



# Planning Appeal Statement

on behalf of

Mr John & Mr Ryann Croke

Darcy's Place,

Church Lane,

Wormley

EN10 7QF

February 2026

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## 1.0 Introduction

1.1 This Statement sets out the Appellants' grounds for appealing against the decision of Broxbourne Borough Council to issue a Planning Enforcement Notice.

1.2 The Notice (Ref. ENF/26/007 – attached as **Appendix 1**) was issued by the Council on 6<sup>th</sup> February 2026 alleging the following breach of planning control:

*Without planning permission, the increase of ground levels through the importation and processing of inert waste.*

1.3 The Notice requires the following actions:

- (i) Cease the importation of inert soils and similar material to the land
- (ii) Cease the processing, separation, screening of imported inert soils and similar material on the land
- (iii) Remove all plant and machinery associated with the importation and processing, separation, or screening of inert soils and similar material from the land.
- (iv) Return ground levels of the land to those shown in drawing RES/1240 (attached) with the exception of that area shown hatched black on the attached plan
- (v) Remove all soils, inert waste, or other material arising from compliance with step (iv) from the land
- (vi) Remove all stockpiles in the immediate vicinity of the Chieftain Power Screener (as shown in the attached photograph)
- (vii) Remove all vehicles, plant, and machinery associated with the compliance with steps (v) and (vi) from the land

1.4 The Enforcement Notice was accompanied by a Stop Notice (ref. ENF/26/0008) which is provided as **Appendix 2**.

1.5 This Statement sets out the Appellant's grounds for appeal.

## 2.0 Background

2.1 The site has a complex and lengthy planning history, the details of which are provided later within this statement.

2.2 In summary, in 1949, planning permission (ref. E/280-48 – attached as **Appendix 3**) was granted (subject to planning conditions) for the use of the land for mineral extraction and subsequently back filled with inert landfill. This permission included Condition 5:

*“The complete refilling of the excavation to the level of the surrounding ground, covering with a surface layer of soil not less than 12 inches deep capable of supporting plant life, and the initial cultivation of the site to the satisfaction of the Local Planning Authority”.*

This use was the subject of further consideration at appeal by the Ministry of Housing and Local Government in 1968 (re. E/98-68 attached as **Appendix 3a**) with the requirements of the original permission reinforced. A further planning application (ref. 7/584-79 attached as **Appendix 4**) to continue activities at the site was refused in November 1979.

2.3 In January 1980 the site was subject to planning enforcement action in respect of a breach of planning condition 5 of E/280-48 (Enforcement Notice attached as **Appendix 5**). That Notice required:

*“Within the period of two years beginning with the date on which this Notice takes effect to restore the land in the manner required by the first planning permission” [E/280-48].*

For the purposes of this appeal, a central issue between the Appellants and the LPA is whether Condition 5 of permission E/280/48 was ever lawfully discharged. The Appellants’ position is that it was not. Accordingly, the works presently undertaken are directed to achieving compliance with that outstanding obligation.

2.4 Over subsequent years lengthy communications ensued between the then owners of the land (the parents and grandparents of the current landowners/Appellants) and Broxbourne Borough and Hertfordshire County councils regarding the restoration of the land. This is set out in detail in the below Grounds for Appeal. The eastern part of the site was subsequently used for low level buildings storage involving a barn structure present

on site and materials brought on and stored including mounds of excavated materials reclaimed materials such as bricks and tiles and plant/machinery.

- 2.5 In around 2018, the use of the eastern part of the site intensified significantly, with the land comprising a number of smaller tenanted yards. An application was made for a Certificate of Lawfulness, which was refused by the Council, who subsequently issued a Planning Enforcement Notice. The resulting appeals (APP/W1905/C/23/3328124, APP/W1905/X/23/3327096 attached as **Appendix 16**) were determined by Public Inquiry, with the Inspector ultimately concluding that whilst storage use of the land had persisted for in excess of ten years, the intensification from 2018 resulted in a material change in the use of the land which prevented immunity by passage of time. Subsequently, the Appellant sought to comply with the requirements of that Enforcement Notice, as amended by the Planning Inspector. It is important to distinguish the 2024 appeal decisions, which concerned a material change of use to a mixed commercial use, from the present appeal, which concerns works said to be undertaken in compliance with a minerals restoration obligation.
- 2.6 The Appellant has since sought to fully restore the land parcel in its entirety, in accordance with the 1979 Enforcement Notice – the condition of the larger parcel being poor with building debris and detritus, including cans, bottles and metal items regularly breaking through the surface of the land. The land was initially owned (as of the 1979 enforcement appeal) by William and Rosemary Croke (Parents of Mr John Croke and Grandparents of Mr Ryann Croke). John Croke grew working at the site with his father and has firsthand recollection of the infill and subsequent activities within the site. He is aware from his own first-hand knowledge that the site was never restored in compliance with the planning condition which was the subject of the 1980 Planning Enforcement Notice.
- 2.7 As evidence from the Planning History (set out below) shows, the Appellant has sought alternative uses for the site including residential development. In 2025 Mr John Croke began a process to restore the site in full accordance with the requirements of the 1980 and 2021 Enforcement Notices to ensure that the site was fully lawful and to resolve those matters which were blighting future use of the land. Mr Croke engaged with the

Environment Agency and applied for a Cla'ire<sup>1</sup> to import clean materials to the site. This was initially approved and the Appellant can provide (upon request) numerous dockets relating to the imported material that is present on the site. This process was halted when the Council advised it considered that planning permission was required.

2.8 The appeal site is recorded by Hertfordshire County Council (HCC) as a "Dormant" minerals site and in December 2025 Mr John Croke applied to HCC for a Review of Old Minerals permissions (ROMP).

2.9 In February this year, Broxbourne Borough Council issued the Planning Enforcement and Stop Notices, which are the subject of this appeal.

### 3.0 Site Description

3.1 The appeal site is located on the northern side of Church Lane in Wormley. It comprises approximately 4.36 hectares and was historically used for sand and gravel extraction and later filled.

*Figure 1: Site Location Plan*



<sup>1</sup> CL:AIRE is a code of practice that provides a framework which allows the re-use of excavated materials on site or their transfer between sites, without having to classify the material as waste. <https://claire.co.uk/>

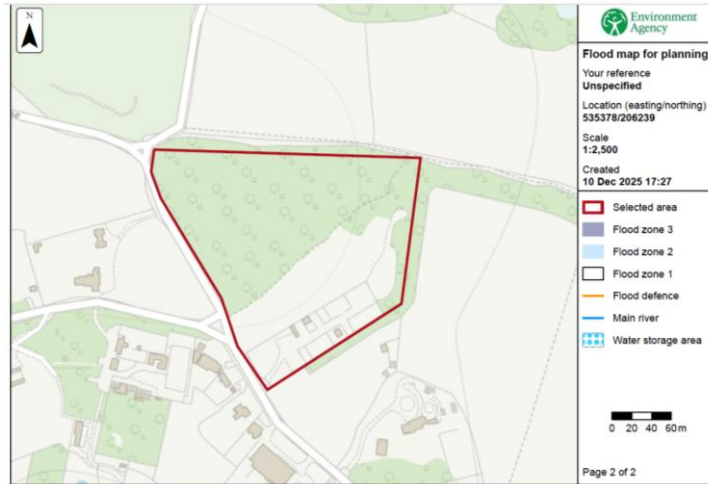
- 3.2 Following the fill, the eastern part of the site was subsequently used for a number of years for informal builders storage, intensifying in use around 2018 and becoming commercial enterprise. That parcel is also subject to enforcement notices issued by Broxbourne Borough, related to the cessation of the commercial use (now ceased) and restoration of the ground (which was underway as part of the restoration to the whole parcel, until recently ceased following the service of a Temporary Stop Notice by the Council in December 2025).
- 3.3 To the south and east of the site are residential properties off Church Lane. To the west the site is bounded by Spring Walk. The land is enclosed by palisade fencing and gated to the front.

*Figure 2: Aerial Image*



- 3.4 The appeal site is located within Environment Agency Flood Zone 1, meaning it is at the lowest risk of flooding.

Figure 3: Extract of Environment Agency Flood Map



#### 4.0 Planning History

- 4.1 E/280/48. Use of Land for Sand and Gravel Extraction (approved)
- 4.2 E/98-68. Enforcement Appeal (including Ground A).
- 4.3 7 /509/1971. Garden Centre and caretaker's bungalow. (Refused)
- 4.4 7 /509/1971. Garden Centre and caretaker's bungalow. (Refused)
- 4.5 7 /584/1979. Continuation of use of gravel pit for preparation of soil for horticulture, together with land. (Refused & appeal dismissed)
- 4.6 7 /768/1980. Restoration of gravel pit, construction of earth embankment, use of part of land for soil manufacture & processing. (Refused)
- 4.7 Appeal Decision dated 4<sup>th</sup> March 1981
- 4.8 07/17/1228/LDC. Certificate of lawfulness for the existing use of covered and open builders storage. (Withdrawn)
- 4.9 07 /20/0175/LDC. Certificate of lawfulness for existing use as a builders yard, storage open and cover. (Withdrawn)
- 4.10 07/20/1040/O. Outline permission for two detached dwellings. (Refused)
- 4.11 7/20/1100/LDC. Certificate of lawfulness for existing use as a builders yard, storage open and cover. Refused.

- 4.12 4<sup>th</sup> May 2021 – Planning Enforcement Notice (ENF/20/0006) relating to hard surfacing of site (attached as **Appendix 14**)
- 4.13 21<sup>st</sup> December 2022 – Planning Enforcement Notice (ENF/22/0035) – relating to storage use on western and northern parts of site
- 4.14 27<sup>th</sup> July 2023 – Enforcement Notice (ENF/23/0059) -relating to use of Eastern part of site.
- 4.15 31<sup>st</sup> August 2023 – Stop Notice (ENF/23/0059) -relating to use of Eastern part of site
- 4.16 14<sup>th</sup> August 2024 - Planning Appeal Decision (attached as **Appendix 24**).

## 5.0 Planning Policy

### National Planning Policy Framework (NPPF) 2024

- 5.1 The NPPF provides strategic policies for all types of development. The Framework sets out a presumption in favour of sustainable development and promotes the delivery of high-quality design.
- 5.2 Section 17 relates to facilitation of sustainable use of minerals. Paragraph 223 states that Planning Policies (see HCC Minerals Policy 13 below) should “*ensure that worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place*”.
- 5.3 Paragraph 224 states that decision making should “*provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions*”.

### The Broxbourne Local Plan 2018 to 2033

- 5.4 As the Borough Council, Broxbourne does not have a statutory role for the restoration of formal mineral sites and accordingly there are no directly relevant policies within their Local Plan. However, the following policies to have some relevance:

GB1 Green Belt

EQ1 Amenity and Environmental Quality

EQ5 Contaminated Land

Hertfordshire Minerals Local Plan Review 2002-2016 (adopted 2007)

5.5 MINERALS POLICY 13 ~ RECLAMATION SCHEME. This Policy states that the County Council will not allow land worked for minerals to become derelict or remain out of beneficial use. All applications for mineral workings must be accompanied by a detailed, comprehensive proposal for progressive reclamation wherever practical. The proposed restoration and after use must be integral with the design of the proposed workings as a whole, irrespective of the proposed after use. The County Council will refuse applications for mineral working if:

- i) there are no proposals for restoration, after use and a programme for aftercare covering a five year period; or
- ii) the proposed form of restoration or after use is inconsistent with the landscape character of the area or would involve detrimental environmental impact, including the impact on the highway network; or
- iii) the proposals, although feasible, are considered unlikely to occur within a reasonable timescale; or
- iv) the details of the proposal for restoration (and, where appropriate, aftercare) are considered to be inadequate; or
- v) satisfactory arrangements have not been concluded by the applicant to secure effective control over the site for restoration and aftercare purposes.
- vi) the applicant is not able to demonstrate that the site will be satisfactorily reinstated.

5.6 MINERALS POLICY 14 ~ AFTERUSE. This Policy states that mineral operators will be required to facilitate proposals for sustainable after-use as part of the reclamation scheme. Proposals for after use will, where appropriate:

- i) respect and/or enhance the local character of the area;
- ii) benefit the local community;

iii) support and diversify the local economy; iv) provide improved and increased public access to the countryside and recreation and create public open space;

5.7 MINERALS POLICY 19 ~ ENFORCEMENT OF PLANNING CONTROL. This policy states that the County Council will, where it considers it expedient to do so, rigorously pursue its powers to remedy breaches of planning control, including breaches of planning conditions and development occurring without planning permission

## 6.0 Grounds of Appeal

6.1 This appeal is made on the following Grounds:

- **Ground (c)** – “that those matters (if they occurred) do not constitute a breach of planning control”.
- **Ground (f)** – “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”.
- **Ground (g)** – “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

Details grounds for appeal are set out below.

### Ground C

6.2 The Appellant’s case under Ground (c) is that the works do not constitute a breach of planning control because they are directed to achieving compliance with Condition 5 of permission E/280/48 and the requirements of the 1980 Enforcement Notice.

6.3 Planning permission was granted under ref. E/280/48 on 30<sup>th</sup> June 1949, subject to a planning condition requiring: “***The complete refilling of the excavation to the level of the surrounding ground, covering with a surface layer of soil not less than 12 inches***”

***deep capable of supporting plant life, and the initial cultivation of the site to the satisfaction of the Local Planning Authority”.***

- 6.4 Quite simply, the Appellant’s position is that Condition 5 was never fully complied with. On the balance of probabilities, the documentary record, and physical state of the site, does not demonstrate lawful discharge of that condition.
- 6.5 The 1949 planning condition was reinforced through the 1968 planning permission and subsequently at appeal in 1981 (see **Appendix 7**).
- 6.6 Following the determination of the appeal in 1981, there was a period of regular communications between the councils and the then landowner.
- 6.7 Attached at (**Appendix 8**) is a letter from HCC to the former landowner dated 2<sup>nd</sup> April 1986. The letter seeks compliance with the planning condition and within the letter it can be seen that the Council considered compliance with the condition to entail considerably more than just spreading a layer of topsoil:

*“The initial cultivation has not been completed to the satisfaction of the County Planning Officer and he requires that attention be given to the following:-*

- 1. The removal of all stones and other debris in excess of 75mm in diameter from the surface layer of the subsoil.*
- 2. The application of weed killer, deep cultivation and further stone picking.*
- 3. The placement of topsoil/topsoil substitute, light cultivation and seeding with grass ley. Application of fertiliser and weed killer as appropriate.*
- 4. The removal of the derelict site hut. (Old redundant vehicles, plant and other machinery.*
- 5. A general 'tidy up' of the site is required including fly tipped rubbish.*
- 6. Replanting of the Hawthorn hedge on the northern boundary”.*

6.8 The above communication was followed with a letter dated 19<sup>th</sup> May 1986 (**Appendix 9**), in which HCC stated “*If I do not hear from you within seven days from the date of this letter, legal action will be taken against you*”

6.9 The County appears not to have pursued legal action and on 19<sup>th</sup> January 1987, a further letter (**Appendix 10**) was sent by HCC. Again, seeking compliance with the planning condition.

6.10 HCC’s decision<sup>2</sup> not to bring a prosecution for non-compliance with the Enforcement notice is set out in an internal memorandum (released under the Freedom of Information Act) dated 3<sup>rd</sup> September 1987 (**Appendix 11**) which states:

*“Having considered the history of this site, I am of the opinion that a prosecution for failure to comply with the Enforcement Notice will be inappropriate in this case. The County’s position is not as good as it could be for a variety of reasons, including the fact that a considerable length of time has elapsed since works were completed at the site. I believe that if [REDACTED] were forced to carry out the works which the County would like done at the site, this may well stir up a hornet’s nest with local residents, who I understand are quite happy for operations to have now ceased at the site and would not wish to see new activity and the resulting lorry movements in the locality. I do regret that it has not been possible to persuade [REDACTED] to improve the site and generally ‘tidy’ it up but do not propose to take any further action on this file”.*

6.11 Although the County Council decided not to pursue prosecution in 1987, the Enforcement Notice was never withdrawn. Its requirements therefore remained, and remain today, extant, and the current and future landowners remain responsible for compliance. To explain:

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<sup>2</sup> In considering whether or not to prosecute, the LPA at the time was exercising a broad discretion. That discretion is found within s.222 of the Local Government Act 1972, and allows a local authority to prosecute where it considers it to be expedient for the promotion or protection of the interests of the inhabitants of their area. The 3<sup>rd</sup> December 1987 note appears to record the reasons given for not proceeding to a prosecution.

- i) Under s.181 of the TCPA 1990, compliance with an enforcement notice does not discharge the notice. There is, therefore, a continuing obligation which is not discharged by compliance (or non-compliance) with the requirements.
- ii) The expiry of the compliance period does not mean that the enforcement notice has ceased to have legal effect.
- iii) S.180 TCPA 1990 provides that an enforcement notice can be overridden by a subsequent grant of planning permission so far as the notice is inconsistent with that permission. Otherwise (as above), an enforcement notice imposes a continuing obligation which is not discharged by compliance with its requirements.
- iv) In the case of enforcement notices served before 27 July 1981, section 285 of the TCPA 1990 is modified by the Planning (Consequential Provisions) Act 1990 Schedule 3, paragraph 10. In the case of enforcement notices served before 27 July 1981, section 285 of the TCPA 1990 is modified by the Planning (Consequential Provisions) Act 1990 Schedule 3, paragraph 10.

6.12 Following the decision not to prosecute, the County Council continued to seek compliance with the requirements of the Enforcement Notice into the 1990s. The Appellants have obtained (through information requests) what is understood to be the County Council's site visit notes (**Appendix 13**). These documents are disorganised but presented in the same way as provided to the Appellants by HCC. This is to avoid any suggestion that the papers may have been manipulated. **Appendix 13** conflates separate sets of site inspection notes – one set dated 16<sup>th</sup> August 1993 and another (in clearly distinct handwriting) dated 27<sup>th</sup> March 1996.

6.13 In the 1993 notes, the officer recommends that “*monitoring of the site on a yearly basis should continue*” – suggesting that there is ongoing concern that the planning condition had still not been complied with. Whilst the Officer's notes indicate that there was approximately 300mm of soil cover on site – there is no explanation as to how this was measured, particularly in the context that the Officer also describes the land as “*rough grassland – very overgrown (tall weeds thistles etc)*”. In the context that the planning condition required “*The complete refilling of the excavation to the level of the surrounding ground, covering with a surface layer of soil not less than 12 inches deep capable of supporting plant life, and the initial cultivation of the site to the satisfaction of the*

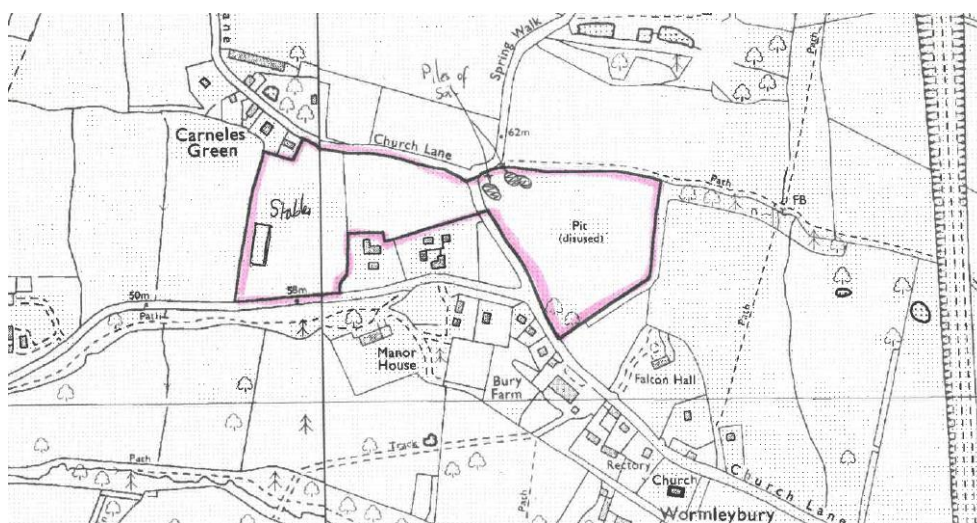
*Local Planning Authority*”, the Officer’s notes also confirm the presence of “*protruding metal in places*”.

- 6.14 It is clear to the Appellant that at the date of this site inspection in 1993, compliance with the Enforcement Notice was still outstanding – the protruding metal was not covered by at least 12 inches of soil and regardless, would have prevented the initial cultivation of the site. Even if 300mm (11.8 inches) soil had been spread over the site by that date, that fell short of the obligations in the condition for there being not less than 12 inches deep of soil capable of supporting plant life and the initial cultivation of the site. The Appellant wishes to refer the Inspector again to the requirements of the Council set out in their letter dated 2<sup>nd</sup> April 1986 (**Appendix 8**) which confirm the extent of works the considered necessary to achieve compliance.
- 6.15 In January 1996, HCC registered the site as being “Dormant” under the Environment Act 1995 (Notice attached as **Appendix 12**). This confirms that the site was not considered to be completed, as it would have been if it had been fully restored under the original permission for minerals extraction.
- 6.16 As seen in **Appendix 13**, in March 1996, HCC officers again visited the site. On this occasion, the officer’s note states site is “*fully restored*”. Whilst the 1996 note records the site as ‘*fully restored*’, the earlier and contemporaneous documentation refers to protruding metal and incomplete cultivation. The documentary record does not clearly demonstrate compliance with the express requirements of Condition 5.
- 6.17 In relation to this Ground C appeal, the onus falls on the Appellant to establish this ground. The balance of proof to be satisfied by the Appellant is the balance of probability. The Appellants consider, in the circumstances of this site, they can meet that test.
- 6.18 The Council (Broxbourne Borough, as advised by Hertfordshire County Council) appear to be of the position that the site was fully restored by 1996, relying on the Officer’s site inspection notes only. The Appellant considers that, on the balance of probability, the site was not restored by that date, for the following reasons:
- a) The site inspection took place only ten weeks after the site was registered as dormant, having regard to the extent of works required to clean the top layers of the

site, remove rubble and debris, import and lay a covering of at least 12 inches of soil, it appears unlikely, having regard to the scale of works required and the contemporaneous correspondence, that full compliance could have been achieved within that period particularly noting the content of the 1987 memo (**Appendix 11**) that this “*may well stir up a hornet's nest with local residents, who I understand are quite happy for operations to have now ceased at the site and would not wish to see new activity and the resulting lorry movements in the locality*”.

- b) The Officer refers to there being horse jumps on site. There has never been equine use of the appeal site – separate sites to the north and west (within separate ownerships) have been historically used for this purpose, but never within the application site. Mr John Croke is willing to provide evidence under oath on this point as he has firsthand recollection of the site at that time. The condition of the land has never been suited to livestock due to the inconsistent surface caused by the irregular fill and lack of restoration – horses would have been injured using the site. The officers’ confusion is considered to be evidenced within the notes by the inclusion of a plan which erroneously includes land on the opposite side of Spring Walk to the west of the appeal site, which was indeed in use for the keeping and exercising of horses. Within this context, the officer’s comments “*site is fully restored, one part used for horses, the more easterly site [the appeal site] is disused scrubland*” actually appear to support the Appellant’s position that the site had not been restored – it had simply greened over.

*Figure 3: Copy of Plan for Officer’s Site Inspection Notes*



6.19 In addition to the above, the restoration of the eastern part of the Appeal site is lawful by reason of actions in more recent history. The Planning Enforcement Notice (served by Broxbourne Borough Council in May 2021 and attached as **Appendix 14**) relates to the eastern part of the appeal site and also requires the Appellant to:

- (iii) *Restore the site to the condition that existed before the breach of planning control described above took place.*
- (iv) *Grade the land with topsoil and sow the bare earth with grass seed.*

Figure 4: Extract of Enforcement notice identifying the Site



6.20 The above Enforcement Notice was the subject of a dismissed appeal (APP/W1905/C/21/3275809 – attached as **Appendix 15**). In requiring the restoration of the land, the Inspector noted (para. 15) that *“The appellant is in the best position to know the full extent of these works and therefore to know what needs to be done to restore the land”*. The 2026 Enforcement Notice, which is the subject of this current appeal, prevents compliance with works required in the 2021 Enforcement Notice, which were in progress on site. Once again, it is not only the case that these works can be lawfully undertaken, but that they should. This position is supported not only by the legislation but also in the Courts interpretation, with specific reference to the following examples:

- a) **R v Beard (1996)** — Court of Appeal - this case explored the Appellant’s (convicted of failing to comply with an Enforcement Notice) argument that he was unable to comply – in this case the Court analysed the statutory framework, emphasising that Section 179(3) of the Planning Act provides a defence only where the owner must secure compliance through others, not where the owner

can comply completely unaided. The Court found that the Appellant had full control and resources to comply and this no defence under Section 179(3) was available.

- b) ***Mirza v Newham LBC [2017] EWCA Crim 924*** – this case clarified the application of Section 179(3) as a defence for cases where an owner has delegated management responsibilities and has limited knowledge of compliance efforts. As set out in this Statement, the same does not apply to Mr John Croke, who has historic knowledge of the site and lack of compliance dating back prior to his ownership, when the site was owned by his parents.
- c) ***Camden LBC v Galway Cooper (2018)*** – in this case, the defendant successfully defended failure to comply with an Enforcement Notice in the basis of expert evidence from a Structural engineer which demonstrates that it was not feasible to comply with the requirements of the Notice. This is contrary to The Appellant’s experience in this case, where he has sought expert advice which has informed the restoration of the site in compliance with the Enforcement Notice.

6.21 In November 2024, the Appellant took advice from an expert in Environmental Management (attached at **Appendix 17**) to establish the extent and scope of works necessary to comply with the obligations of the 1980 Enforcement Notice. The works undertaken on site to date have accorded with that scope of works and are therefore believed to comply with but not exceed the deemed consent arising from the Notice.

6.22 As set out in correspondence with HCC (provided as **Appendix 18**), it has previously been suggested by the HCC Development Management Team Leader that, as the 1980 Enforcement Notice required the restoration to be completed within a two-year period, any requirement to comply with the Enforcement Notice lapsed at the end of that two-year period. As set out above, that is clearly incorrect in law. The requirement within the 1980 Enforcement Notice that restoration be completed within two years did not extinguish the underlying obligation. Rather, failure to comply within that period constituted a continuing breach susceptible to enforcement action unless and until the Enforcement Notice is complied with, which is what the Appellants are seeking to do.

6.23 The email (provided under the Freedom of Information Act) between officers at HCC and Broxbourne Borough dated 29<sup>th</sup> April 2025 (attached as **Appendix 19**) appears to confirm

that there was some confusion between to the two local planning authorities as to whose remit the works fell under and who the relevant enforcing authority was. The Appellant has been clear with both councils that he is undertaking restoration in relation to the outstanding obligations of the minerals permission, and to ensure compliance with an extant enforcement notice. The works are not a separate development falling within the Planning remit of the Borough Council. That confusion also appears evident in the allegation set out in the December 2025 Temporary Stop Notice (**Appendix 23**) which stated “*The importation and deposit of soils and inert waste, the separation/processing of that waste and the change in round levels through the movement of soil and inert waste material*”. At that time, the Council appears to accept the activity was a County Planning matter, rather than an operational development to raise ground levels.

6.24 The Appellant is unaware of the reasoning behind the decision of the LPA to exclude the hatched area from the requirements of the Notice (that is the subject of this appeal) – it is considered that this may possibly be because those works are further progressed and without the mounds of earth and excavated material that are part of the ‘work in progress’. If this is the case, then it is considered relevant that the notice served by the Council relates to “operational development” and not the use of the land. If the operational development (i.e. the restored levels) in this part of the site are deemed lawful then logically the same decision should apply to the remainder of the site.

6.25 In summary, it is the position of the Appellant that the 1949 planning condition remains uncompiled with and the 1980 Enforcement Notice remains extant and requires compliance. The works undertaken are directed to achieving that compliance and therefore do not constitute a separate breach of planning control. The site remains registered as a “dormant” (incomplete) minerals site and the 1980 Enforcement Notice has never been withdrawn – as such, the works described within the 2026 Enforcement Notice are Lawful.

#### Ground F

6.26 Without prejudice to the primary case set out under Ground C, if a breach were found, the steps required by the Notice exceed what is necessary to remedy that breach. In

particular, the requirement to remove all plant and machinery would prevent ongoing maintenance and compliance with previous restoration requirements. In that respect, the Appellant wishes to make the following observations:

- a) The Eastern Part of the site (as red outlined in the Enforcement Notice (ref. ENF/20/0006 – **Appendix 14**) issued by Broxbourne Borough Council in May 2021 is the subject of separate requirements to restore ground conditions. As acknowledged by the Inspector in respect of that appeal (**Appendix 15**), “*The appellant is in the best position to know the full extent of these works and therefore to know what needs to be done to restore the land*”. It is therefore the contention of the Appellant that the Enforcement Notice, which is the subject of this current appeal, should exclude that area of land from any requirements, so as not to contradict the requirements of that previous Notice.
  
- b) The requirement to remove all vehicles plant and machinery from the site is considered excessive. The Appellant has always retained plant within the site, which is necessary for its maintenance. The below images were taken Circa 1982.





In more recent years, JCBs were kept in the shed/barn on site that is shown in the 2017 aerial image below, but has since been demolished and have been retained in the open thereafter. Appellant wishes to maintain positive stewardship of the land moving forward and requires the plant to be able to do so.



Additionally, as witnessed by Officer from both councils during site inspections historically, the ground is full of rubble waste and debris which regularly breaks through the surface and it is necessary to sift existing material on such occasion. It is the case that the clean muck that has been imported to site is cleaner than that which exists – which is where the requirements for sifting has primarily arisen. This will be an ongoing requirement in future and will require specialist machinery – therefore this needs to be retained on site.

## Ground G

- 6.27 The Ground G appeal is made on the basis that the period for compliance falls short of what should reasonably be allowed. The Notice requires cessation within one day and removal of machinery within one week. Given the scale of material imported between August and December 2025, and the regulatory controls governing its lawful movement, a minimum period of six months would be required to achieve compliance in a controlled and lawful manner.
- 6.28 Whilst the notice provides one month to restore ground levels and six weeks to remove excess earth, this will be impossible without the issue of plant and machinery to mechanically sift – the outcome would be the removal of the imported inert sifted soils and the exposure of the rubble and debris that sits below. Regardless of this issue, it is considered to be the case that the removal of such volumes of material (which were brought onto the site over four months between August and December 2025) is impractical both in terms of the actual operation and the regulatory process of securing permits to move the material. It is therefore considered that a minimum period of six months is required to facilitate compliance.
- 6.29 As set out in the Ground F appeal above, with regard to the final time period for the removal of all other vehicles plant and machinery connected to that use - this would leave the land derelict of the basic plant required to maintain it in perpetuity. Machinery needs to be retained within the site.
- 6.30 More significant to all of the above, is considered to be the issue that Section 13 of the Environment Act 1995 (Review of Old Minerals Permissions – ROMP) requires dormant sites to be reviewed and updated with modern restoration and aftercare conditions. These are expected to accord with paragraphs 210-215 of the NPPF, requiring - high-quality restoration capable of long-term after-use. The Appellant has applied to HCC to agree conditions for ROMP within the site which he anticipates will accord with Defra/Natural England Soil Guidance - which recommends profiles of 300mm topsoil and 600–900mm

subsoil, a total of 1.0–1.2 metres. It will be necessary for any timescales imposed by the Enforcement Notice not to override those statutory provisions under the Enforcement Act.

## 7.0 Summary

- 7.1 This Appeal is made under Grounds C, F and G. Under Ground C, the works described within the Enforcement Notice **are lawful** under the requirements set out in Condition 5 of Planning Permission ref. E/280/48 and upheld in the 1980 Planning Enforcement Notice and 1981 Appeal decision.
- 7.2 Under Ground F, the works additionally include the removal of earth that is expressly required under the more recent 2021 Planning Enforcement Notice (**Appendix 14**) issued by Broxbourne Borough Council and associated 2024 Appeal decision (**Appendix 15**). Furthermore, the requirements of the Notice require the removal of plant and machinery which has been retained onsite for decades and is essential to its future maintenance – including compliance with the 2021 Enforcement Notice.
- 7.3 Under Ground G, the time periods set out in the Notice are impractical and do not provide for proper consideration of any future restoration works that may be secured through the ROMP process.
- 7.4 It is acknowledged that the Planning and Enforcement History of the Site is complex and to assist the Inspector a Chronology is provided as **Appendix 25**, which cross references the various documents appended to this Statement of Case. Despite the somewhat fractious history and numerous Planning Enforcement interventions the Appellant is now seeking to properly restore the site and resolve the historic breaches under the 1980 and 2021 Planning Enforcement Notices.

## 8.0 Conclusion

- 8.1 This land has a complex planning history involving numerous planning applications and planning enforcement interventions. Following the Inspector's decision (attached as **Appendix 24**) the Appellant lost the benefit of the historic established use of the land

which had inured at a low intensity since the 1980s. Faced with the requirements of more recent Planning Enforcement Notices, he then became aware of the non-compliance with the 1980 Notice and sought to comply with all outstanding requirements in order that he could move forward with the site in a regularised state.

- 8.2 The historic documentary record obtained by the Appellants shows that further enforcement action was considered but not pursued in 1987. The Enforcement Notice was not withdrawn. The Appellant submits that, on the balance of probabilities, Condition 5 was not complied with and that it (and the Enforcement Notice) still require compliance.
- 8.3 Should the Inspector take a contrary view to the Appellant on the lawfulness of the site, the Ground F and Ground G appeals set out the reasons why the requirements of the Notice are excessive and lacking in time for compliance.
- 8.4 **For the reasons set out above, the Inspector is respectfully requested to allow this appeal and quash the Enforcement Notice.**

## List of Appendices

<b>Appendix 1:</b>	Planning Enforcement Notice (ref. ENF/26/0007)
<b>Appendix 2:</b>	Stop Notice (ref. ENF/26/0008)
<b>Appendix 3:</b>	Planning Approval (ref. E/280-48)
<b>Appendix 3a:</b>	Planning Approval (re. E/98-68)
<b>Appendix 4:</b>	Planning Refusal (ref. 7/584-79)
<b>Appendix 5:</b>	Enforcement Notice
<b>Appendix 6:</b>	Planning Refusal (ref. 7/768-80)
<b>Appendix 7:</b>	PINS Appeal Decision
<b>Appendix 8:</b>	Letter from HCC to Former Landowner (dated 02/04/1986)
<b>Appendix 9:</b>	Letter from HCC to Former Landowner (dated 19/05/1986)
<b>Appendix 10:</b>	Letter from HCC to Former Landowner (dated 19/01/1987)
<b>Appendix 11:</b>	Internal Memo (HCC – dated 03/09/1987)
<b>Appendix 12:</b>	HCC Site Notice “DORMANT” site
<b>Appendix 13:</b>	Notes of HCC Site Inspections 16/08/1993 and 27/03/1996
<b>Appendix 14:</b>	Planning Enforcement Notice (ENF/20/0006 – hard surfacing)
<b>Appendix 15:</b>	PINS Appeal Decision (ENF/20/0006 – hard surfacing)
<b>Appendix 16:</b>	Combined PINS decisions
<b>Appendix 17:</b>	Advice from Darren Eyers (01/11/2024)
<b>Appendix 18:</b>	Email (29/04/2025) from HCC to Appellant
<b>Appendix 19:</b>	Emails between HCC and BOB
<b>Appendix 20:</b>	Waste Exemption Registration
<b>Appendix 21:</b>	Waste Exemption Registration
<b>Appendix 22:</b>	Appellant’s PCN Response (12/10/2025)
<b>Appendix 23:</b>	Temporary Stop Notice (re. ENF/25/0057)
<b>Appendix 24:</b>	Combined PINS appeal decision
<b>Appendix 25:</b>	Chronology of Site Activity