

PINS Reference:APP/W1905/C/26/3378144 and APP/W1905/C/26/3378145

Proof of Evidence of Jennifer Thompson (BSc)(MSc) MRTPI MIED

Submitted on: 16th June 2026

Appeal Site: Land adjacent to Darcy's Place, Little Broomfield, Church Lane,
Wormley EN10 7QF

On behalf of Mr John Croke and Mr Ryann Croke

Against Broxbourne Borough Council

Local Planning Authority Reference: ENF/26/0007

Appeal: **Against an enforcement notice alleging, without planning permission, the increase of ground levels through the importation and processing of inert waste.**

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1 Introduction

1.1 The Appeal is against Broxbourne Council's issue of a Enforcement Notice ENF/26/0007 on 6th February 2026 for 'Without planning permission, the increase of ground levels through the importation and processing of inert waste'.

1.2

1.3 The reasons for issuing the notice are cited as follows;

'It appears to the Council that the breach of planning control has taken place within the last 10 years.

The site is located within the Green Belt, and the use of the land constitutes inappropriate development which is, by definition, harmful to the Green Belt. The intensive use of the land results in noise and disturbance to the occupiers of nearby residential properties with no mitigation provided. The use increases vehicle movements in the vicinity without any assessment of the impact of these additional movements. There is also an adverse impact on the highway through the deposit of mud on the highway. The removal of almost all vegetation and trees in order to facilitate the development of the land results in a loss of biodiversity and a negative impact on the visual appearance of the site on the locality.

The operational development is contrary to Policies GB1: Green Belt, EQ1: Residential and Environmental Quality, EQ4: Noise, DSC1: General Design Principles, TM2: Transport and New Developments and NEB4: Landscaping and Biodiversity in New Developments of the Broxbourne Local Plan 2018-2033 and to the aims and objectives of the National Planning Policy Framework.

The Council do not consider that planning conditions could overcome the objections to the development.'

2. Witness Details

- 2.1 My name is Jennifer Thompson and I am Director of Thompson Planning Ltd, a Town Planning Consultancy based in Essex, close to the Hertfordshire Border.
- 2.2 I have over 20 years' experience as a planning professional, working as Town Planner in a range of sectors including Local Authority Planning, Development Control Departments at Epping Forest District Council and the London Borough of Havering. I was also seconded to the Policy Team for Epping Forest District Council. I have worked in private practice for a multi-disciplinary consultancy (Bidwells) and in my own practice. My company has also previously contracted continuously between 2020 and 2025 for Broxbourne Borough Council assisting with major applications and Public Inquiries.
- 2.3 I hold a BSc in Environmental Science from the University of Southampton, whereby I completed modules on EIA development and Contamination. Whilst not qualified as an engineer in this regard, my studies provided an appreciation of the regulatory regime and processes associated with waste disposal. I also possess and an MSC in Spatial Planning from the University College London from the Bartlett School of Planning. I have been registered with the RTPI since 2005 and became MRTPI in 2015. I became MIED in 2022.
- 2.4 My development control experience includes working for the London Borough of Havering between December 2004 and October 2007 as a Planning Assistant, before moving to Bidwells in October 2007 and Epping Forest District Council in December 2008. The London Borough of Havering is a Unitary Authority and the planning team deals with waste and school applications. Whilst working for Havering I assisted with and took responsibility for applications in the Rainham area relating to waste transfer and processing.
- 2.5 During my time at Bidwells I worked primarily on large scale majors in various locations including Watford, Harlow, Brentwood, Bury St Edmunds and Canterbury. I then left in December 2008 after securing a position at Epping Forest District Council.

- 2.6 Commencing December 2008 in my role as a Senior Planning Officer at Epping Forest District Council I worked in the Development Control team before later being seconded to Planning Policy. In Development Control my focus was primarily small-scale majors, complex applications and planning appeals. I also registered applications, responded to complaints, trained new staff members, presented applications at Planning Committee and balanced the merits of over 1200 applications during my appointment. In the field of policy-making, I was responsible for the progression of several evidence-base documents underpinning the Draft New Local Plan, including the Strategic Housing Land Availability Assessment, Open Spaces, Sport and Recreation Assessment, The Heritage Appraisal and the Sustainability Assessment. I was also responsible for the associated consultant tendering processes, interview and appointment of the selected consultancies and managed a small policy team.
- 2.7 In 2014, I formed Thompson Planning Limited, becoming incorporated in 2017. My consultancy covers primarily London and the South East and my work includes householder applications and small-scale major applications. My Company sub-contracted to Broxbourne Borough Council between June 2020 and October 2025. During my time at Broxbourne Council I had no involvement at all with the site at Darcy's Place or either Mr John Croke or Mr Ryan Croke.
- 2.8 In my capacity as a planner and built environment professional, I have worked for and with various Local Authorities, Developers and Housing Associations. I consider I am able to take a balanced professional view in assessing the interactions between the historic permissions and the remaining Enforcement Notices.
- 2.9 I declare that the evidence which I have prepared and provided for this Inquiry is true and has been prepared in accordance with the relevant guidance of the RTPI. I can confirm that the opinions expressed by me are my true and professional opinions and that my evidence includes all facts which I regard as being relevant to the opinions I have expressed. I am aware that as an expert witness, my duty is to the Inquiry.

3 Scope of Evidence

3.1 My evidence is given on behalf of Mr John Croke and Mr Ryann Croke and concerns the following matters;

- i) detailed analysis of the Planning history and chronology related to the site
- ii) Consideration and comparisons of the obligations binding the site
- iii) How the present works relate to the obligations in place
- iv) Consideration of activities on site giving rise to the Enforcement Notice
- v) Procedural matters

3.2 My evidence does not extend to the manner in which the site should be remediated, engineering knowledge or assessment of contamination beyond that which would be expected from a planning professional.

3.3 My evidence is also restricted to ground (c) before the Inspector and does not extend to grounds (f) and (g).

4 Planning History

4.1 The site history is set out in both Statement of Case documents provided and then agreed upon within the Statement of Common Ground in section 3 of the document.

4.2 What is less clear from the planning history list is the Appellants' experience of the Regulatory processes associated with the site, which Mr John Croke has provided in his own Proof of Evidence and I will not seek to replicate that or offer a view beyond to comment, that as is clear from the extensive correspondence between Mr Croke and both the Borough and County Councils, he has been seeking to comply with historic Enforcement Notices, has been

conducting extensive research and has sought meetings on several occasions with the various parties involved to try to reach a solution to restore the site.

- 4.3 Throughout extensive correspondence, what is clearly lacking is a joined-up approach to a review of the site and combined commitment to a resolution. Instead, the only collaborative efforts appear to be focused on enforcement proceedings as oppose to considering a long term solution to site restoration as sought by Mr Croke.

5. Detailed analysis of historic documentation and chronology

- 5.1 Having reviewed the sequence of historic documents and viewed the site I am clear that the original Planning Permission (E/280-48) allowing extraction of minerals from the site was implemented. I am also clear that this permission extends beyond the Appellants' site to land on the other side of Church Lane. From Appendices 37 to 50 of the Council's Statement of Case monitoring fill activity and the material evident on site I am clear that backfilling has been undertaken and that this covers the entirety of the site, as set out in the account provided by Mr. Croke in his Proof of Evidence. I am also clear that condition 5 attached to permission E/280-48 required '*covering with a surface layer of soil not less than 12 inches deep capable of supporting plant life*' and that condition 6 required '*The work of filling to proceed concurrently with that of excavation, and as closely behind as possible, and both excavation and restoration to be completed within a period of thirty years*'.
- 5.2 Whilst I am in no doubt that 12 inches of soil capable of supporting plant life would not meet restoration requirements by today's standards, this is clearly intended to cap the imported fill and provide a basis for meaningful establishment of ground vegetation.
- 5.3 I have seen the Enforcement Notice dated 4th January 1980 that requires by clause (c) '*within the period of two years, beginning with the date on which this notice takes effect, to restore the land in the manner required in the first permission,*'. This clearly supports the Council's position that not less than 12 inches of soil should cover the imported fill.

- 5.4 I am clear that in the Proof of Evidence provided by Mr Peter Unthank (provided by the Council in Appendix 36 of their Statement of Case) associated with previous Enforcement Notices drafted 1st July 1980, notes restoration was not complete.
- 5.5 Following an Appeal, the Enforcement Notice was upheld, including the provision '*within the period of two years, beginning with the date on which this notice takes effect, to restore the land in the manner required in the first permission,*'. It is important to understand at this juncture that this notice has never been withdrawn and therefore the obligations upon the landowner still remain. Clearly, compliance within the specified timeframe is not possible, and absent compliance, the obligations imposed by the notice remain outstanding to date.
- 5.6 In order to comply with a notice, the measures required by the notice must be achieved. When first issued in 1980 the recipient of the Notice was not in breach as the compliance period of two years has not lapsed. Once the compliance period expired, the owner is then in breach if the works required have not taken place. Whilst the aspiration of the Council was clearly to remediate the site within the prescribed period, the lapse of the compliance period does not release the site owner from the obligations. To the contrary it places the site owner at risk of prosecution for non-compliance, but only after the compliance period (2 years from upholding the notice) has lapsed. Therefore, in my opinion, Mr Croke's interpretation that the site still requires restoration when there is an extant notice still in effect and debris protruding from the ground on site and no soil evident is entirely reasonable. My opinion is supported by internal correspondence provided in Appendix 44. In the absence of a withdrawal notice my professional opinion is that this Notice still has effect and still binds the site.
- 5.7 Section 173A TCPA 1990 provides the statutory mechanism by which a local planning authority may withdraw an enforcement notice, or waive or relax any requirement of it. Where those powers are exercised, section 173A(3) requires the authority to give notice to those persons who have been served with the notice, or who would be served if it were re-issued. I have seen no evidence that Hertfordshire County Council, as the authority responsible for the 1980

Enforcement Notice, ever exercised its powers under section 173A. In particular, I have seen no record of the notice being withdrawn, no notice waiving or relaxing the restoration requirements, and no notification issued pursuant to section 173A(3). In those circumstances, and as a matter of planning history, I consider that the 1980 Enforcement Notice remained extant and continued to bind the land. The significance of that continuing obligation is addressed elsewhere in this proof.

- 5.8 Appendices 37 to 50 of the Councils Statement of Case detail a period of monitoring in the 1980's. Appendix 38 is correspondence detailing the transfers of land to the Appellant father/grandfather dated 28th October 1981.
- 5.9 Appendix 40 relates to Site notes from August 1982 which can be well surmised by '*overall, very little had been done*' regarding restoration. This is followed by correspondence in Appendix 41 which states '*It appears that contrary to the terms of the tipping license, your client has tipped on the site 10 feet above the level permitted by the license from our client. We are given to understand however, that our client does not object to this overfill as he understands it to be in accordance with the wishes of Hertfordshire County Council. Nevertheless, as a direct result of the increased height in tipping, the tipping area has spread outside of that originally agreed. This has resulted in your client tipping materials around the office building and it is not for our client to dismantle and remove the office. Indeed our client should have been consulted before yours carried out tipping operations, the effect of which effectively was to bury the office*'. This clearly demonstrates and states that ground level has increased above the fill level of the original pit and this is further supported by site visit notes in Appendix 42 where it is noted that 'the south eastern part of the site will require some limited infilling in order to produce an acceptable gradient' on the 13th October 1982. At this time, I am clear infilling was therefore still taking place.
- 5.10 The correspondence found in Appendix 44, dated 21st October 1982 between the County Council's Planning and Environmental teams reveals the planning position and outlines how a compliance period for an Enforcement Notice may be extended as '*an act of grace without legal consequence (Joyner v Gilford*

Corporation (1954))” and that this should ensure the permits allowed by Environmental Services can continue to be lawful enabling continued restoration. This correspondence in 1982 considers whether the Authority is placing the Appellant in a ‘catch-22’. At this juncture it is clear to the Council that the land owner can not comply with the notice in time. There is no consideration of revocation of the notice and no clear intention to enforce in the near future despite the impending opportunity to do so. The Correspondence is also clear that after 5th March 1983 the Council has the ability to enter the land to achieve compliance, this demonstrates that compliance can be sought for restoration works continuing beyond 2 years.

- 5.11 Appendix 39 from 28th Jan 1983 is a site note identifying that progress is delayed on site, rain is a factor and *‘covered with soil on western half of main excavations’*. There is no depth noted. The note from 1983 states *‘although the infilling has formed a dome, recent heavy rain has caused settlement. This has been made good by another layer of fill where necessary’*.
- 5.12 To my understanding, Appendices 41 and 39 make very clear that the level of fill is beyond the level of the original pit and indeed beyond the original ground level. This means that where the Council is alleging in the notice ‘the increase of ground levels through the importation and processing of inert waste’, the ground level is established from these appendices as having already been clearly raised relative to the surrounding sites. Therefore, the Council’s description of levels in paragraph 5.5 of Statement of Case ‘the height of the land, at its highest point, already exceeded adjoining land’, is historically established as indicated in Appendices 39 and 41. Therefore, reversion to a Topography survey dated 2024, as included in the Enforcement Notice subject of this appeal, would not bring ground levels across the site level with site boundaries throughout. Furthermore, it is clear to me that a dome is intended on the site and that drainage is an issue. A domed completed fill would drain well and mitigate any long-term issues with drainage. I am also satisfied that a domed restored site would not be of equal ground level to the immediate surrounding land. In this context I am of the opinion the Council manner of measuring successful restoration in the notice is not correct.

- 5.13 Site Inspection notes from 10th March 1983 are supplied in Appendix 43. These note that fill levels now align between the northern and western boundaries and that the site now 'awaits capping with imported subsoil'.
- 5.14 Appendix 45 is a formal letter from the County Council on 14th March 1983 acknowledging fill is complete and *'there is still some work to be done, on the restoration of the site'*.
- 5.15 Appendix 37 is a letter dated June 1983 from the County encouraging *'every effort to obtain sufficient clean soil'*. By this, in my opinion, the Council is clearly acknowledging that importation is required.
- 5.16 Appendix 46 is a letter from the County Council dated 20th January 1984 requesting *'final restoration of the whole site should now be commenced'*. The clear issue here being not continuation of restoration, but that it should start. My interpretation of this document is that as of 1984 there was no restoration. Appendix 47 states *'the deposit of soil is still taking place on this site'*, clearly denoting restoration is not complete. Appendix 48 is a formality withdrawing an Appeal.
- 5.17 Appendix 8 then becomes of relevance as it is correspondence to the site owner dated 8th April 1986 detailing the failure to comply with the Enforcement Notice, namely *'clause 1 (a) (ii) of the notice whereby the excavation be completely refilled to the level of the surrounding ground, covered with a surface level of soil not less than 12 inches deep capable of supporting plant life'*. This letter then goes further to describe the following very prescriptive necessary works.
1. *The removal of all stones and other debris in excess of 75mm in diameter from the surface layer of 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 and 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.*

The implication of the letter is very clear in that continued failure to conduct the prescribed restoration works will result in prosecution. Therefore at this point in time there are not 12 inches of soil across the site.

- 5.18 There is a break in evidence just beyond a year, with the next Site Inspection (Appendix 49) available being 5th August 1987, this relates to scrap metal and a site hut. There is no mention of the wider site or restoration and no reference to importation of soil.
- 5.19 Following this site Inspection the County issues the internal memo dated 3rd September 1987 provided in Appendix 9. This is a key internal correspondence considering prosecuting the site owner for non-compliance with the 1980 Enforcement Notice. This acknowledges the lapse of time without action, but also, in considering prosecution, clearly identifies that the 1980 notice is not complied with and that it remains an untidy site. The reference to a need for lorries and the disruption to neighbours is a clear reference to importation of material and the County have in this correspondence decided not to pursue matters, but they have not withdrawn the notice. After September 1987 the County did not pursue restoration of the site.
- 5.20 Appendix 50 provides County Council correspondence 8th April 1988, regarding the Public Right of Way clearly states *'the site is covered by a depth of soil evidently capable of supporting plant growth albeit poor vegetation'*. This does not confirm a depth of cover, only that soil is evident and that the Council is unable to secure further action despite *'my officers have made attempts to persuade the land owner to undertake remedial measures beyond that legally required'*. Interestingly, this correspondence is not with the landowner, and there is no record of any correspondence with the landowner either acknowledging that Condition 5 relating to the original planning permission is satisfied or that the Enforcement Notice has been withdrawn. Mindful of the file note in Appendix 9 detailing the non-compliance and unfavourable position for enforcement proceedings, my understanding of this document is that the Council are suggesting that the requirement of condition 5 for 'no less than 12 inches' of soil is somehow diminished by the ability of the site to grow any vegetation. It is clear that the vegetation is predominantly undesirable by

reference to 'aftercare' and 'control of weeds' in this Appendix. It is also noted that the letter is sent in the Officers absence, so final wording may not have been subject to the Officers review. The letter is however clear that the County is 'unable to bring about a wholly satisfactory conclusion' which suggests all is not as intended. The absence of confirmation of soil depth or date of agreement that the works are satisfactory further compounds my understanding that this was a situation where the Council was unable to act, not that they did not wish to do so.

- 5.21 Appendix 51 appears to be a County Site Monitoring Form dated 16th August 1993. Monitoring responsibility rests with the County and the District is denoted as Broxbourne (which has always been a Borough) leading to my conclusion this is a County form. The notes indicate a need for reseeded: *'this would require the area to be reseeded'* and notes *'protruding metal in places'*. The notes appear to have been taken from footpath 44 through the site, and the condition underfoot aligns with the concerns expressed in Appendix 50 in 1988. The notes made appear to be concerned with any unlicensed activity 'the general condition of the site is 'fair'. There are no indications of any renewed activity. The notes describe a *'fabricated camp'* *'most likely a tramp or group of children'* using it. This indicates no activity for a period of time.
- 5.22 Then on 11th January 1996 the County Council entered the Site onto the Dormant Register by serving a Notice as attached in Appendix 12 of the Appellants' Statement of Case. As the Appellant has raised the issue, to assist the Inquiry I shall set out my understanding of the process.
- 5.23 This Dormant Notice was served shortly after the Environment Act 1995 came into effect with the associated formation of the Environment Agency, but the County Planning Authority remained the Minerals Planning Authority (MPA) overseeing provisions for waste and minerals sites and their monitoring.
- 5.24 Section 96 of the Environment Act relates to Minerals Planning Permissions and the associated Schedules 13 and 14. Commencement Order 3 made provisions for Section 96 and the associated Schedules 13 and 14 to come into effect on 1st November 1995. This Dormant Notice therefore likely represents the Council's initial issue of entries onto the Register at the infancy of the

County's Review of Old Minerals Permissions (ROMP). This is a separate process not subject to this Appeal but is a mechanism by which the Council can secure restoration of a site. The Appellants have sought to activate this process with the County Council as stated in the Appellants' Proof of Evidence paragraph 5.3.

5.25 It is clear to me there have been revisions to the Environment Act over time, alongside the enactment of the Environment Act 2021, however what remains is that the Environment Act was the UK Government's response to the Polluter Pays Principle that was established at the Rio Earth Summit (1992) with global effect and traces its roots back to the Brundtland definition of Sustainability defined in the report 'Our Common Future' (1987) commissioned by the United Nations World Commission on Environment and Development. The absolute basis at the root of the policy and legislation is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. In this context the abandonment of enforcement or restoration at the Appeal site would directly conflict with this approach and core principles that underpinned the initial drafting and implementation of the Environment Act 1995.. I acknowledge this has minimal direct influence on the procedural elements under scrutiny before the Inspector; however, it is my opinion that the objective behind the implementation of a policy should be considered when assessing its application. In this instance, we are considering whether the Council should be supporting and facilitating the restoration of a site.

5.26 The next site record (27th March 1996) is provided at Appendix 10, prepared by Howard Simpson, an Officer not previously referenced. The site area he visited extends both sides of Church Lane and Mr Simpsons note states '*one part used for horses, the more easterly side is disused scrubland, with some horse jumps. Three small piles of soil remain at the entrance to the site from spring walk*'. The accompanying map indicates soil piles and a stable that presumably is near to the horses and located on the other side of Spring Walk. Given Church Lane severs the site and there is no indication that Mr Simpson has not assessed the parcel as a whole, or that he is aware of separate ownership and operations since the 1980's From the description, it appears Mr Simpson has accessed

the site from Spring walk, recorded the piles of debris on the way past and proceeded across the Horse field owned by Mr Edwards as one part of the site on the other side of Church Lane. There is no note for another area provided. There is nothing in this note to persuade me the Officer entered the Appeal site under consideration today.

- 5.27 I am further concerned by the informal nature of the note in Appendix 10, this document appears to conclude nearly 50 years of activities on site with an informal handwritten memo, no correspondence with the significant number of other departments involved and no notification to the Appellants. Notwithstanding procedural concerns, the note makes no mention of contours, gradients, drainage, the Public Right of Way previously of concern, no reference to soil testing or depth checks, and there appears to be no counter signatory or formal sign-off for the site. I also note that in the Appellants' Proof of Evidence, paragraph 3.6 confirms 'there were never any horses on the site' and then details a singular event where a horse was tethered as part of trespass and the horse passed away on site.
- 5.28 There is an undated report at Appendix 27 within evidence that clearly was drafted after February 1983, referred to within the notes, but this is unauthored and prepared by the Borough Council as opposed to the Minerals Planning Authority at County. In this context, with no author, date or information beyond the summary provided, I am unclear what the note's conclusions are based upon or the qualification of the person offering the view. This undated note suggests that condition 5 from the original permission was complied with within a year of February 1983. However, this is at direct odds with the County Council's internal Memo in Appendix 8 (1986) and indeed in contradiction of Appendix 9 (1987). Given that the Borough Council is not responsible for monitoring the site, is not responsible for enforcing the 1980's notice and not expected to be privy to the records associated, it is extremely unclear why the an undated report that apparently relates to a previous enforcement investigation for the processing of soil on site in 1979 (Appendices 6 and 7) would be offering a view on compliance with a different investigation.

6. Consideration and comparison of obligations binding the site

6.1 The following table is prepared to demonstrate for the benefit of the Inquiry, the conflicting advice and obligations placed upon the Appellants' by the historic planning conditions and Enforcement Notices. This table should be considered alongside the prescriptive requirements identified in Council correspondence dated 1986 provided in Appendix 8, but I acknowledge that whilst dictatorial in tone and prescriptive, this correspondence is informative only and not binding.

6.2

Decision/Enforcement Notice	Relevant Requirements	Obligation outstanding
Planning Permission E/280-48 for Sand and Gravel extraction	<p>Condition 5</p> <p>The complete refilling of the excavation of the level of the surrounding ground, covering with a surface later 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”.</p>	Outstanding
	<p>Condition 6</p> <p>The work of filling to proceed concurrently with that of excavation, and as closely behind as possible, and both excavation and restoration to be completed within a period of thirty years”.</p>	Lapsed

Enforcement Notice dated 4 th January 1980	(a) Within a period of 12 months beginning with the date on which this notice takes effect to cease excavation of sand and gravel from the land	Complied with demonstrated by Appendices 37-50 of the Councils Statement of Case and the Appellants Proof of Evidence
	(b) Within a period of twenty-eight days beginning with the date on which this Notice takes effect to cease the use of the land for the purpose of the preparation of soil for horticulture	Complied with as demonstrated by Appendices 49 and 51
	(c) 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, and	No evidence of formal compliance discharge or withdrawal.as confirmed by Appendix 9
	(d) Within the period of two years beginning with the date on which this notice takes effect to restore and reinstate the footpath.	Complied with in so far as the footpath is open and used as demonstrated by letter in Appendix 50
Enforcement Notice dated	(i) Cease the importation of inert soils and similar material to the land	Complied with but at odds with Condition 5 of planning permission E/280-48 above

		and Requirement (c) of 1980 Enforcement Notice
	(ii) Cease the processing, separation, screening of imported inert soils and similar material on the land	Complied with but at odds with Condition 5 of planning permission E/280-48 above and Requirement (c) of 1980 Enforcement Notice. And conflicts with the express requirements detailed in Appendix 8 Council letter 1986.
	(iii) Remove all plant and machinery associated with the importation and processing, separation, or screening of inert soils and similar material from the land.	Not complied with pending the outcome of this Appeal as identified in clause ii above.
	(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	Conflicts directly with the requirements of Condition 5 of Planning Permission E/280-48 above and Requirement (c) of 1980 Enforcement Notice

	(v) Remove all soils, inert waste, or other material arising from compliance with step (iv) from the land	Not complied with as this disregards the need to provide a depth of soil above the waste as a cap to the site in compliance with condition 5 of planning permission E/280-48 above and Requirement (c) of 1980 Enforcement Notice
	(vi) Remove all stockpiles in the immediate vicinity of the Chieftain Power Screener (as shown in the attached photograph)	Not complied with as this directly relates to activities in accordance with Appendix 8 Council letter 1986.
	(vii) Remove all vehicles, plant, and machinery associated with the compliance with steps (v) and (vi) from the land	Not complied with as this directly relates to activities in accordance with Appendix 8 Council letter 1986.

6.3 The table above clearly demonstrates that the present Enforcement Notice is directly at odds with historic obligations that remain in play at the site and that were the Council Enforcement Notice to be upheld in its current form, the Appellants would be forced into a situation whereby it is not possible to comply with all obligations in pace but worse, the site will likely never be properly restored, the conclusion which is for the mutual benefit for all.

7. How the present works relate to obligations in place

7.1 Mr Croke has detailed within his Proof of Evidence the works conducted on site, and he has first-hand knowledge of his work undertaken and intended restoration. Mr Croke has declared this is based upon advice from Darren Evers; a summary email is provided at Appendix 17 of the Appellants' Statement of Case.

7.2 I visited the site on 16th May 2026 and it was clear that the top layer of ground has been scraped and that this has been pushed into piles around the site. It is evident to me on site I could find no area, scraped or otherwise, where material is not protruding from the limited soil and clay material on site. On this basis, I consider the previously filled material to have been protruding throughout, and that vegetation has rooted in and around this. Mr Croke's evidence confirms how swiftly the site 'greens over', but I do not confuse this growth of vegetation with proper restoration.

7.3 The machine on site is a Chieftain Screener with two sorting beds. This machine acts like a filter, that works with vibration and screens to filter the material into separate outputs. Essentially sorting coarse and fine material.

7.4 I am satisfied from review of the County Council's 1986 letter (in Council Statement of Case Appendix 8) and from the advice of Darren Evers (in email dated 1st November 2024 provided in the Appellants Statement of Case Appendix 17) that the Screening Machine is required on site to 'sift' the existing upper layer to derive an element of soil to use to contribute towards a layer of 12 inches of soil. I am also aware this will result in small amount of material that when crushed can be used to form haul roads to

import further soil to create the 12 inches required. This approach reduces importations required and reduces cost to the Appellants and minimises further ground level increase. The provision of Haul Roads prevents the heavy plant sinking when accessing furthest points of the site and also reduces debris drawn onto the highway.

7.5 I am aware further soil will require importation in order to achieve at least 12 inches needed based upon the Advice by Darren Evers (Appendix 17 of the Appellants Statement of Case.

7.6 I am satisfied from the evidence on site and referred to above that the action on site by Mr Croke is in an effort to restore the site as directed by the obligations surmised in paragraph 6.2

8. Consideration of activities on site giving rise to the notice

8.1 The Council has stated in the Enforcement Notice the breach of planning control is 'without planning permission, the increase of ground levels through the importation and processing of waste. From my evidence above it is clear to me that whilst there are piles of material on site, this originates from the process of scraping the top layer soil on site. Therefore, removing the piles will provide a reduction in site level, and the requirement to cap the infill with 12 inches of soil is not possible without importation.

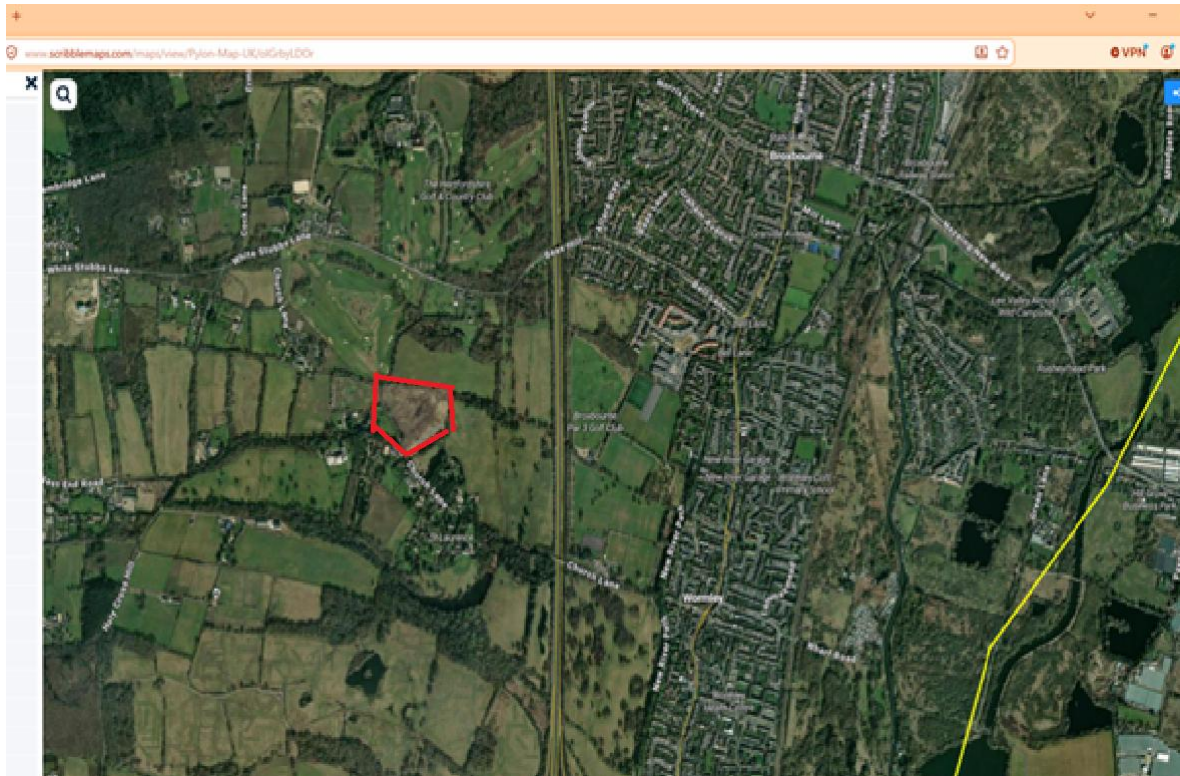
8.2 It is clear to me that the requirements of the 1980s Enforcement Notice (Appendix A of the Council's Statement of Case) and from Appendices 39 and 41 that the site was never expected to be restored at the same height at which extraction began. The site was understood to be increased in level as a result of fill; therefore, the reference to the height of neighbouring land as a measure for restoration is, in my opinion, fallacious.

8.3 The Council has used the Appellants' own topography survey from 2024 as a reference for restoration height. Whilst predating the recent importation of material, this height is simply the position of the land as it stood in 2024, used for the Appellant's Engineer (Mr Darren Evers, Appendix 17 of the Appellants Statement of Case). The requirement to restore to this level appears based around the presumption that the land was already restored, a matter I have demonstrated is not the position based upon section 5 above and the evident state of the site when visited.

- 8.3 My opinion having familiarised myself with the full site history is that the site is not and has not been restored. The soil scraped appears a mix of material with the soil and there is no clear difference between the material below foot or within the heaps on site. This further reinforces the need to screen material, using the equipment on site to reduce the need for further importation.
- 8.4 The Council set out in paragraphs 5.1-5.8 in the Statement of Case that the works on site constitute operational development as defined under S55 of the Town and Country Planning Act. The Council acknowledges that waste material was used on the site following minerals extraction in paragraph 5.5 and therefore no new use is created. However, the Council also starts from the premise that restoration occurred, and it is the Appellants' position that it did not. On site I can see no evidence that would persuade me the site had been restored and the aerial/photographs provided by the Council in their Appendices 20,21 and 22 do little to persuade me that the site was restored as intended. The level of detail demonstrates at best coverage by invasive weed species.
- 8.5 Appendix 30 contains images from a Site Inspection on 2nd June 2020 shows limited detail beyond the hard surface and the same sparse vegetation. Then Appendix 31 suggests the Officer returned to site 19th June, for what reason is unclear so close to the previous visit. This provides images that show a grassland with an electricity Pylon in the background. I recall no such feature on the former extraction site during my visit and research online suggests the nearest network is some distance away. This leads me to believe the photos within Appendix 30 relate to a different site and can not be relied upon to demonstrate restoration.

8.6 Figure 1: Aerial photo showing location of site and locating of nearest pylon route – Source: <https://www.scribblemaps.com/maps/view/Pylon-Map-UK/olGrbyLDOr> Every Pylon Route in the UK.

This was then cross referenced with National Grid records which confirm the same detail but in a less visually clear manner. Site outlined in red, nearest electricity pylon line in yellow



8.7 In this context whilst I agree in isolation, without background context, that an Officer could believe the works to fall under S55 definition of development, once appraised of the site history, extant notices and the nature of the works relative to the County guidance provided in Appendix 8 I can not understand how this view has been reached, not least given the Appellants were clearly investigating restoration of the site as per Appendix 11 of the Councils Statement of Case dated the day after the receipt of the Notice.

8.8 Moving to the Councils consideration of conditions, I note in the Council's Statement of Case in paragraph 5.14 the emphasis on condition 5 and the wording 'to the satisfaction of the local planning authority'. Whilst I understand that the Council may be satisfied the refilling is supporting plant life and perhaps may be considered cultivated, I can not accept that this

allows the Council to reduce in any manner the very clear requirement for 'no less than 12 inches of soil'.

- 8.9 The Appellants Proof of Evidence sets out in Paragraph 4.8 that he started restoration in the area which is hatched and excluded from the Enforcement Notice. Meaning recently imported material is directed here. The Appellant is clear in paragraph 4.8 ' *The soil that I imported under the EA's permits was deposited straight into the hatched area*' (importation dockets provided in Appendix 3 of the Appellants Addendum Statement) When this is considered in relation to the Enforcement Notice served, this Notice requires the return of ground levels to those in the 2024 Topographical survey . This is with the exception with the exception of the hatched area, where the Appellant is clear the imported material is deposited. The terms of the Notice in this context have very little reasonable effect aside from the require the spread the scaped mounds back across the site. The result of doing so would mean the land would grow over with weeds and other similar species but the site would still not be properly restored, and the original 1948 planning condition 5 and the 1980 Enforcement Notice would still not be complied with.

9. Procedural matters

- 9.1 The Inspector will note there is a complete absence of reference to planning policy within my Proof of Evidence. This is because whilst legislation and procedure is of particular relevance, the consideration of planning merits has no bearing on whether the previous Enforcement Notice from 1980 remains in effect as per Section 181 of the Town and Country Planning Act or whether the requirements of the 1980's Enforcement Notice has been complied with. Planning merits also have no bearing on whether condition 5 from the base consent in 1948 have been met.
- 9.2 The Rule 6 party representations consider impacts relative to Local Plan policies and amenities within parts 5 and 6 of their Statement of Case. I do not respond on these points as the concerns raised relate to the intended

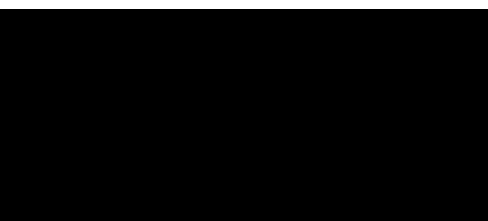
restoration of the site as outlined above. These works are anticipated to be short term disturbances that conclude with the betterment of the site and should be approached in a manner akin to construction by considerate operators over as a short a period as possible to conclude matters.

- 9.3 Whilst considering process I find it highly unusual that there is so much discussion around whether the site is restored in the absence of any hard evidence. There is no monitoring of imported restoration material, there are no soil tests on record, no visit notes documenting restoration progress or approach and no notices confirming adherence, restoration, compliance or revocation of an Enforcement Notice. In this context it is only reasonable to rely on what evidence is properly available and given the information available, I remain of the firm opinion the site is not restored.

10 Summary and Conclusion

- 10.1 Following full analysis of all available documentation and site visit, I am clear the matter for consideration by the Inspector is not the planning merit of the restoration of the site or the Appellants approach to restoration, but rather the procedural matter of whether the action undertaken to date accords with the planning condition from E/280-48 as followed through onto consecutive permissions or should this not be the case, whether the action undertaken complies with and contributes to the obligations imposed on the Appellants under the still extant Enforcement Notice from 1980.
- 10.2 I am clear in my opinion and experience that once implemented a consent does not lapse. The permission has an expiry in condition 6 intended to limit operations and restore the site effectively. Where efficient restoration has not taken place I do not believe there is a mechanism whereby once not complied with, if no enforcement action is progressed, then the owner is no longer committed to restoration. This directly opposes planning best practice and the Polluter Pays Principle enshrined in the Environmental Protection Act .

- 10.3 The Appellants own land that is not restored and there are other obligations on them as a land owners with a Public Right of Way crossing the site to ensure the land is restored and safe. This means I am of the opinion the Appellants should be restoring the site, but that is not under scrutiny. What must be determined is whether the Appellants can, in the historic context of Decisions and Notices, continue restoration to a depth of no less than 12 inches. It is my opinion they can.
- 10.4 My opinion after review of the Appendices before the Inspector is that the works on site are for restoration purposes and that the Appellants can continue restoration lawfully in accordance with the historic permission and Enforcement Notices.
- 10.5 I reach this opinion mindful of the County decision not to prosecute in 1987 (Appendix 9 of the Council's Statement of Case). My opinion is that declining to proceed to prosecution doesn't mean the Authority didn't wish to restore the site '*I do regret it has not been possible to persuade Mr Croke to improve the site and generally "tidy" it up*'. Rather, the Council undertook an assessment of the merits of prosecution and found that '*the Council's position is not as good as it could be for a variety of reasons....*'. The test for likely successful prosecution and expediency are entirely separate processes to objectively considering whether restoration is beneficial or necessary and this is what formed the basis for the Enforcement Notice and Planning Conditions in the first place. In this context I am of the firm opinion that the Appellants' should be permitted to continue restoration.



Jennifer Thompson BSc MSc MRTPI MIED

16th June 2026