



Charnwood Borough Council

Town and Country Planning Act 1990

Appeal Statement By

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BSc (Hons), MSc, MRTPI

Planning Enforcement Officer

**Without planning permission the
change of use of the land to
residential use and the erection of
buildings and structures associated
with the residential use.**

at

**Land at Rayn's Island, Rothley,
Leicestershire**

Local Planning Authority Ref No. E/20/0144

Planning Inspectorate Ref No. APP/X2410/C/20/3261785

This statement and associated documents can be viewed on [the Planning Enforcement page of the Council's website](#) or in reception at the Council Offices but this is via appointment only by calling 01509 634570

1.0 Introduction

1.1 I am employed by Charnwood Borough Council as a Senior Planning Enforcement Officer in Development Control, Planning and Regeneration and am responsible for the investigation and resolution of suspected breaches of planning control within the Borough of Charnwood. I am a chartered member of the Royal Town Planning Institute and have a Masters in Urban and Regional Planning. I also have the Trevor Roberts Certificate of Continuing Education in Planning Enforcement and have sixteen years' experience working as a Planning Enforcement Officer.

2.0 The Unauthorised Development

2.1 This appeal relates to the unauthorised change of use of the land to residential use and the erection of buildings and structures associated with the residential use.

2.2 On the site there is a brick building which is believed to have been constructed in the 1930's. Since the current owner purchased the site he has internally renovated the building into a one bedroom dwelling. Externally the windows have been refurbished, a log burner flue installed, and more recently decking has been erected to the northern end of the building. Photographs of this dwelling along with the other buildings on the site associated with the residential use are attached as Appendix 7.

- 2.3 To enable 'off-grid' living various outbuildings and structures have been erected on the site. A wooden shed known as the 'solar shed' has been erected upon the land and situated upon its roof there are a number of solar panels to generate energy. The energy is stored in batteries located within the building and this is transferred, when needed, to the dwelling. There is also a generator which is used to provide electricity during the winter months.
- 2.4 The water for the site is supplied via an original bore which has been updated by the current owner and there is a building that has been erected over this to protect the bore hole.
- 2.5 Washing water is dispersed to a soakaway on the site and there is a compost toilet, with the waste being stored and then used as manure on the site.
- 2.6 There is a large wooden storage/tool shed which the owner has erected and it is used for storage as the dwelling is modest in size and has very little available storage.
- 2.7 On the site is an area where logs are cut and stored for heating throughout the winter, and next to this area is the composting waste storage area.

- 2.8 The most recent addition to the site is the erection of a polytunnel where the land owner grows produce to feed the occupiers of the site.
- 2.9 Upon purchase of the site the owner also constructed a floating pontoon for the mooring of his boat. The site originally had a static pontoon however due to the change in water levels during flooding the owner felt that a floating pontoon was required as this goes up and down with the changing water levels, allowing access to the site at all times.
- 2.10 The Council acknowledge that the brick built building (without the decking) and the static moorings along the bank of the island have been present for in excess of 4 years and therefore the built form of these developments are not the subject of this appeal.

3.0 The Appeal Site and its Location

- 3.1 The appeal site is an island located east of Dobbies Garden Centre on the River Soar and it is approximately 1 acre in area. The site can only be accessed by boat, either from Sileby Mill Boatyard, Mill Lane, Sileby or via a footpath opposite the island.
- 3.2 The site is located outside of the limits to development as defined by saved policy ST/2, is located in the countryside and is encompassed by the River Soar which is a designated Local Wildlife Site.

3.3 The island has Willow trees around the entirety of the site, which are regularly maintained by the land owner.

3.4 The appeal site is shown on the plan extract attached as Appendix 2.

4. Relevant Planning History

4.1 The application that are relevant to this appeal is as follows;

P/16/0578/2 - Residential use (Enquiry)

The advice given by the case officer was “I can find no planning records for the site in question. I can therefore only suggest that if you wish to use the site for residential purposes then you should submit an application for a certificate of lawful development. Such an application should include evidence to show how the land and building have been used for at least the last 10 years to establish the lawful use of the site.”

4.2 The Council hold no historical or recent planning records in respect of the brick building for its erection or use as a dwelling.

4.3 The residential use and the activities on the site were first brought to the Council’s attention by a member of the public as they had become concerned with the buildings being erected on the site.

- 4.4 On 11 June 2020 the Council met with the appellant on site to view the works that had been undertaken and to discuss the current occupation of the land, by the appellant. The appellant advised that following purchase of the land they moored their narrow boat at the side of the island and lived on the boat while the site was cleared and the brick building on the site made habitable for occupation. Once the brick building was suitable for occupation the appellant moved into it in October 2016.
- 4.5 As the Council was concerned that a breach of planning control was taking place a Planning Contravention Notice was served on 16 June 2020. A copy of the Planning Contravention Notice and the appellant's response is attached in Appendix 3.
- 4.6 The appellant's response to the Planning Contravention Notice was carefully considered. Due to the lack of evidence that the residential use of the island was lawful the Council considered it necessary to serve an Enforcement Notice on 23 October 2020.
- 4.7 It was considered that the residential use of the site and the buildings, structures and associated paraphernalia were detrimental to the openness and character of the Countryside. In the absence of a flood risk assessment it was unclear how the development would remain safe from flooding for its lifetime and that it will not increase the risk of flooding elsewhere. In addition, in the absence of an assessment that

details the impact the development has upon the biodiversity and the geodiversity it is unclear as to the full impact of the development upon the Local Wildlife Site.

4.8 The use, associated buildings and structures are contrary to the relevant provisions of the policies CS1, CS2, CS11 CS13, CS16 and CS25 of the Charnwood Local Plan (Core Strategy) and "saved" Policies EV/1, ST/2, CT/1, TR/18 and CT/2 of the Charnwood Local Plan 2004, policies R01 and R03 of the Rothley Neighbourhood plan and the National Planning Policy Framework. The Enforcement Notice was served for the following reasons;

1. It appears to the Council that the above breach of planning control has occurred within the last 4 years.
2. The site lies within Flood Zone 3b, which is land defined as having a high probability of flooding and is functional floodplain. In the absence of a Flood Risk Assessment, the local planning authority is unable to assess the risk of flooding to and from the development and therefore be satisfied that flood risks can be managed to ensure that the development remains safe throughout its lifetime. The development is therefore contrary to Policy CS16 of the Charnwood Local Plan 2011-2028 Core Strategy and advice

given in the National Planning Policy Framework and the Planning Practice Guidance.

3. The site is surrounded by a Local Wildlife Site (LWS), the River Soar and there is a presumption against development both within LWS's and that which would lead to direct or indirect harm to LWS's. In the absence of an assessment that details the impact the development has upon the biodiversity and the geodiversity it is unclear as to the full impact of the development on the LWS. In light of this it must be concluded that the development conflicts with policy CS13.

4. The site is located in the countryside outside of the defined settlement boundary and built up area of Rothley as set out in Policy CS1 of the Charnwood Local Plan 2011-2028 Core Strategy (CS) and saved policy ST/2 of the Local Plan (2004). Taking account of the location and accessibility of the site, it is not in a sustainable location for new housing development, nor does it enhance or maintain the vitality of rural communities. As such, it is considered the residential use of the site and associated buildings and structures conflicts with policies CS1 and CS25 of the Core Strategy (2015) and saved policies ST/2, TR18 and CT/1 of the Borough of Charnwood Local Plan, policies R01 and R03 of

the Rothley Neighbourhood plan and the National Planning Policy Framework (the Framework).

5. The buildings, structures and paraphernalia associated with the residential dwelling are considered to cause harm to the character and appearance of the area and therefore this conflicts with policies CS2 and CS11 of the Core Strategy (2015) and saved policies EV1 and CT2 of the Borough of Charnwood Local Plan and the National Planning Policy Framework (the Framework).
6. The Council does not consider that planning permission should be given as planning conditions could not overcome these objections

4.8 A copy of the Enforcement Notice is attached in Appendix 1.

5.0 Relevant Planning Policies

5.1 The Charnwood Local Plan 2011-2028 Core Strategy was adopted on 9 November 2015. Relevant policies include:

Policy CS1 - Development Strategy - sets out the development strategy for the Borough and the criteria for considering proposals within individual tiers of settlements. Rothley is defined as one of seven Service Centres across the borough, a settlement that does have access to a good range of services and facilities and can therefore accommodate moderate growth over the plan period. It provides for at least 3000 new homes within or adjoining settlement boundaries of between 2011 and 2028 and states that Charnwood will respond positively to development that contributes towards meeting development needs and which supports our strategic vision.

Policy CS2 – High Quality Design - requires developments to make a positive contribution to Charnwood, reinforcing a sense of place. Development should respect and enhance the character of the area, having regard to scale, massing, height, landscape, layout, materials and access; protect the amenity of people who live or work nearby, provide attractive well managed public and private spaces; well defined and legible streets and spaces and reduce their impact on climate change.

Policy CS3 – Strategic Housing Needs supports an appropriate housing mix for the Borough and sets targets for affordable homes provision.

Policy CS11 – Landscape and Countryside seeks to support and protect the character of the Boroughs landscape and countryside by requiring new developments to protect landscape character and to reinforce a sense of place and local distinctiveness by taking account of relevant local Landscape Character Assessments. Requiring new development to take into account and mitigate its impact on tranquillity and requiring new development to maintain the separate identities the towns and villages. To support rural economic development which has a strong relationship with the operational requirements of agriculture and other land based industries and contributes to a low carbon economy, in accordance with Policy CS10. It is important to protect the predominantly open and undeveloped character of Areas of Local Separation unless new development clearly maintains the separation between the built-up areas of these settlements.

Policy CS13 – Biodiversity and Geodiversity – seeks to conserve and enhance our natural environment for its own value and the contribution it makes to our community and economy. This will be done by;

Supporting developments that protect biodiversity and geodiversity and those that enhance restore or re-create biodiversity. It is expected that development proposals must consider and take into account the impacts on biodiversity and geodiversity, particularly with regard to:

Sites of Special Scientific Interest

Local Wildlife Sites

Regionally Important Geological Sites

UK and Local Biodiversity Action Plans priority habitats and protected species, and ecological networks.

Support for development that results in the loss of ecological or geological features will only be given in exceptional circumstances where the benefit of development clearly outweighs the impact on ecology and geodiversity.

Where there are impacts on biodiversity adequate mitigation will be required; or as a last resort, compensation which results in replacement provision that is of equal or greater value and potential than that which will be lost, and is likely to result in a net gain in biodiversity.

Development proposals will need to be accompanied by ecological surveys and an assessment of the impacts on biodiversity and geodiversity.

Policy CS16 – Sustainable Construction and Energy seeks to direct development to locations within the Borough at the lowest risk of flooding. Where development is proposed in flood risk areas mitigation measures must be in place to reduce the effect of flood water.

Policy CS25 – Presumption in Favour of Sustainable Development seeks for the Council to take a positive approach that reflects the presumption in favour of sustainable development.

Charnwood Borough Council Local Plan 2011-2028 Core Strategy is now five years old, its policies for the supply of housing are considered out of date and the Authority must instead use the standard method to calculate a housing requirement. In light of this, the Authority cannot currently demonstrate a 5 year supply of housing land (4.1 years), and as a result, any policies which directly relate to the supply of housing cannot be afforded full weight if they restrict the provision of this supply.

The shortfall in the supply of deliverable housing sites means that, in accordance with the presumption in favour of sustainable development (at paragraph 11d of the NPPF), any adverse impacts caused by the proposal must significantly and demonstrably outweigh its benefits, for planning permission to be refused.

5.2 The relevant saved policy of the Borough of Charnwood Local Plan (adopted 12th January 2004) is as follows:-

Policy EV/1 advocates good design in new development with reference to it respecting the character of its surroundings and safeguarding the amenities of adjoining residents.

Policy ST/2 - Limits to Development – seeks to restrict development to within the existing Limits to Development boundaries of existing settlements to ensure that development needs can be met without harm to the countryside.

Policy CT/1 - General principles for Areas of Countryside, Green Wedge and Areas of Local Separation. Development within these areas of generally open land will be strictly controlled. This is limited to small scale development and re-use and adaptation of rural buildings for uses suitable in scale and nature.

Policy CT/2 states that development which is acceptable in principle will be permitted where it (inter alia) would not harm the character and appearance of the countryside.

Policy TR/18 Parking Provision in New Development notes that planning permission will not be granted for development unless off-street parking for vehicles, including cycles, and servicing

arrangements are included to secure highway safety and minimise harm to visual and local amenities.

As the Local Plan pre-dates the NPPF, paragraph 213 indicates that due weight should be given to relevant policies according to their consistency with the NPPF. These policies are considered to be broadly consistent with the aims of the NPPF and, as such, should be given significant weight

5.3 Other relevant policies

The National Planning Policy Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. This is achieved through (inter alia) the application of the policies in the NPPF. It requires that decisions should apply a presumption in favour of sustainable development and therefore planning applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The NPPF requires development to achieve high quality design that respects local distinctiveness and poor design should be refused.

In respect of rural housing, the Framework requires that planning decisions should be responsive to local circumstances and support housing development that reflect local needs. To promote sustainable

development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The development of isolated homes in the countryside should be avoided unless specific circumstances apply which include where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.

The Framework requires that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value (in a manner commensurate with their identified quality in the development plan) and recognising the intrinsic character and beauty of the countryside.

With regard to enforcing planning legislation the document states that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Paragraphs 7, 8, 9, 10, 11, 12, 47, 58, 67-70, 77, 78, 79, 91, 92, 102, 111, 124, 127, 130, 153, 154, 155, 157, 163, 164 and 170 of the NPPF are of particular relevance in this instance.

The supplementary planning document (SPD) Leading in Design has been previously referred to however this has been superseded by the Charnwood Design Supplementary Planning Document, a copy of which was attached to the Council's appeal questionnaire. This document provides guidance on design to support the Charnwood Local Plan Core Strategy 2011 – 2028.

Housing Supplementary Planning Document (2017)

The Housing SPD was adopted in May 2017 and provides guidance to support the Local Plan Core Strategy and the saved policies of the Borough of Charnwood Local Plan in respect of Policy CS3: Strategic Housing Needs - for affordable housing and housing mix. It should be noted that guidance note HSPD 9, which deals with housing mix, has been quashed by the High Court and is no longer a material consideration in the consideration of planning matters.

Leicestershire Housing and Economic Development Needs Assessment
(HEDNA) - 2017

HEDNA provides an up to date evidence base of local housing needs including an objectively assessed housing need figure to 2036 based on forecasts and an assessment of the recommended housing mix based on the expected demographic changes over the same period. Whilst the objectively assessed need figure remains untested in a plan making environment in the Borough and is therefore not to be relied upon at the current time, the housing mix evidence can be accorded significant weight as it reflects known demographic changes.

Rothley Neighbourhood Plan

Not yet adopted however the inspector has now examined the plan and issued his decision on 8 December 2020 that subject to a series of recommended modifications the plan meets all the necessary legal requirements and should proceed to referendum. The plan is well advanced and the Council has confirmed that it complies with the various statutory requirements that relate to its preparation.

Charnwood Borough Council and Rothley Parish Council are currently finalising the plan in accordance with the recommendations made following which a decision statement will be published. Following the publication of the decision statement, the plan will have significant weight so far as the plan is material to matters considered. Prior to the publication of the decision statement, the plan has weight in line with NPPF Paragraph 48.

Policy R01 Rothley limits to development:

Proposals for development within the defined limits to development for Rothley village will be supported provided they do not result in the loss of an important open space of public, environmental or ecological value as defined in Policy R11 and they accord with other provisions of the Neighbourhood Plan.

Policy R03 Development outside Settlement Boundaries:

Development proposals will not be permitted on land outside the Settlement Boundaries, as described in the 2004 Local Plan, unless:

- i) it is for a rural housing exception scheme
- ii) it promotes the development and diversification of agricultural and other rural businesses that meets the essential need for a rural worker
- iii) it is through a re-use of redundant or disused buildings or the replacement of an existing building
- iv) it meets other policies in this Neighbourhood Plan and other adopted policies of the Local Plan

Policy R04 Design Principles

New Development within the Parish of Rothley should have full regard to the following design principles

- Materials used shall complement those used in adjoining buildings and respect the character of the area

- Any new development should not harm the visual integrity of the settlement
- Building heights should not exceed the prevailing roof line of adjacent plots
- The density of development should respect the density of the area

The Crime and Disorder Act 1998

Places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the determination of planning applications and proposed enforcement action.

- 5.4 Copies of the policies and strategy have already been sent to the Inspectorate and were attached to the Council's appeal questionnaire.

6.0 Statement of Case - Ground (A)

6.1 The appellant seeks planning permission for;

- (i) Residential use of the Land; and
- (ii) Retention of the structures and buildings referred to in the Enforcement Notice, including those listed at 5. “What you are required to do”; and
- (iii) use of the main building as a seasonal residence together with complementary use of part of the existing moorings for up to one residential boat

6.2 As stated earlier in this report the brick building in its built form is not the subject of this appeal. It is the residential use of it and the associated buildings and structures associated with the residential use that is the subject of this appeal.

6.3 The site is located in flood zone 3b which is functional floodplain. This is designated as land used to store water and allow water to flow in times of flood. The site is at a very high risk of flooding. Whilst it is acknowledged that the brick building is an existing structure the Environment Agency has raised serious concerns regarding the occupant’s ability to remain safe in a range of flood events. They have advised that a robust Flood Risk Assessment (FRA) which demonstrates how the development will remain safe from flooding for its lifetime and that it will not increase the risk of

flooding elsewhere in a range of flooding events would need to be provided. In the absence of a flood risk assessment it is unclear how the development will remain safe from flooding for its lifetime and that it will not increase the risk of flooding elsewhere in a range of flooding events. In light of this the development is contrary to Policy CS16 of the Charnwood Local Plan 2011-2028 Core Strategy and the National Planning Policy Framework and the Planning Practice Guidance.

- 6.4 The Council acknowledge that the brick building has a raised floor to deal with the impact of flooding however no evidence has been provided to show that the additional buildings and structures on the land will not cause a danger during a flooding event nor that these buildings will not increase the risk of flooding elsewhere.
- 6.5 In addition to the impact the development has on flooding the Council are concerned about its ecological impact. The site is an in channel island in the River Soar which is both designated as a Local Wildlife Site and identified in Policy CS12 as strategic green infrastructure. The Local Wildlife Site designation includes a 6m buffer and therefore a significant part of the application site is included within it. It undoubtedly provides supporting habitat for the Local Wildlife Site and potential habitat for notable species such as otter that depend upon the river. The Council's Senior Ecologist has advised that a considerable proportion of the site is comprised of what appears to be

wet woodland and traditional orchard. These are both priority and high value habitats that are likely to be harmed by most forms of development and therefore the ecological value of the island is a material consideration in its own right. In accordance with Policy CS13 the council would normally require the provision of an ecological assessment in order to; characterise the impacts associated with the development and its ongoing use, assess whether the proposals are acceptable in principle, secure the provision of appropriate mitigation and where necessary determine the extent to which off-site compensation may be required. It is apparent from a consideration of contemporary and recent aerial images that the residential use of the site has been associated with a degree of vegetation clearance and the erection of numerous structures that is prima facie evidence of ecological harm. In light of this and in the absence of an acceptable ecological assessment it must be concluded that the development conflicts with policy CS13 of the Charnwood Local Plan Core Strategy

6.6 The site is located outside the limits to development for Rothley and as such, it is considered to be an unsuitable location for new residential development. Although Policy CS1 states the Council will respond positively to development that meets a specific local or economic need where that need is identified in a Neighbourhood Plan or other appropriate community-led strategy. The Neighbourhood Plan does not identify a need within the site location and there is no evidence before the Council to fulfil the terms of the policy.

6.7 Policy CS11 of the Core Strategy states that we will support and protect the character of our landscape and countryside and support residential development which has a strong relationship with the operational requirements of agriculture, horticulture, forestry or other land based industry and which contributes to a low-carbon economy in accordance with Policy CS10. There is no evidence before the Council to identify such need and therefore it is considered to be unacceptable residential development in the countryside, contrary to Policies CS10 and CS11.

6.8 In terms of the transport sustainability of the site, the site is very remote and only accessible by boat which is an unusual situation within the Borough. The appellant's private vehicle is kept at Sileby Mill Boat Yard but this is some distance from the site. The appellant has indicated that they can row their smaller boat across the river channel straight into the neighbouring Wildlife site (Cossington Meadows) and then walk to the village from there. The site is isolated and located some distance from public transport. In addition more than one mode of transport is required to access shops or local amenities as there are no shop facilities in Cossington and therefore the home owners are more likely to be reliant upon their private vehicle due to the remoteness of the site. There is no evidence before the Council to show that the occupiers would not be dependent upon their private vehicle once they leave the site therefore this would be contrary to national policy which seeks to locate development in

locations which are accessible by alternative modes of transport, and would undermine the Borough Council's aim in Policy CS17 of the Core Strategy in achieving a 6% modal shift by 2028.

6.9 Policy CT/1 sets out the types of housing development which would be acceptable in principle, and within the service centre such as Rothley, it states the Council will encourage the effective use of land for new homes. The priority is to see any new development that takes place at Service Centres to be within their existing built-up areas. Greenfield locations may be appropriate where there is recognised local housing need. No justification has been provided to comply with policy CT/1 therefore it can only be concluded that the development is contrary to this policy.

6.10 The National Planning Policy Framework (NPPF), which is a material consideration, sets out the limited circumstances where homes in the countryside are acceptable. The conversion or re-use of redundant or disused buildings which enhances their setting is one such circumstance. In this case it is considered that due to the additional structures, buildings and paraphernalia associated with the residential use, on balance, it is considered that the conversion of the building and change of use of the land does not enhance the setting of the island.

6.11 In conclusion the Council is of the opinion that as the site is outside the limits of development for Rothley and in the countryside as defined by saved local plan policy ST/2 and there is no evidence that the dwelling meets an identified local need or that it meets the requirements set out in Policy CS1 or the NPPF permission should not be granted. Additionally the development conflicts with policies CS17 and CS25 of the Core Strategy and Policy CT/1 of the Borough of Charnwood Local Plan and R01 and R03 of the Rothley Neighbourhood Plan.

6.12 With any residential use whether this be that of the building or a residential mooring at the site the domestic paraphernalia and buildings required in association with the use are considered harmful to the rural location of the site.

6.13 Aerial photographs are included in Appendix 6 of the site which details the visual clearance of areas of the island, the buildings/structures erected and the visual harm the residential use of the land has upon the area and character of the island.

6.14 The Council would respectfully request that the Inspector does not grant planning permission for any residential use of the island whether this be the use of the building or a residential mooring on the site or both. If however it is considered permission should be granted there are a number of Conditions the Council would request the Inspector

attach to the decision and these are included in Appendix 4. The Environment Agency and Canal and River Trust will, in their response to the Inspector, detail any Conditions they feel should be included should planning permission be granted.

7.0 Statement of Case - Ground (B)

7.1 The appellant contends that the change of use of the land to residential use without planning permission has not taken place. They state that the brick building on the site was constructed as a residence in approximately 1885 and subsequently occupied as such. They go on to contend that after a period during which the building was unoccupied, the appellant continued with and completed the refurbishment works started by the previous owner, and resumed residential use of the building.

7.2 The appellant confirmed in their response to the Planning Contravention Notice that they purchased the land in October 2015 with the sale completed 7 December 2015. The appellant confirmed that the building had no internal doors and ceiling, with the windows in varying states of disrepair and commencement of the works to enable the building to be used for residential accommodation commenced July 2016 with occupation taking place 22 October 2016. A copy of the appellant's response to the Planning Contravention Notice is attached in Appendix 3.

7.3 On purchase of the land the building, from the appellant's recollection was in a very poor state of repair and if it had been used as residential accommodation, such use had not taken place for many years. There has however been no evidence submitted by the appellant to show that

a residential use has taken place on the site prior to their purchase of the land.

- 7.4 In March 2016 the Council received an enquiry from the appellant questioning whether what they intend to do on the island required consent from the Council. The enquiry was

“I am writing with a query as to whether I need planning permission. My husband and I have bought a property on the river Soar near Sileby, Leicestershire. It is a small island called Rayns Island. There is a bungalow on the island for which we pay council tax. Can you advise me as to whether i need planning permission to live on the island, either in the house or on our boat which would be moored on an existing pontoon? I would have presumed so but the payment of the council tax has me wondering as is this not a payment for residential properties?”

- 7.5 The Council’s response to this enquiry was that as there was no planning history for the site for residential use and therefore that they should submit a Certificate of Lawful Development showing how the land and buildings had been used. The enquiry and Council’s response are attached in Appendix 5.

- 7.5 Following the advice given no application for a Certificate of Lawful Development was submitted suggesting that the applicant, at that time, had no such evidence to prove that the site had a lawful residential use.

7.6 The Council has no evidence to show that when the building was constructed it was used for residential occupation. If however it was the Council are of the opinion that if any residential use had taken place that this use ceased many years ago and due to the passage of time this use has now been abandoned.

7.7 The Council acknowledge that the factors relevant to any assessment of abandonment are as follows;

- The physical condition of the building
- The length of time for which the building has not been used
- Whether it had been used for any other purpose, and
- the owners intentions

7.8 The appellant in their response to the Planning Contravention Notice detailed that the brick building consisted of 3 rooms, separated by 2 brick walls, with no internal doors, no ceiling and the windows were in varying states of disrepair. The building contained just litter, remnants of parties, old fires, bottles etc. Basically indicating that the building was merely a shell with no evidence of such facilities like a bathroom or kitchen to facilitate residential use of the building.

7.9 No evidence has been provided by the appellant to show that the building has been used for residential accommodation prior to their purchase of it. In addition the appellant has been unable to show that

there has not been any other intervening uses. In the appeal case *Thurrock BC v SSETR* [2002] EWCA Civ 226; [2002] 2 PLR 43 (QB) the judge, Lord Justice Schiemann stated that the onus is upon the appellant to demonstrate, on the balance of probabilities, that the material change of use has not taken place. The burden of proof therefore rests with the appellant to show that the building and land has been used for a residential use, that this use has not been abandoned and that there have been no other intervening uses.

7.10 It is clear in this case that the appellant's intentions are for the use of the building and the site for a residential use. This may also have been the intention of the previous owner as the Council does accept that residential Council tax has been paid on the property since 1993. However in paying Council tax this does not prove the residential use of the land and building. The payment of Council tax by the previous owner could have related to the occupation of their boat on the mooring at the island however it is unclear in the Council's tax records whether this is the case.

7.11 The Council is of the opinion that if there was a residential use of the land, due to the passage of time and lack of evidence from the appellant this use has been abandoned and therefore the current residential use is a material change of use of the land.

8.0 Statement of Case – Ground (c)

8.1 The appellant contends that there is no breach of planning control because the current residential use is merely a resumption of the established use. The Council has discussed this in section 8 and would maintain the fact that if there had been any residential use that this use has been abandoned and therefore cannot be resumed. In light of this it is not considered that the other buildings and structures can be considered incidental to a residential use or that they fall within the permitted development limits.

9.0 Statement of Case – Ground (d)

9.1 The appellant contends that the static moorings along the eastern and northern sides of the island, and the brick building have gained immunity. The Council agree with this contention and that is why the removal of the static pontoons and brick building are not included in the requirements within the Enforcement Notice.

10.0 Statement of Case – Ground (f)

10.1 The appellant's case is that there are static boat moorings already in existence alongside the island which are immune from enforcement action and the appellant contends that the removal of the "floating pontoons" is not needed to ensure the residential use of the Land will cease.

10.2 The Council accepts this point and therefore should the inspector's decision be to dismiss the appeal the Council would not dispute the requirements of the Enforcement Notice being amended to remove the wording "floating pontoons".

11.0 Conclusion

11.1 The Council considers that, given all due consideration of the facts of this case, its decision to serve an Enforcement Notice was justified, reasonable and robust and the Inspector is respectfully requested to dismiss the appeal.

11.2 In the event that the Inspectors grants planning permission for the use then the Council would request that the Conditions attached in Appendix 4 are included with the decision.

Appendices

1. A copy of the Enforcement Notice
2. Location plan at 1:1250 scale showing the appeal site
3. Planning Contravention Notice and copy of appellant's response to the
Planning Contravention Notice
4. Proposed conditions
5. 2016 enquiry and Council response
6. Aerial photographs of the site
7. Photographs of the site