



**Rebuttal Proof of Evidence: Andrew Sierakowski BSc (Econ)Hons, MSc, GDL, LLM, MRTPI**

Acting County Planning Manager, West Sussex County Council

**Appeal by PJ Brown (Civil Engineering) Ltd.**

**Land East of Dan Tree Farm, London Road, Bolney, West Sussex, RH17 5QF**

PINS Ref: APP/D3830/C/23/3319435

MSDC Ref: AP/23/0042

September 2024

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## Appendices – West Sussex County Council Core Documents

Appendix No.	Document Number	Document	Date
1.	WSCD040	WSCC Site Inspection Report including Photographs.	18/02/2014
2.	WSCD043	WSCC Site Inspection Report including Photographs.	17/07/2015
3.	WSCD044	WSCC Site Inspection Report including Photographs.	08/10/2018
4.	WSCD047	Enforcement Notice plan with the area of the deposited waste marked in blue and labelled "C".	Undated
5.	WSCD048	Email from Richard Agnew (WSCC) to Michael Martin (MDSC) 5 <sup>th</sup> March 2014 and Site Visit Note of 4 <sup>th</sup> March 2014	04/03/2014 & 05/03/2014
6.	WSCD049	Correspondence from Nick Page to West Sussex County Council	2012
7.	WSCD050	Email from Highways England to Mid Sussex District Council 11 <sup>th</sup> November 2024.	17/07/2001

## **1. Introduction**

- 1.1 My name is Andrew Sierakowski. I have been employed by West Sussex County Council (WSCC) ("the County Council") in the County Planning Team since July 2020 as the Acting County Planning Manager.
- 1.2 The evidence set out in this rebuttal is true and has been prepared, and is given, in accordance with the guidance of my professional institute. I confirm that the opinions expressed are my true and professional opinions. A full personal/professional statement is set out in my full Proof of Evidence.
- 1.3 This Rebuttal Proof has been prepared in response to new points raised for the first time in the Proof of Evidence of Brian Woods in support of the Appellant's case. I set out my response to these points to assist the Inspector. I do not repeat points I have already made in my Proof of Evidence. There are four matters on which I wish to comment as follows:
  - Response to where waste is deposited;
  - Response on the storage use for 10 years not being a lawful fallback;
  - Response on Nick Page involvement; and
  - Response on the National Highways position.
- 1.4 In addition I have noticed that the documents containing the site visit notes in Appendices WSCD040, WSCD043 and WSCD044 of my Proof of Evidence, from 18<sup>th</sup> February 2014, 22 July 2015 and 8 October 2018, have inadvertently not included some or all of the relevant site visit photos. The contents of these photos are described in the site visit notes and should have been included. I now append these as amended copies of the previously submitted Appendices WSCD40 (Appendix 1 to this Rebuttal Proof of Evidence), WSCD43 (Appendix 2) and WSCD44 (Appendix 3).

## 2. Matters for Rebuttal

### *Where waste is deposited*

- 2.1 Brian Woods in paragraphs 6.5 to 6.8 of his Proof of Evidence argues that there has been no deposit of waste on the Appeal Site and claims that the Council has failed to identify where waste has been deposited.
- 2.2 Andrew Clarke in fact sets this out in his Proof of Evidence at paragraphs 7.6 to 7.12 and includes a number of photographs (MSDC10, MSDC11 and MSDC12) showing the deposit of waste.
- 2.3 For the avoidance of doubt and to assist the Inspector on this point a further copy of the Enforcement Notice plan is attached as WSCD0047 (Appendix 4) to this Rebuttal Proof, with the area of the deposited waste marked in blue and labelled "C".
- 2.4 Brian Woods then additionally in paragraph 6.7 attempts to argue that Mid Sussex District Council (MSDC) in their Authorisation Report recognise that the deposit of waste on land does not occur, because it refers to the deposit of waste elsewhere. This is simply a misreading of the paragraph that he quotes from the Authorisation Report which clearly sets out the alleged breach of planning control including the deposit of waste.
- 2.5 Further, when the Appellant themselves applied to WSCC for a Certificate of Lawfulness on 30 September 2019 (which was refused by WSCC) they themselves described the use of the site as "*importation, **deposit**, re-use and recycling of waste material and use of land for storage purposes*" (see Appendix WSCD035 to my Proof of Evidence). The Appellant clearly themselves accepts that the use of the site includes the deposit of waste.

### *Response on the storage use for 10 years not being a fallback*

- 2.6 Brian Woods in paragraphs 6.14 to 6.19 and Section 8 of his Proof of Evidence argues that the Council has incorrectly stated the "from use" in the Enforcement Notice. He seeks to argue that the Council accepts that storage took place on the site between 2007-2018 and that this is the last lawful use. He refers to a paragraph in the MSDC Authorisation Report.
- 2.7 This is a misinterpretation of the MSDC Authorisation Report. Neither MSDC nor WSCC have ever accepted that a lawful storage use accrued on the Appeal Site prior to the material change of use to a mixed waste and storage use in around 2018. The WSCC Planning Enforcement Report included as Appendix WSCD003 to my Proof of Evidence, clearly stated that the storage use did not accrue lawfulness through the passage of time. This has always been the common judgment between both MSDC and WSCC, and myself and Andrew Clarke, throughout the joint enforcement action on the Appeal Site. The MSDC Authorisation Report simply says that the use of the site prior to the mixed waste and storage use commencing included some storage use, but there is no acceptance that this had become an accrued lawful use. As stated in the Report, the storage use was merely ad hoc rather than constituting a material change of use and/or included use as an ancillary part of agricultural use of the planning unit of the wider Bolney

Park Farm. There is no acceptance that 10 years of continuous storage use on the same planning unit throughout has ever taken place. If the Appellant seeks to argue this point, the burden of proof is on them to prove on the balance of probabilities that there was a lawful storage use of the Appeal Site as a planning unit that accrued 10 years prior to the material change of use to mixed waste and storage in around 2018, without there having been any intervening change in the planning unit or other material change of use. The evidence clearly does not show this. The last lawful use of the Appeal Site was agriculture.

- 2.8 To consider this matter in more detail, the Inspector is referred to the aerial photographic evidence that has been submitted and what this demonstrates. The starting point, as always, is the establishment and use of a relevant planning unit, and whether this planning unit has been in continuous storage use for 10 years. The Appellant has not set out any evidence that demonstrates this. Furthermore, if the evidence that I have submitted with my Proof is examined, it can be seen that there is contrary evidence, showing that the use of the relevant planning unit involved simply cannot be considered to have extended back over that period. The aerial photograph from 30<sup>th</sup> April 2007 (Appendix WSDC011) clearly shows that the appeal site was not an established planning unit at this stage. The substantive use of the land was still as a cultivated agricultural field, as part of the wider agricultural land, with no more than a few items at the corner of the adjacent access track. There is then a gap in the evidence from 2007 to 2012, both in relation to aerial photographs and other documentary evidence. This falls far short of demonstrating any establishment of the relevant planning unit or demonstrating any continuous storage use for 10 years prior to the change of use to mixed waste and storage in around 2018.

*Response on Nick Page involvement*

- 2.9 Mr Woods argues at paragraph 7.30 of his Proof that any information provided to the Councils by Nick Page at the site visits should be given little weight, and that any comments he gave were without the consent of the Appellant. That is not a position the Councils agree with. As can be seen from the site visit notes, Nick Page represented the Appellant at several site visits over a number of months in 2014 and 2015. In addition, other representatives of the Appellant, including Bob Penticost, who attended the site visit of 17<sup>th</sup> July 2015 with Nick Page, also confirmed to the Councils that no waste use was ongoing at the site in 2014 and 2015 at these site visits. In further rebuttal to this point, I have also produced the site visit notes from Richard Agnew at WSCC from the site visit on 4<sup>th</sup> March 2014, where it was again confirmed by PJ Brown representative Bob Penticost that none of the activities on the site constituted waste development (see site visit note of 4<sup>th</sup> March 2014 attached as WSCD048 in Appendix 5). Also attached as WSCD049 in Appendix 6 are various other items of correspondence between Nick Page and County Council from 2012 and 2013 that clearly confirm that Nick was acting on behalf of PJ Brown.

*Response on the National Highways position*

- 2.10 Mr Woods alleges at various places in his Proof, see for example paragraph 8.42, that National Highways (NH) do not pursue or contend the highway

matters in this appeal, and that the Councils position is unreasonable. This is not a correct characterisation of the factual position. It is clear from the highways Statement of Common Ground that NH has several areas of material disagreement with the Appellant. Further, the conditions proposed by NH are clearly not acceptable for the reasons explained in Rupert Lyons' Proof of Evidence. In addition, NH have recently emailed on 11 September 2024, saying that none of the Appellant's highway evidence for this appeal fully meets the requirements of the National Planning Policy Framework (NPPF) or Circular 01/2022 (see the email from Highways England attached as WSCD050 in Appendix 7). In this context it is wholly reasonable for the Councils to defend this point, and for the reasons set out in the Proof of Mr Lyons.