

**Report of the Chief Executive**

**Enforcement Appeal Decision**

<b>ENFORCEMENT REFERNECE:</b>	<b>22/00295/ENF</b>
<b>LOCATION:</b>	<b>Land rear of 13 Middleton Crescent Beeston Nottinghamshire</b>
<b>PROPOSAL:</b>	<b>Construct 14 houses, garages and associated access road following demolition of dwelling</b>

**APPEAL DISMISSED WITH VARIATION TO COMPLIANCE PERIODS**

**1 BACKGROUND**

The subject of the enforcement notice is a green bank adjacent to the Tottle Brook which was constructed on the site as part of the above scheme. However, the bank in question is taller, longer and constructed at a steeper angle than shown on the approved plans and is positioned closer to the Tottle Brook.

A retrospective planning application was submitted in an attempt to regularise the bank as constructed, however this was strongly opposed by both neighbouring properties on Wollaton Vale and by the Environment Agency.

**2 REASONS FOR SERVING THE ENFORCEMENT NOTICE**

The Bank as constructed did not comply with the previously approved plans under planning application refs: 18/00377/FUL and 21/00307/ROC in that the Bank is longer, taller and the location differs to that shown on the approved plans.

The Bank by virtue of its scale, height, massing, gradient and proximity to neighbouring properties on Wollaton Vale was considered to be oppressive, causing an unacceptable level of overshadowing, a detrimental loss of light, causing significant overlooking and negatively affecting the living conditions of the neighbouring properties.

The Bank by virtue of its design, scale, massing and gradient was also considered to be overly prominent and would be out of keeping with the character of the area and fail to integrate into its surroundings.

The height of the Bank and proximity of it to Tottle Brook will also result in the proposed trees not being able to establish and grow effectively resulting in a substandard landscape scheme that is unacceptable.

The Council consider that planning permission should not be given, because planning conditions could not overcome these objections to the development.

**LEVEL OF DECISION: WRITTEN REPRESENTATIONS****3 SUMMARY OF THE PLANNING INSPECTOR'S DECISION**

It was established that approved landscape and site section plans did not concur. It was therefore agreed that it was not possible to construct the scheme in line with approved plans. For this reason, following advice from Counsel, the Council took the decision to relax the requirements of the Notice under s173A of the Act prior to the determination of the appeal. This essentially means that the notice requires the removal of the bank but does not require the bank to be re-built in line with approved plans, as this clearly would not be possible. The Inspector was satisfied that the amendment did not cause any injustice.

**Appeal on Ground c**

The appeal on Ground c was made on the basis that the matters alleged do not constitute a breach of planning control. The Inspector noted that the distance between the bank of the brook and the foot of the green bank is narrower than depicted on the approved plans and that the height of the bank is not consistent with the plans and that the inconsistencies are not minor. The distance should be 3m to allow for tree planting, the Inspector found that the distance is only 1.08m at the narrowest point. He noted that these distances are significant, especially given the limited distances to the neighbouring properties on Wollaton Vale.

He further noted that the angle of the bank is significantly steeper than shown on the approved sectional drawings. A shallower bank would not have made it possible to create the level gardens of the new properties shown on the landscape plan.

The Inspector therefore concluded that the bank had not been constructed as approved and does not benefit from planning permission and represents a clear breach of planning control. Accordingly, the appeal on Ground c failed.

**Appeal on Ground (a)**

The appeal on ground (a) was made on the basis that in respect of any breach of planning control, planning permission ought to be granted. The Inspector identified the main issues in respect of the appeal under ground a as:

- i) The effect of the character and appearance of the area.
- ii) The effect on the living conditions of neighbouring occupiers.
- iii) The effect on flood risk.
- iv) The effect on wildlife along the corridor of Tottle Brook; and
- v) The weight that should be applied to any fall-back position.

**Character and Appearance**

The Inspector found that the development has significantly harmed the character of the area. The originally open, low-density setting along Tottle Brook has been replaced by a prominent engineered embankment.

The retaining bank is steep, high, and unnatural in form, appearing more akin to a highway embankment than a feature within a residential environment. It differs materially from the approved plans, which showed a shallower, more natural profile set further from the brook.

Landscaping was not considered capable of mitigating this impact due to the bank's scale and steepness. As such, the development was found to be an unsympathetic and harmful feature, contrary to Policy 10 of the ACS and Policy 17 of the Part 2 Local Plan.

### **Living Conditions**

The Inspector concluded that the development causes significant harm to neighbouring occupiers on Wollaton Vale (particularly numbers 43–61).

The embankment is overbearing due to its height, length and steepness, resulting in a poor outlook and some overshadowing. In addition, elevated garden areas create direct overlooking and loss of privacy.

Opportunities for mitigation through planting are now limited due to the reduced width of the bank. Overall, the scheme was considered an unneighbourly form of development that fails to adequately consider neighbouring amenity.

### **Flood Risk**

The Inspector gave significant weight to flood risk concerns and the Environment Agency's objection.

The embankment has been constructed closer to Tottle Brook than approved and within Flood Zone 3b (functional floodplain). This has reduced flood storage capacity and is likely to displace floodwater, increasing flood risk elsewhere.

No evidence was provided to demonstrate that the impact would be insignificant. The development is also classed as "more vulnerable" and is not appropriate in this flood zone.

Accordingly, the proposal was found to increase flood risk and conflict with national policy in the NPPF and PPG.

### **Impact on Wildlife**

The approved scheme allowed space for landscaping and biodiversity enhancement along Tottle Brook.

As built, the embankment extends close to the watercourse, leaving limited space for planting and harming the function of the brook as a wildlife corridor. The Inspector concluded this would likely have a negative ecological impact and fails to comply with development plan policies relating to biodiversity.

### **Potential Fall-Back Position**

The Council's decision to waive/relax the requirements of the Enforcement Notice means that there is no requirement to rebuild any retaining structure after the bank is demolished. If nothing is rebuilt, the appellants contend that a sheer face of earth would remain at a height of about 5 metres. This would be unstable and could lead to potential collapse into the brook. Whilst this is the fall-back position, the Inspector considers that the likelihood of it occurring appears limited. He further commented that if permission is refused and the notice upheld, there would be an onus on both parties to work together to find an alternative solution. It seems highly unlikely that the appellants would leave the new dwellings at risk of collapse given the expense involved in constructing them. and it would be irresponsible to do so. It would be incumbent on the Council to work towards a solution.

No obvious alternative scheme has been presented to date, but this does not dictate that a solution is unlikely to be found. The appellants had the right to seek permission for the current structure or respond to the Enforcement Notice but if the appeal is unsuccessful, the reasons for that could be addressed in an alternative design, seeking planning permission as necessary.

It is clear that any alternative scheme would still have some impact, however, a less severe bank set further away from the brook would provide a softer edge and allow more space for landscaping and wildlife and alleviate flood risk issues. The Inspector attached limited weight to the fall-back scenario.

### **Conclusion on ground (a)**

The appeal on Ground (a) fails and the inspector refuses to grant planning permission in respect of the deemed application for the reasons above.

### **The Appeal on Ground (f)**

An appeal on this ground is made on the basis that the steps required to remedy the breach exceed what is necessary to remedy the breach of planning control.

The appellant had suggested that the notice could be varied to require reconstruction in "broad accordance" with the plans, however the Inspector stated that it is not clear how this could be achieved. He further discussed the discrepancies between the plans and concludes that the suggestion is unworkable and the lack of clarity in terms of what is required in order to comply. Additionally, he considered not just the overshadowing but the impact on wildlife, increased flood risk, effect on outlook. He therefore considered that this lesser step would not achieve the same aims.

The appellant also suggested that the red line area attached to the enforcement notice should be reduced in scale to allow the requirement to remove resultant rubble/waste from the site more easily by enabling it to be used in other parts of the development. The Inspector noted at the time of his visit that the remainder of the development seemed largely complete with a number of homes occupied. Therefore, it seems unlikely to be required for that purpose, and the requirement goes no further than is necessary. He further noted that whilst the reduction of the red line area may assist in the sale of the remaining houses there is nothing wrong

with the Council's decision to identify the wider site given that the retaining bank formed part of the development for which permission was granted on the whole site. He therefore saw no obvious reason to amend the red line area.

**Conclusion on ground (f)**

The appeal on ground (f) fails.

**The Appeal on Ground (g)**

The enforcement notice provides for a period of 12 weeks to remove the bank and 24 weeks to remove result rubble and material. The appellant considers that to be unreasonably short and requests that the time period be extended to 9 months to allow for the removal and a further 6 months for the removal of resultant material.

Given the scale of the bank and the likely work involved to remove it, the Inspector agreed that this is unduly short in practical terms. Both parties have confirmed that a permit from the EA to carry out work could take three months to process. The Inspector was also mindful of the potential consequences of the enforcement notice and the fact that it is in nobody's interest to leave the bank unsecured, although no alternative proposal has been submitted to date.

Given the circumstances of the case, the Inspector believed it was reasonable to allow a period of time for an alternative to be considered and implemented, should the necessary permission be granted.

**Conclusion on Ground (g)**

Given the complexity of the case and the need to consult other parties, the Inspector was of the view that it would be reasonable to extend the time periods for compliance to 12 months. This should allow 6 months to seek the relevant permissions and a further 6 months to complete the work and a further 3 months beyond that to remove any resultant rubble and material from the site.