U1430/W/24/3342573 (dated 12 August 2024, see Appendix N referenced paragraph 99 of Circular 06/2005 (at paragraph 36 of the decision) which states that:

*It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before*



*the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.*

- 9.89 In the absence of a protected species assessment, in the context of the previously existing habitats and the river's riparian, the deemed application would not be supported.
- 9.90 Overall, the deemed application is not supported by any assessment of the ecological impact. It is in conflict with section 15 of the NPPF, and with policy CS13 of the Core Strategy and policy EV6 of the emerging Local Plan.

## **Highways**

- 9.91 Policy CS17 of the Core Strategy aims to achieve a 6% shift from travel by private car to walking, cycling and public transport. Policy CS18 of the Core Strategy requires network improvements where necessary. Saved Policy TR/18 of the Local Plan seeks to ensure adequate parking is provided in new development.
- 9.92 Emerging Local Plan policy T3 requires new development to provide car parking in accordance with the latest published guidance of the County and Borough Councils. Emerging policies INF1 and INF2 seek to secure appropriate infrastructure to mitigate the impacts of development.
- 9.93 Mill Lane is an unclassified road, not maintained by the County Council. It joins Fosse Way roughly 500m from the southernmost car sales area on the Land. It measures around 3m in width along most of its length, with informal passing bays increasing that width to around 4.5m locally. The tarmac surface is poorly maintained, with large cracks and potholes apparent. There is no separate footpath or cycle path.
- 9.94 Fosse Way is a busy road, with right turns into and out of Mill Lane made difficult by traffic volumes. Visibility to the right is restricted by a railway abutment. To the left it is impaired by a road sign and by unauthorised advertisement signs. There has not to date been an assessment of the adequacy of this junction submitted to this appeal, and so there is insufficient information to allow the Council to form a view of its capacity and safety.

## Sustainable Travel

- 9.95 There is a bus stop for southbound travellers on the opposite side of Fosse Way at around 640m from the centre of the Land, but no pedestrian crossing. The nearest bus stop for north bound travellers is around 160m away from the junction with Mill Lane





and 790m from the centre of the developed Land, but there is no footpath connecting Mill Lane to that bus stop.

- 9.96 In accordance with policy CS17 and policy CC5 from the emerging Local Plan the objective of achieving modal shift toward more sustainable modes of travel is to be achieved by improving the access to key facilities and services on foot, by bicycle or on public transportation. Routes should be well lit and safe, and bus stops should be within 400m walking distance. None of the facilitation of sustainable travel has been provided in this case, and it is not clear how it could be. The appellant does not appear to have sufficient control over the length of Mill Lane to allow the addition of a footpath, or street lighting. There is no proposal to enhance the public transportation service. Visitors to the Land, or people who work at the Land are more likely to continue to use their private cars. The objective of modal shift is unlikely to be achieved. The proposal is therefore contrary to Policy CS17 and policy CC5.

#### Transport Assessment

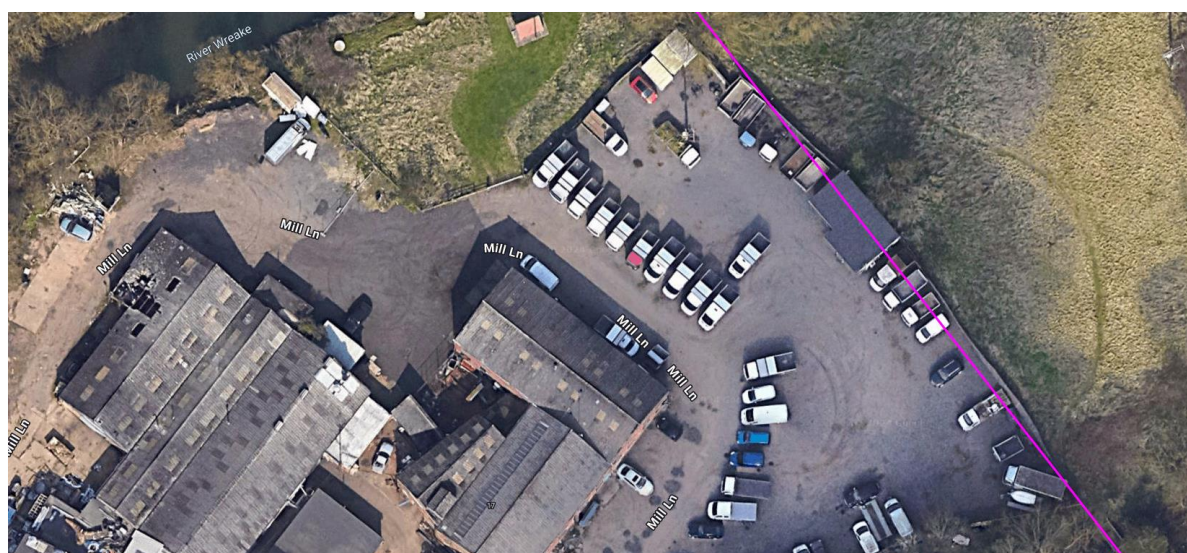
- 9.97 The unauthorised development at the Land appears to represent an intensification of the use of Mill Lane. The deemed application should then be supported by a Transport Assessment and a Travel Plan which consider the impacts of the development on Mill Lane, the highway, traffic flow and sustainable travel, and how traffic will be managed within the Land, in accordance with paragraph 118 of the NPPF.
- 9.98 The bridge connecting the two parts of the Land is too narrow to allow vehicles to meet. The proposal should include the means of managing traffic flow in two directions along Mill Lane and crossing the bridge.
- 9.99 The parking within the Land appears to be very informal, with few marked parking spaces. The appellant should demonstrate the level of parking provision being proposed for staff, customers, cars awaiting repair and service vehicles, mindful of the differing sizes of vehicles likely to visit the site and of the need to provide parking spaces for drivers with limited mobility. The internal circulation should include turning spaces for the largest vehicles anticipated to visit. If a one-way system is proposed, there should be an alternative turning area for occasions when the internal gates are closed.
- 9.100 As currently configured it is not clear that the parking provision at the site would satisfy saved Local plan policy TR/18, emerging Local Plan policy T3 or the Leicestershire County Council "[Non-residential parking standards Sui Generis](#)".



### Public Right of Way

- 9.101 Acknowledging that the online mapping of public rights of way sometimes lacks precision, it appears to the Council that the eastern extension of the van sales yard has encroached upon PRoW i56.

*Figure 22 - Public Right of Way i56 (purple line) from LCC "where to walk in Leicestershire" website*



- 9.102 The appellant should demonstrate that relevant permits have been obtained to redirect the PRoW, to the satisfaction of the County Council.

### Conclusion – Highways

- 9.103 The development of the Land after the year 2000 represents a significant intensification of usage and is likely to have generated a commensurate additional volume of traffic. This intensification has not been accompanied by improvements to sustainable travel, but has in fact encouraged additional trips by private car to a location which is unsustainable in travel terms. Additional pressure has been added to highway junctions, especially the Mill Lane/ Fosse Way junction, without being considered in a Transport Assessment. The internal layout and on site parking have not been demonstrated to be safe or adequate. Overall the development is contrary to saved policy TR/18, Core Strategy policies CS17 and CS18, to emerging Local Plan Policies CC5, T3, INF1 and INF2 (as proposed to be modified) and to section 9 of the NPPF.



## **Residential Amenity**

- 9.104 Saved policy EV/1 of the Local Plan and policy CS2 of the Core Strategy, and emerging Local Plan policy DS5 require high quality design which protects the amenity of adjacent properties. The Charnwood Design SPD (2020) also provides guidance to ensure an adequate level of amenity is achieved.
- 9.105 The amenity enjoyed by the dwelling known as Mill House, adjacent to the Land, should be considered. Its front elevation sits only a few metres back from Mill Lane, and is vulnerable to the impact of traffic passing along the lane. The development on the Land, and the associated traffic gives rise to noise, vibration and dust, which could be at levels which have an adverse impact upon the amenity of existing residents. The appellant should submit expert reports on each of these potential nuisance factors. Such expert reports may well include mitigation measures which would need to be added as planning conditions to any allowed appeal decision.

## **Sustainable Construction**

- 9.106 Policy CS16 from the Core Strategy and policy CC4 in the emerging Local Plan support development which take account of sustainable development principles. These policies consider how waste is reduced and managed, how water is managed, protection of environmental resources, and energy efficiency in design, amongst other matters.
- 9.107 The appellant should demonstrate how each relevant aspect of these policies has been considered, and how waste and water in particular are being managed. These measures, if considered adequate by the Inspector, may be necessary to secure by planning conditions.
- 9.108 On Land which is subject to flood risk these matters of management of waste, including sewage, have a particular importance. Bins have a tendency to float away in flood water, and sewage stored in tanks below the predicted level of flood water can be particularly problematic. The storage of scrap vehicles, caravans and parts alongside the River Wreake, and the paucity of pollution prevention measures evident at the Land are additional matters of concern.
- 9.109 Based on the observations of Officers during site visits the Land has been developed, and is being managed in a manner contrary to the requirements of policy CS16 from the Core Strategy and policy CC4 in the emerging Local Plan.



### **Planning Balance and Conclusion (deemed application).**

- 9.110 The deemed application seeks permission for forms of development not considered by the policies of the development plan to be appropriate in the countryside. The spatial strategy for the Borough makes provision for sufficient employment land in sustainable locations, and development at the Land is not an exceptional case that would warrant this form of contravention of that strategy as expressed in Core Strategy policy CS1 and emerging local plan policy DS1. As developed, it does not fit with the policy support for rural economic development expressed in CS10 and in paragraphs 88-89 of the Framework.
- 9.111 Some elements of the development observed are main town centre uses. No sequential assessment has been undertaken to demonstrate that this Land is a suitable location for them. In this respect, the development is contrary to policy CS9 of the Core Strategy and policies T1 and SC1 of the emerging Local Plan.
- 9.112 The introduction of the urbanising forms of development evidently has been detrimental to the landscape character of the countryside, contrary to policies CS10 and CS11 in the Core Strategy and policy EV1 in the emerging Local Plan. Unquantified and unmitigated harm has been caused to the ecology and biodiversity on the Land contrary to policy CS13 of the Core Strategy and EV6 and section 15 of the Framework. No information has been provided about the impact on protected species, which are likely to be present in this type of location, and in accordance with Circular 06/2005, planning permission should not be granted until the presence or otherwise of protected species, and the extent that they may be affected by the development is established.
- 9.113 The development fails to satisfy national flood risk policy in terms of the sequential location of development, and is in conflict with policies CS16 of the Core Strategy and CC1, and CC2 of the emerging Local Plan.
- 9.114 The site does not provide for sustainable travel for its staff or visitors. There are no lit pedestrian or cycle routes connecting with the active travel infrastructure in Syston, and no safe access to bus stops, which are located at a considerable distance from the centre of the developed part of the Land. There are concerns about the capacity of Mill Lane to carry the traffic being generated, and about the impact upon highway safety along Mill Lane and at its junction with Fosse Way. Pending the consideration of a transport assessment as required by paragraph 118 of the NPPF and inputs from the County Council as the Local Highway Authority it appears to the Borough Council that the development is in conflict with policies CS17, CS18 and CS24 and with policies INF1 and INF2 in the emerging Local Plan. It is also in conflict with the objectives in



section 9 of the Framework and appears to the Borough Council to be in conflict with the LHA's Highway Design Guide.

- 9.115 Impact on the residential amenity of Mill House has not been addressed, and so there is insufficient information to inform that aspect of the consideration. The deemed application is therefore in conflict with policies EV/1 of the saved Local Plan, CS2 of the Core Strategy and DS5 of the emerging Local Plan, and with section 12 of the Framework.
- 9.116 Sustainable Construction policies include a requirement to manage water and waste. In the context of development in a high-risk flood zone these matters have added relevance. The appellant has not yet demonstrated how they can satisfy the policy requirements of CS16 from the Core Strategy and CC2 and CC4 of the emerging Local Plan.
- 9.117 The factors listed above would result in conflict with the development plan as a whole and with the objectives of sustainable development set out in the Framework. Significant weight is given to the development plan conflict given the relevant policies are generally consistent with the Framework.
- 9.118 The policies most important for determining this deemed planning application are considered to be ST/2, CT/1, EV/1 and TR/18 from the Borough of Charnwood Local Plan (2004), CS1, CS2, CS10, CS11, CS13, CS16, CS17, CS18 from the Core Strategy (2015).
- 9.119 Policy TR/18 has partially been succeeded by the latest Leicestershire Highway Design Guide, and so partly out of date. The Limits to Development relied upon in ST/2 and CT/1 insofar as it responds to those Limits no longer serve the needs of the Borough's growth, and so are out of date.
- 9.120 Considering the matters which have changed since those policies were drafted, including the introduction of the Core Strategy and the advanced stage of progress of the emerging Local Plan the importance of those out-of-date policies is diminished. Core Strategy policy CS1 permits development outside Limits to Development at the more sustainable locations in the Borough, and its flexibility and spatial strategy combine to offer consistency with the Framework's objective of providing for sufficient growth. The main modifications to the emerging Local Plan include a revision to the Limits to Development in order to include planning approved and allocated sites. The Limits to Development are described in its policy DS1. Whilst the emerging policies are not included amongst the list of policies most important for determining the application,



the weight afforded to them serves to diminish the importance of ST/2 and CT/1 in the determination of this appeal.

- 9.121 It is considered that all of the other policies listed as policies most important to the determination of the appeal are up to date, and that the “basket” of most important policies is up to date. Therefore, the provisions of paragraph 11d of the NPPF are not engaged.
- 9.122 Had 11d been engaged, the next step is to consider the proposal against 11d(i). The conflict with the Framework in respect of flood risk means that, in accordance with Paragraph 11d(i) and footnote 7, the presumption in favour of sustainable development, would be dis-engaged. Discussion about most important policies is thereby obviated, and there is no need to move to a consideration of paragraph 11d(ii).
- 9.123 The deemed application would give rise to benefits to the local economy through retaining local employment, though as it has not been demonstrated that this is the only feasible location for the business to locate, this limits the weight afforded to this benefit, as does the fact that in delivering this benefit the development would simultaneously introduce demonstrable flood risk.
- 9.124 In the Council’s view, the benefits of the scheme would not amount to material considerations which would outweigh the identified significant conflicts with the development plan and the Framework. Consequently, they would not justify a decision being made other than in accordance with the development plan, taken as a whole and the Ground (a) appeal should be dismissed (see PINS Decision APP/X2410/W/23/3318405 at Appendix O).

#### Planning Obligations

- 9.125 Should the ground (a) appeal be allowed certain aspects of the development would need to be secured by planning agreement. These include a biodiversity mitigation strategy, financial contributions toward sustainable travel, and potentially off-site highway improvements.
- 9.126 In accordance with the procedural guidance for planning appeals, the appellant should submit a draft planning agreement at the earliest possible date in this appeal process. The Council will engage with that draft text when it emerges.



### Without prejudice Draft Planning Conditions

- 9.127 Without clarity about the scope of the ground (a) appeal it is difficult for the Council to draft a suite of planning conditions which would satisfy the six tests set out at paragraph 57 of the NPPF. In response to the appellant's Statement of Case and draft Statement of Common Ground the Council expects to be in a position to prepare a suite of draft planning conditions for inclusion in the SoCG, or in its Proof of Evidence.

## **10. Ground (f) – required steps**

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*that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach*

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- 10.1 The appellant has not detailed in their Grounds of Appeal specifically which steps they consider are excessive but has indicated that they consider a number of the current uses on the Land are not in breach of planning control.
- 10.2 As discussed earlier in this statement the Council consider the Land as one composite planning unit due to the various uses taking place on the Land (some of which may have now ceased such as the residential use) and the Enforcement Notice illustrates a mixed-use of the Land across several use classes. The combined sui generis use of the Land is a change of use of the Land from the previously lawful use Class B2 with ancillary offices. Therefore, the Land, as a whole does not benefit from planning permission and that is why the Notice requires all the uses to cease however the Council does accept if the Land was only being used for B2 uses with ancillary offices/warehousing then this would not be in breach of the planning regulations.
- 10.3 The Council accept that the mill buildings are lawful with step 6 and 14 in the notice, requiring the uses to cease and for the removal of portable buildings, sheds and containers and does not make any reference to the removal of the mill buildings themselves.
- 10.4 The Council do not consider that the steps included within the Notice are excessive however the Council will continue to remain in dialogue with the appellant and if there



are any suggested amendments that both parties can agree to this will be included in the statement of common ground.

## 11. Ground (g) – reasonable time

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*that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed*

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- 11.1 The appellant has not been specific or given any justifiable reason in their Grounds of Appeal as to why they consider insufficient time has been given to remedy the breaches detailed in the enforcement notice. The Notice provides a very generous time of 15 months to cease the unauthorised uses and remove the unauthorised development and therefore, without any justifiable reason the Council would argue that the time limits provided within the notice are fair and give a reasonable period for the unauthorised business to relocate.

## 12. Conclusion

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- 12.1 It is the Council's view that none of the grounds of appeal can be supported.
- 12.2 The Council has set out some errors in the wording of the Enforcement Notice in this Statement of Case, and invites the Inspector to vary the Notice accordingly.





## 13. Appendices

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<b>Appendix A</b>	Historical Aerial photographs
<b>Appendix B</b>	email to landowners May 2021
<b>Appendix C</b>	Planning application documents P/22/0061/2
<b>Appendix D</b>	Decision Notice P/22/0061/2
<b>Appendix E</b>	Letter dated 09 Feb 2023
<b>Appendix F</b>	Letter to landowners January 2024
<b>Appendix G</b>	Burdle v Secretary of State for the Environment [1972] 1 WLR 1207
<b>Appendix H</b>	Murfitt v Secretary of State for the Environment and East Cambridgeshire DC (1980)
<b>Appendix J</b>	Secretary of State for Levelling-up, Housing and Communities v Caldwell [2024] EWCA Civ 467
<b>Appendix K</b>	Application Form, Decision Notice and Site Plan for P 22/2521/2
<b>Appendix L</b>	Galaxy Real Estate sale brochure
<b>Appendix M</b>	Crematoria Management Ltd, R (On the Application Of) v Welwyn Hatfield Borough Council [2018] EWHC 382 (Admin) (01 March 2018)
<b>Appendix N</b>	PINS decision in respect of APP/U1430/W/24/3342573
<b>Appendix O</b>	PINS Decision in respect of APP/X2410/W/23/3318405