



# **Charnwood Borough Council**

**Town and Country Planning Act 1990**

**Final Comments By**

**Miss S J Hallam**

**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 This final comments statement should be read in conjunction with the appeal statement submitted by the Council.

## **2.0 Ground B**

- 2.1 The appellant contends under Ground B that the residential use of the island is not a new use and that it is merely a resumption of an earlier residential use which had been paused. They state that the alleged change in use of the land to residential has not occurred.
- 2.2 The Council would dispute that the current residential use is merely a resumption of an earlier use and this will be explained in further detail below.
- 2.3 The Council have no evidence on the planning history for the site to show that planning permission was granted for a residential use. Evidence has however been submitted by Parish Councillor Elizabeth Jones (Appendix H of the appellants statement) that indicates the previous land owners, Steve and Diane resided on the island for approximately 6 years. If this was the case the Council accepts that at that time the residential use, due to the lack of any planning history to confirm the use had been granted formal consent, would have gained immunity. The Council does not have any evidence to dispute this local knowledge and therefore does not question what Ms Jones has stated.

- 2.4 The Council therefore accepts that the island may have been occupied by the Steve and Diane for a six-year period prior to and during the early 1990's as confirmed by Ms Jones. Ms Jones however goes on to state that in the mid 1990's they vacated the land and moved to Tamworth. No evidence has been provided to show that the island was occupied from the mid 1990's to October 2016 when the appellant moved in to occupy the brick building for residential purposes. The site had therefore been unoccupied, prior to the appellant's occupation, on a residential basis for 20 plus years.
- 2.5 Appendix I of the appellant's statement details the state of the building when purchased by the appellant and it is clear that the building had not been used for many years with no windows and doors and bare brickwork internally. The building was totally uninhabitable. The appellant in his response to the Planning Contravention Notice (Appendix 3 of the Council's statement) states that the brick building consisted of three rooms, separated by 2 brick walls, with no internal doors and no ceiling. He went on to state the building only contained litter, remnants of parties, old fires, bottles etc. The appellant did not indicate that the building had any such facilities as a kitchen or a bathroom. In the appellants response they openly detail the extensive works that have been undertaken to bring the building into a condition where it could be occupied for residential purposes.

2.6 In light of the dilapidated state of the building prior to the appellants use and the extensive renovations it required to bring it to a habitable state, along with the amount of time that the building was unoccupied the Council are of the opinion that the use was not merely paused but had been abandoned by the previous owners, Steve and Diane. In the case of *Hughes v Secretary of State for the Environment, Transport and Regions [2000]*, which is very similar to this case, albite the building may not have been at the same level of disrepair (the roof of the building in this case was in a very poor state of repair) the Judge held that the use had been abandoned. In the Judge's decision the four criteria associated with abandonment were taken into account.

These criteria are;

- 1 The physical condition of the building
- 2 The length of time for which the building had not been used for residential purposes
- 3 Whether it had been used for any other purposes; and
- 4 The owner's intention

2.7 Another case of interest and very similar to those in this appeal is that of *Castell-y-Mynach Estates v. Secretary of State for Wales [1985]*. In this case a building ceased to be occupied as a dwelling in 1965, and then over a period of 16 or 17 years was allowed to deteriorate to a totally uninhabitable condition. It was concluded that the use had been abandoned as the land had remained unused in such circumstances that a reasonable man might conclude that the previous use had been abandoned.

2.8 The Council are of the opinion that in this instance the building on Rayn's Island had been allowed to become uninhabitable over the 20 years it remained unoccupied that a reasonable man would conclude that the residential use had been abandoned. Even the appellant upon purchasing the site questioned whether planning permission was required to live on the island further suggesting that to a reasonable person the residential use on the site had been abandoned.

2.9 The Council do not question the appellants clear intentions throughout to use the building and land for a residential use however when considering point 4 of the abandonment criteria the current owners intentions are not relevant as it is the previous owners intentions that this appeal must consider. The Council are of the opinion that the residential use was abandoned prior to the appellant's residential use of the land. There is no evidence before the Council to show that the previous owners, after they vacated the land in the mid 1990's intended to maintain the residential use of the site. In addition, there is no evidence to show that the previous owners took positive steps to keep the building in a good state of repair and arrest its deterioration. Therefore, it is the Council's opinion that the previous owners abandoned the residential use of the island.

- 2.10 The appellant has provided the sales particulars (Appendix M of the appellants statement) for the purchase of the island which the Council notes that it refers to a small one bedroom bungalow which required complete refurbishment, further suggesting that the previous owners had not recently resided on the island prior to its sale and did not regularly maintain the building with the intention to, at some point, reside on the site.
- 2.11 As detailed in the Council's appeal statement, the payment of Council tax by the previous owner does not prove the owner's intentions of residing on the site. Nor does it prove that they had not abandoned the residential use.
- 2.12 The letter from the Council provided in the appellant's statement in Appendix N was from the empty homes officer who dealt with an initiative run by the Council to get vacant homes re-occupied. The data for identifying such properties was taken from the Council tax records and was in no way related to the planning status of the site. As stated above the Council tax records do not provide proof that the land was occupied for residential purposes and had a lawful residential use for planning purposes.

2.13 The appellant contends that both Sileby and Rothley Parish Council confirm the view of the local community that the building on the site has an established residential use. The Council are not aware that either of the representatives for these Parish Councils are planning professionals and therefore are not conversant with the intricacies of the planning regulations or would have in-depth knowledge on whether, from a planning perspective, the use had been abandoned. They have provided local knowledge about the site which confirms that the site has been vacant for at least 20 years.

### **3.0 Ground C**

3.1 As detailed above the Council are of the opinion that the residential use was abandoned by the previous owner and therefore the current residential use requires planning permission. If however the Inspector does not come to the same conclusion and considers that the residential use is lawful the Council do accept that the site would benefit from permitted rights to erect buildings and structures within its curtilage however each building/structure would need to be individually assessed against the General Permitted Development Order 2015.

- 3.2 The Council would however contend that virtually all the buildings/structures are located forward of the principal elevation of the building and therefore under Schedule 2, Part 1, Class E E.1(c) these would not be permitted development. Within the householder technical guidance, the “principle elevation” will usually contain the main architectural features such as the main windows and entrance to the house. The Council are of the opinion that the principle elevation of the building is the elevation (eastern elevation) facing into the island which contains a door with two side windows and two further larger windows. The Council accepts that there is a door on the northern elevation which gives access to the kitchen but the Council consider that this elevation could not be considered as the principle elevation as it is clearly subservient to that of the eastern elevation.
- 3.3 In addition the Council contend that the raised platform extending from the northern elevation of the brick building is unauthorised as this does not fall within the limits set under Schedule 2, Part 1, Class A (k)(i).

#### **4.0 Ground D**

- 4.1 The majority of the points raised by the appellant under this ground of appeal have already been covered by the Council’s argument regarding abandonment of the use by the previous owner. The Council would however like to address the point where the appellant states that they understood that the previous owner intended to return to live on the island and that the Council tax records support this. The Council would

question what evidence, other than Council's tax records, the appellant has to show that the previous owner's intention was to return to live on the island. The Council do not agree that the Council tax records are sufficient evidence of this and the appellant can only comment on what the previous owners' intentions were if they had such written confirmation from them.

- 4.2 The Council agree that the fixed pontoons are not part of this appeal and it is accepted that the floating pontoon does not facilitate the residential use and therefore, should the Inspector wish to amend the Enforcement Notice and remove this from the Notice, the Council would not object. The Council would however like to point out that in agreeing this point the Council are not approving any residential mooring at the site. The appellant would need to make the necessary application for such use.

## **5.0 Ground A**

### Flood Risk

- 5.1 The Council accepts that the brick building on the site is not new and the application would be to re-use this building. If the Inspector accepts that the residential use that occurred some 20 years ago has been abandoned the Council would request that the Inspector treat the current use of the building as a new use. Therefore, the use of the land for residential purposes falls within a flood risk vulnerability category that is inappropriate to Flood Zone 3b (functional floodplain) in which the whole application site is located. The residential use is classed as

'more vulnerable' making it clear this type of development is not compatible with this Flood Zone and therefore the proposal is contrary to Policy CS16 of the Charnwood Local Plan 2011-2028 Core Strategy, the National Planning Policy Framework and its associated Planning Practice Guidance.

5.2 In respect of the structures erected in association with the residential use of the land these structures reduce the volume of floodplain storage within the functional floodplain. As the entire site is within the functional floodplain, there is not scope to provide compensatory storage elsewhere, and therefore the Environment Agency have raised objections to these structures due to their impact on the capacity of the floodplain, which may worsen flooding elsewhere.

5.3 In respect of the Flood Risk Assessment (FRA) submitted by the appellant which proposes mitigation measures to reduce the risk of flooding. The Environment Agency has reviewed this document and has raised serious concerns regarding the occupant's ability to remain safe in a range of flood events. The Environment Agency has advised the following;

"The latest guidance on flood risk and climate change, available at <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>, states that residential developments, i.e. 'more vulnerable' development, located within the Humber region should take into account the 1% annual exceedance probability (AEP)

30% climate change flood level and the 1% AEP 50% climate change flood level.

The submitted FRA uses the 1 in 1000 year flood level (46.41mAOD) as a proxy for the 1% AEP 30% climate change flood level. This is an acceptable approach. However the FRA does not estimate a level for the 1% AEP 50% climate change flood level, which we would expect to be higher. The FRA should estimate this more severe flood level, for example by using a stage-discharge curve.

The FRA proposes raising the internal floor level of the middle room of the building to 46.44mAOD. This is 3cm above the modelled flood level for a 1% AEP 30% climate change flood event. As previously stated the 1% AEP 50% climate change flood level is likely to be higher. The floor height of 46.44mAOD is therefore unlikely to be above the 1% AEP 50% climate change flood level, and the 3cm of freeboard above the 1% AEP 30% climate change flood level does not allow for any errors in the modelled flood level, which may be higher than the calculated level.

The other rooms in the building will remain at their current level of 46.19mAOD. This is 22cm below the 1% AEP 30% climate change flood level. The FRA therefore proposes using water resistant doors and flood resilience measures to raise electrics above the flood levels. We would not normally accept flood resistance

measures (water resistant doors) in place of raised floor levels, as they require action to put in place, and there is a chance of them failing, as water rises through other routes.

During a flood event, there would also not be safe access and egress available from the site, as it is surrounded by the River Soar on all sides. The Statement of Case suggests that access and egress would be available at all times by boat, but we would strongly advise against the public entering flood water, including by boat, as the velocity of the water and floating debris could make it extremely hazardous. If the flood water was beginning to extend into the floodplain the riverbank may also be submerged. The Environment Agency are not the statutory consultee with regards to access and evacuation and emergency planning, this is the Local Planning Authority (LPA). The LPA must determine, in consultation with their emergency planners, whether the arrangements for access and egress are acceptable.

The FRA concludes:

“This report demonstrates that the proposed development is not at significant flood risk, and will not increase flood risk to others, subject to the recommended flood mitigation strategies being implemented.”

We do not consider that the flood mitigation strategies proposed in the FRA adequately mitigate the flood risk at the site, for the

reasons stated above. With regards to flood risk to others, the FRA has not assessed the loss of floodplain storage from the additional structures on site so we also cannot agree that the FRA demonstrates that there will be no increased flood risk to others.

In conclusion we do not consider that this development will remain safe from flooding for its lifetime in a range of flooding events, and it may increase flooding elsewhere. The development is therefore contrary to the National Planning Policy Framework and the Planning Practice Guidance.”

- 5.4 The Environment Agency have also highlighted that their initial objections to the foul drainage arrangements stand as these have not been addressed by the appellant in their statement.
  
- 5.5 The Council’s Emergency Planner agrees with the Environment Agency that the public should not enter flood water, including by boat, as the velocity of the water and floating debris could make it extremely hazardous. In addition to this they raised concern regarding the offsite access advising that it would be extremely difficult for the Emergency Services to get access to the site regardless of whether flooding has occurred. They state that the residents Emergency Plan is based on them being able to evacuate themselves but should they be unable to do so access by the Emergency Services would be very difficult requiring specialist teams.

5.6 In light of the objections raised by the Environment Agency and the Council's Emergency Planner, the Council remains of the opinion that the development is 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.

#### Biodiversity

5.7 The Council notes that the appellant has offered to take some steps to provide biodiversity enhancements on the island which is to include bat and bird boxes. The Environment Agency supports this approach but has advised that firstly there should be an assessment of the ecological value of the current site, including an assessment for the potential for protected species. They have advised that any enhancements offered should seek to build on the biodiversity currently on site and/or provide suitable habitat for species likely to be present. This may include bat and bird boxes but could also be extended to create new habitat (i.e. for reptiles or amphibians by appropriate planting or pond creation) as deemed appropriate by an ecological assessment.

5.8 The Council do not agree with the appellant that the Island is located outside of the Local Wildlife Site. The Local Wildlife Site includes a 6m buffer and therefore a significant part of the appeal site is included within it. The use of the existing building on the site has created the need for a variety of new buildings and structures on the land to facilitate the residential use. In addition, vegetation clearance of the land has taken place to accommodate these buildings and structures

and for garden areas and vegetable growing areas. The appellant has stated that the use has no adverse impact but has provided no evidence to support this claim. The Council would maintain the stance that ecological harm has taken place by the residential use of the land. Without an ecological assessment it is unclear to what extent the use has harmed the ecology on the site and therefore the Council maintains the stance that the development conflicts with policy CS13 of the Charnwood Local Plan Core Strategy.

- 5.9 In Appendix Q of the appellant's statement the Council notes that the reserve manager of the adjacent site does not object to the appellant living on the site. The island is not part of the reserve therefore the comments from the reserve manager would appear to be from a more personal view point and the manager's knowledge of the appellant's current activities. The Council would like to point out that if permission was granted the site could be sold and the residential activities be somewhat different to the appellant's current use of the site.

#### Location

- 5.10 The Council does not agree with the appellant's statement that the residential use of the land and associated buildings does not conflict with the wording of the Core Strategy policy CS1. National, local and neighbourhood plan policies seeks to direct development to the most sustainable locations in order to avoid isolated and unwarranted new homes in the countryside. Policy CS1: Development Strategy, of the Charnwood Local Plan Core Strategy, provides this overarching

framework to guide the location of development in Charnwood and applies a spatial context for the vision and objectives of the plan. Policy CS1 seeks to ensure that new development is located in the most sustainable locations where it provides people with good access to jobs, services and facilities and is a strategy of urban concentration and regeneration, consistent with the National Planning Policy Framework. The services and facilities available in the Borough have been assessed and Policy CS1 sets out a settlement hierarchy of locations in terms of their sustainability, with criteria for considering proposals at those locations. The site currently under consideration does not fall within such a location for which positive support for development has been identified and, therefore, the strategy for the countryside should apply which seeks to restrict development unless it meets certain specific criteria. The proposal does not satisfy any of these criteria and is remote from services, facilities or public transport connections and is in an unsustainable location, contrary to national and local policies which seek to steer development to sustainable locations.

- 5.11 In respect of policy ST/2 the Council accepts that this only refers to built development but with the introduction of the residential use several buildings have been erected on the land to help facilitate the use. The Council are of the opinion that these buildings do not make a positive contribution to Charnwood or respect and enhance the character of the area or the island. As shown in aerial photographs of Appendix 6 of the Council's statement the island was covered in vegetation with only the

brick building evident but since the site has been used by the appellant various buildings and structures have been erected that are considered detrimental to the character of the island, the overall character of the area and cause harm to the countryside in conflict with Policy ST/2.

5.12 Paragraph 79 of the NPPF states planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the circumstances detailed in this paragraph are followed. The Council is of the opinion that the appellants case does not comply with paragraph 79 for the following reasons;

- (a) there is no justification that the development is essential for a rural worker
- (b) the building is not considered a heritage asset and so its reuse is not supported on these grounds
- (c) the reuse of the building is not considered to enhance its immediate setting in light of the additional buildings and paraphernalia required to facilitate the use. The domestication of the island in the middle of the River Soar is not considered to enhance the character of the island, the Local Wildlife Site or the immediate vicinity
- (d) the development does not involve the subdivision of an existing dwelling
- (d) the design of the development is not considered to be of exceptional quality

5.13 The Council does not dispute that the reuse of buildings are supported in certain circumstance however in this case the reused of the building has brought further development on to the site and the clearance of areas of the island which is not considered to be acceptable on policy grounds.

5.14 The Council are of the opinion that the Rothley Neighbourhood Plan can be given significant weight in the decision-making of this appeal as the plan is currently awaiting referendum. The examiner recommended modifications which would delete policy R01 and incorporate elements of the policy with R02 to create a new, renumbered policy R01. Policy R03 was also recommended to be amended and renumbered as Policy R02. The two policies are as follows;

***Policy R01: Development within Rothley Limits to Development***

*Development proposals for small scale residential development within the Rothley Limits to Development (see map or subsequent revisions) will be supported where a proposal:*

- i) Is appropriate in size to the character, services and facilities of Rothley; and*
- ii) Includes smaller dwellings suitable for young families or for older people looking to down size; and*
- iii) Retains existing natural boundaries such as trees and hedgerows which contribute to visual amenity or are important for their ecological value; and*

*iv) Does not result in the loss of an important open space of public, environmental or ecological value and, where appropriate, addresses their distinctive qualities; and*

*v) Where appropriate, preserves and enhances the setting of any heritage asset and is sympathetic in style to surrounding buildings especially within the Conservation Areas; and*

*vi) Does not adversely affect neighbouring properties by way of visual intrusion and noise, or by loss of privacy, daylight or amenity.*

***Policy R02: Development outside Settlement Boundaries***

*With the exception of development sites allocated in the Local Plan, proposals for development outside of the 'Limits to Development' boundary (see map or subsequent revisions) must be for either:*

*i) A rural housing exception scheme; or*

*ii) Homes in the countryside set out at paragraph 79 of the NPPF; or*

*iii) Rural or agricultural business development in accordance with paragraph 83 of the NPPF.*

The Council is therefore still of the opinion that the residential use of the island is in conflict with policy R02. The referendum version of the Rothley Neighbourhood Plan January 2021 is attached in Appendix 1 to this final comments statement.

- 5.15 The owner's intentions may be to have sustainable living however the council would question whether this really is the case due to the significant clearance of the island and the erection of a variety of buildings and structures to facilitate the residential use. The Council would question the need for the solar shed and paraphernalia associated with it when the solar panels could have been installed on the roof of the existing building and the battery cells installed within the existing building.
- 5.16 The Council would maintain the fact that the residential use of the land conflicts with policies CS1 and CS25 of the Core Strategy (2015) and saved policies ST/2 and CT/1 of the Borough of Charnwood Local Plan, policy R02 of the Rothley Neighbourhood plan and the National Planning Policy Framework.
- 5.17 In respect of the draft Charnwood Local Plan 2019-2036 the Council would like to advise that this sets out the Council's preferred options for draft policies which are yet to be tested through an Examination in Public before they can become part of the development plan for Charnwood. The policies therefore carry limited weight at the current time but include policies which would seek to protect the intrinsic beauty and character of the countryside and direct developments to appropriate locations.

### Heritage considerations

5.18 The appellant has suggested that given the unusual context and likely age of the building it may be considered as a heritage asset of significant value to be identified as a local listed building. The Councils Senior Conservation Officer has reviewed the history for the site and all the documents provided by the appellant. He has advised the following;

“There may have been a building on the island prior to the creation of the cut as suggested by the owner and bearing in mind that any building erected after this would have required transporting of materials across the river.

Looking at the photographs of the existing building, however, it is not considered that this has sufficient architectural or historic significance to be considered as a non-designated heritage asset or that it should be added to the local list. From the photographs provided by the appellant it is considered that the building more than likely dates from the early to mid-20<sup>th</sup> century. It is possible that materials were salvaged from an earlier building, therefore limiting the amount of new material that required to be transported to the island. The appellant has obviously spent some time researching the historical origin but there is insufficient evidence to provide any robust historical significance for it to be considered to be afforded any protection on heritage grounds.”

5.19 In light of the above comments the Council would not support the contention that the building on the site has the necessary historical significance and therefore Policy CS14 of the Charnwood Core Strategy should not be of consideration in this appeal.

#### The Character and Appearance of the Area

5.20 The Council remain of the opinion that the buildings, structures and paraphernalia associated with the residential use cause harm to the character and appearance of the area and are in conflict with policy.

5.21 The Council do not dispute that the appellant has improved the condition and appearance of the existing building on the site but the residential use has brought with it additional buildings, structures and paraphernalia which would not have been on the site when the appellant first took ownership. It is acknowledged that if the appellant was to vacate the site the condition of the island may deteriorate but if this was to happen the Council would first actively work with the owner to stop this from occurring and if this failed could consider formal action if its condition was considered to have a detrimental impact on the amenity of the area. The fear of the island falling into disrepair should not be a consideration for this appeal.

5.22 The Council notes the support provided by Rothley and Sileby Parish Council. These comments are made on their personal thoughts of the site and do not appear to be in any way based on policy grounds

## **6.0 Ground F**

6.1 As stated earlier the Council are happy for the floating pontoons to remain and the Inspector to vary the Enforcement Notice to reflect this.

## **7.0 Conclusion**

7.1 The Council are of the opinion that the residential use was abandoned by the previous owner. In addition that planning permission should not be granted for a seasonal or a full time residential use of the island its reasons on both points are outlined in, the Enforcement Notice, the statement of appeal and these final comments.

## **Appendices**

- 1 The referendum version of the Rothley Neighbourhood Plan January 2021