



# **MID SUSSEX**

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# **DISTRICT COUNCIL**

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## Town and Country Planning Act 1990

### APPEAL STATEMENT

**Planning Inspectorate Ref:**  
APP/D3830/C/23/3319435

**Local Authority Ref:**  
AP/23/0042

**Appeal by:**

PJ Brown (Civil Engineering) Ltd

**Appeal Site:**

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

**Development:**

Without planning permission,

The material change of use of the Land from agriculture to a mixed use  
of:

- the importation, processing, storage and export of waste material upon  
the Land;
- the deposition of waste material upon the Land;
- the storage of building materials upon the Land;
- the storage of plant, machinery and containers upon the Land;

The operational development comprising:

- the laying and construction of hardstanding upon the Land

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## 1.0 INTRODUCTION

1.1 This statement is prepared by Mid Sussex District Council as the Local Planning Authority's ("the Council") response to the s.174 appeal by PJ Brown (Civil Engineering) Ltd ("the Appellant") against the issue of an Enforcement Notice under s.171A(1)(a) of the Town and Country Planning Act 1990 on 28<sup>th</sup> February 2023 in relation to Land east of Dan Tree Farm, London Road, Bolney, West Sussex, RH17 5QF ("the Land" or "the Appeal Site").

1.2 With respect to the Enforcement Notice, this alleged the following breaches of planning control:

*Without planning permission:*

- *the material change of use of the Land from agriculture to a mixed use of:
  - *the importation, processing, storage and export of waste material upon the Land;*
  - *the deposition of waste material upon the Land;*
  - *the storage of building materials upon the Land;*
  - *the storage of plant, machinery and containers upon the Land;**

And the

- *the operational development comprising:
  - *the laying and construction of hardstanding upon the Land**

1.3 The Notice gave the following reasons for issuing the notice:

*It appears to the Council that the above breach of planning control stated in 3.1 above has occurred within the last 10 years and constitutes unauthorised development.*

*It appears to the Council that the above breach of planning control stated in 3.2 above has occurred within the last 4 years and constitutes unauthorised development.*

*The Unauthorised Development is located in a rural area and is unrelated to the needs of agriculture and is considered contrary to policies DP12 and DP16 of the Mid Sussex District Plan 2014 – 2031, policies W3, W4, W8 and W9 of the West Sussex Waste Local Plan 2014 – 2031, policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 177 of the National Planning Policy Framework 2021.*

*By virtue of its location, scale and appearance the Unauthorised Development causes harm to the visual amenity of the rural area and the High Weald Area of Outstanding Natural Beauty in which it lies contrary to policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan 2014 – 2031, policies W11, W12 and W13 of the West Sussex Waste Local Plan April 2014 - 2031 policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the National Planning Policy Framework 2021.*

*By virtue of the location and scale of the Unauthorised Development it represents a severe impact upon the safety of the local highway network contrary to policy DP21 of the Mid Sussex District Plan 2014 – 2031 and policy W18 of the West Sussex Waste Local Plan April 2014 – 2031 and paragraphs 110 and 111 of the National Planning Policy Framework 2021.*

*By virtue of the use, siting, scale and material construction of the Unauthorised Development it represents a risk to land and water contamination contrary to policies DP41 and DP42 of the Mid Sussex District Plan 2014 – 2031 and paragraph 183 of the National Planning Policy Framework 2021*

*By virtue of the use, siting and scale the Unauthorised Development it causes harm to the adjacent ancient woodland and biodiversity of the land contrary to policies DP27 and DP38 of the Mid Sussex District Plan 2014 – 2031 and policies W14, W16 and W19 of the West Sussex Waste Local Plan April 2014 – 2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 174 of the National Planning Policy Framework 2021.*

*The Council does not consider that planning permission should be given because it is contrary to the policies of the development plan and planning conditions could not overcome these objections to the development.*

1.4 The notice required the following actions to be taken in order that the breach of planning control and the harm to amenity be ceased.

*1) Cease the use of the Land for the importation, processing and export of waste material;*

*2) Cease the use of the Land for the deposition of waste material;*

*3) Cease the use of the Land for the storage of waste and building materials*

*4) Cease the use of the Land for the storage of plant, machinery and containers*

*5) Remove from the Land all plant, machinery, equipment, containers and vehicles*

*6) Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the unauthorised development*

*7) Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked 'A' on the Plan.*

*8) Remove from the Land the portacabin sited in the approximate position marked 'A' on the Plan.*

*9) Remove from the Land the containers sited in the approximate position marked 'B' on the Plan.*

*10) Remove from the Land the hardstanding marked outlined in blue on the Plan.*

*11) Remove from the Land to an authorised place of disposal all debris and materials as a result of compliance with step 5.10 above.*

*12) Reinstate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land*

- 1.5 The notice gave a period of 7 days for compliance with requirement 1, 2 and 3 of the Notice.
- 1.6 The notice gave a period of 14 days for compliance with requirements 4, 5, 7, 8 and 9 of the Notice.
- 1.7 The notice gave a period of 28 days for compliance with requirements 6, 10 and 11 of the Notice.
- 1.8 The notice gave a period of 3 months for compliance with requirement 12 of the Notice.
- 1.9 Copies of the Enforcement Notice have already been forwarded with the Council's Questionnaires and Schedule of Documents.

## **2.0 THE SITE AND ITS SURROUNDINGS**

- 2.1 The Land subject to the Enforcement Notice is an area of land approximately 2ha which lies immediately east of the A23 trunk road with access directly from the A23.
- 2.2 The Land, whilst being described as to be east of Dan Tree Farm, forms part of Bolney Park Farm where the main farmstead is located to the south of the appeal site.
- 2.3 Bolney Park Farm is a large agricultural holding lying north of Broxmead Lane and east of the A23. The wider farm holding has a lawful use for a mixed use of agriculture and rearing and grazing of horses (for use in relation to show jumping), although the Land subject to the Notice has solely a lawful use for the purposes of agriculture.
- 2.4 The Land where the alleged unauthorised use is taking place is on a parcel of land at the northern end of the agricultural holding at Bolney Park Farm and comprises a cleared area of land approximately 1.25ha in size where the waste importation and processing takes place and which is served by an existing access road approximately 225m long directly from the A23 trunk road to the west. Incorporating the access road, the land to which the notice relates measures 2ha in size.
- 2.5 The primary waste importation and processing takes place on the cleared area to the east with high bunds and raised tracks which serve the operation. The storage element of the use takes place on the more southern part of the land and is arranged informally around this area but so as not to obstruct the tracks or the movement of heavy plant around the site.
- 2.6 The Land is set in a highly rural location within the wider High Weald Area of Outstanding Natural Beauty and benefits from no other lawful use or vehicular access. The closest settlement is Bolney with its defined built-up area boundary approximately 1.5km from the appeal site.

- 2.7 The Land is set at an elevated position with wider views of the High Weald AONB particularly to the south and east as the land falls away in level. To the north and east the wider agricultural unit is bordered by woodland designated as Ancient Woodland and through which public right of way 20CR runs. At its closest point the Ancient Woodland lies within 15m of the appeal site and as just lies within the 15m buffer zone which surrounds Ancient Woodland.
- 2.8 The Appeal Site is understood to fall into two landownerships. The Access Track is understood to fall within a landholding that includes the land to the south of the Access Track and is owned by Ms S Wright, of Park Farm Cottage, Park Farm, Bolney and includes an equine rehabilitation centre. Bolney Park Farm is understood to extend to 56.2 ha and to be in the ownership of Mrs Maureen Rawlins of Bolney Park Farm.

### **3.0 PLANNING HISTORY**

- 3.1 The following planning history is considered relevant to the determination of the appeal.
- 3.2 On 17<sup>th</sup> July 2021 Mid Sussex District Council approved Planning Application Ref. 01/01232/AGDET for the *'Infilling of the bomb crater, levelling and re-seeding of area, easing of the slope of the field, and banking and planting of the lower slope'* submitted pursuant to Part 6 of the Town and Country Planning (General Permitted Development) Order 1995.
- 3.3 On 11<sup>th</sup> September 2001 Mid Sussex District Council approved Planning Application Ref. 01/01613/AGDET for a *'new hardcore farm track, and banking and planting of the lower slope'* submitted pursuant to Part 6 of the Town and Country Planning (General Permitted Development) Order 1995. This related to a narrow strip of land to the east of the current Appeal Site and entirely within the area covered by the Prior Determination issued on 17th July 2001. It did not relate to any of the land within the Appeal Site.
- 3.4 The works approved under the two Agricultural Prior Determinations issued by Mid Sussex District Council, are understood to have commenced sometime after the beginning of 2002.



- 3.5 On 11th June 2012 West Sussex County Council granted planning permission under reference Ref. WSCC/077/11/BK for the *“Development of equine rehabilitation and physiology centre comprising treatment block, horse walker, sand school, car park, grass paddocks, exercise track and engineering operation to form a bund adjacent to the A23”*.
- 3.6 The application was submitted to and determined by West Sussex County Council as the Waste Planning Authority as the development was considered a ‘County Matter’ rather than a ‘District Matter’, because it included the construction of what was described in the application as an acoustic bund, 500m in length (north to south), between 36m - 55m in width (west to east) and between 1.5m - 9m in height, formed from 76,500 cubic metres (51,000 tonnes) of inert waste that was to be imported into the site.
- 3.7 Works to implement Planning Permission Ref. WSCC/077/11/BK commenced in 2013.
- 3.8 PJ Brown (Construction) Ltd submitted an application for a Certificate of Lawfulness to West Sussex County Council on 30th September 2019 for *“the importation, deposit, re-use and recycling of waste material and use of land for storage purposes for a period exceeding 10 years”*. The application was refused by the County Council on the 10th January 2020.
- 3.9 On 27th January 2020 West Sussex County Council issued an Enforcement Notice on the landowner and PJ Browns (Construction) Ltd alleging:
- “Without planning permission the making of a material change of the use of the land from agriculture to sui generis waste use for importation, processing, and export of waste, and deposition of waste to the Land along with ancillary storage”*.
- 3.10 Both recipients of the Notice appealed, although West Sussex County Council withdrew the Notice in March 2021 prior to the appeal being determined.

- 3.11 Prior to the inquiry the appellants (PJ Browns (Construction) Ltd) submitted a letter to the Inspector querying the lawfulness of West Sussex County Council issuing the Enforcement Notice as the use may be considered a 'mixed use' of waste and storage' use rather than solely a 'waste' matter, as alleged by the Enforcement Notice.
- 3.12 Thereafter in May 2022 Mid Sussex District Council issued a number of Planning Contravention Notices (PCN) upon the operators(s) to require information as to the operation being carried on upon the land. These Notices were thereafter responded to, and information provided in May 2022.
- 3.13 It was thereafter considered that the unauthorised use upon the site is a 'mixed use' and that as such Mid Sussex District Council are the correct relevant responsible Local Planning Authority for development as being carried on.
- 3.14 On 28th February 2023 Mid Sussex District Council issued the Enforcement Notice that is the subject of this appeal, which was due to come into effect on 31<sup>st</sup> March 2023. A valid appeal was submitted on 29<sup>th</sup> March 2023 and the requirements of the Notice have thereafter been held in abeyance.
- 3.15 Also of note is Planning Application Ref. DM/21/3566 submitted to Mid Sussex District Council on 8<sup>th</sup> October 2021 in relation to a proposed development at Broxmead Farm, Broxmead Lane which lies approximately 800m to the east of the appeal site. This application sought permission for "*Proposed engineering works and extensive native planting scheme to facilitate the creation of a grass training and exercise arena, together with facilities for an elite show jumping horse breeding program requiring a new barn construction and additional paddocks. The grading works will completed using 37833m<sup>3</sup> of clean inert soils/materials to the farm. Construction access is proposed via an existing access from the southbound carriageway of the A23*". This application, whilst not on the Appeal Site included the vehicular access off the A23 and the access drive and tracks within the red line of the Enforcement Notice as they were being used to facilitate the development. This application was withdrawn in April 2022 without a decision being made.

## 4.0 PLANNING POLICY

4.1 The appeal has been made on grounds (a) and therefore a deemed planning application has been made.

4.2 The determination of a planning application must be made in accordance with the Development Plan unless material considerations indicate otherwise:

4.3 Section 70 (2) of the Town and Country Planning Act 1990 states:

*“In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,*
- b) And local finance considerations, so far as material to the application, and*
- c) Any other material considerations.”*

4.4 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise. In respect of this site, the Development Plan now consists of the following:

- The Mid Sussex District Plan 2014 – 2031
- Mid Sussex Site Allocations DPD 2022
- West Sussex Waste Local Plan 2014 – 2031
- Bolney Neighbourhood Plan 2015 – 2031

4.5 In the event of conflicts between policies in these plans or with Government policy, it is the most recent which takes precedence. With this in mind the latest National Planning Policy Framework (NPPF), which was issued in July 2021 is materially relevant and sets out in paragraph 2 that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”*

4.6 The Mid Sussex District Plan was adopted on 28th March 2018 and full weight can be given to the policies contained within the District Plan.

- 4.7 Mid Sussex Site Allocations Development Plan Document was adopted in June 2022 and identifies sufficient housing sites to provide a five-year housing land supply to 2031 and also makes sure that enough land is allocated to meet identified employment needs and full weight can be given to the policies contained within it.
- 4.8 The West Sussex Waste Local Plan 2014 – 2031 has been made and full weight can be given to the policies contained within the Plan.
- 4.9 The Bolney Neighbourhood Plan has also been made and is a full material consideration in the determination of planning applications. It is noted that the policies of the Bolney Neighbourhood Plan are not referred to on the Enforcement Notice and will not be relied on by the Council in the consideration of this appeal.
- 4.10 The Ansty, Staplefield and Brook Neighbourhood Plan has also been made and is a full material consideration in the determination of planning applications. The land subject to the Enforcement Notice and appeal does not, however, fall within the boundaries of the Ansty, Staplefield and Brook Neighbourhood Plan and reference to this plan were included in error on the Enforcement Notice. Therefore, the policies of the plan are not relevant to the determination of this appeal.
- 4.11 National policy (which is contained in the National Planning Policy Framework and National Planning Practice Guidance) does not form part of the development plan but is an important material consideration.

### **The Development Plan**

- 4.12 Having regard for the issues being considered under ground (a) of this appeal, the relevant policies from the Development Plan are considered to be:

#### **Mid Sussex District Plan:**

- Policy DP12: Protection and Enhancement of Countryside
- Policy DP16: High Weald Area of Outstanding Natural Beauty
- Policy DP21: Transport

- Policy DP26: Character and Design
- Policy DP29: Noise, air and light pollution
- Policy DP37: Ancient Woodland and Trees
- Policy DP38: Ecology
- Policy DP41: Flood Risk and Drainage
- Policy DP42: Water Infrastructure and the Water Environment

4.13 Policy DP12 of the District Plan seeks to protect the countryside for its intrinsic character and beauty. Development within rural location is supported where it enhances the visual quality of the landscaping and is:

- necessary for the purposes of agriculture
- Is supported by a specific policy elsewhere within the development plan

4.14 Policy DP16 of the District Plan seeks to protect the High Weald Area of Outstanding Natural Beauty and development should have regard to the High Weald AONB Management Plan and that development conserve and enhance the natural beauty particularly in respect of landscape features and their setting.

4.15 Policy DP21 of the District Plan seeks to ensure that development is accompanied by the necessary transport infrastructure to support development. Development should sustainably located to minimise the need for travel, protects the safety of road users and pedestrians and does not harm the special qualities of the High Weald Area of Outstanding Natural Beauty through its transport impacts.

4.16 Policy DP26 of the District Plan requires the design of new development to respect the character of towns and villages as well as the character of the buildings. Development should only be permitted if it is of high quality design and contributes positively to, and clearly defines, public and private realms and creates a sense of place while addressing the character and scale of the surrounding buildings and landscape.

4.17 Policy DP29 of the District Plan seeks to protect protected landscapes from pollution and in relation to light pollution to ensure the impact of artificial lighting on local amenity, intrinsically dark landscapes and nature conservation areas are minimised.

- 4.18 Policy DP37 of the District Plan seeks to protect ancient woodland which are irreplaceable wildlife habitats with complex ecological conditions that have developed over centuries. They contain a wide range of wildlife including rare species, however, because the resource is limited and highly fragmented, ancient woodland and their associated wildlife are particularly vulnerable and must be protected from damaging effects of adjacent and nearby land uses that could threaten the integrity of the habitat and survival of its special characteristics. Development should therefore be positioned as far as possible from ancient woodland with a minimum buffer of 15 metres maintained between ancient woodland and the development boundary.
- 4.19 Policy DP38 of the District Plan seeks to protect the biodiversity of the site in particular valued soils will be protected and enhanced, including the best and most versatile agricultural land, and development should not contribute to unacceptable levels of soil pollution.
- 4.20 Policy DP41 and DP42 the District Plan relate to flood risk and water quality and seek to ensure Sustainable Drainage Systems are applied to all new development and that development should connect to a public sewage treatment work and where this is not feasible, proposals should be supported by sufficient information to understand the potential implications for the water environment.

West Sussex Waste Plan:

- Policy W3: Location of Built Waste Management Facilities;
- Policy W4: Inert Waste Recycling;
- Policy W8: Recovery Operations involving the Depositing of Inert Waste to Land;
- Policy W9: Disposal of Waste to Land;
- Policy W11: Character;
- Policy W12: High Quality Developments;
- Policy W13: Protected Landscapes;
- Policy W14: Biodiversity and Geodiversity;
- Policy W16: Air, Soil, and Water;

- Policy W18: Transport; and
- Policy W19: Public Health and Amenity.

4.21 Copies of all the relevant Development Plan policies were included with the Council's previously submitted schedule of documents.

### **National Planning Policy**

4.22 In February July 2021 a revised NPPF was issued, containing revised guidance on the determination of planning applications. The following extracts are considered relevant.

4.23 The NPPF 2021 sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three objectives of sustainable development, such that the planning system needs to achieve an economic objective, a social objective and an environmental objective. This means ensuring sufficient land of the right type to support growth; providing a supply of housing and creating a high quality environment with accessible local services; and using natural resources prudently.

4.24 Paragraph 12 states that the National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

4.25 With specific reference to decision-taking the paragraph 11 provides the following advice that decision makers should apply a presumption in favour sustainable development and for decision-taking this means:

*“c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

4.26 Paragraph 47 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.  
*against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.”*

4.27 Paragraph 84 relates to rural economic development and supports sustainable development and diversification of agricultural and other land-based rural businesses.

4.28 Paragraph 110 ensures that safe and suitable access to the site can be achieved for all users.

4.29 Paragraph 111 relates to highway safety and states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

4.30 Paragraph 126 relates to design and seeks to ensure that are visually attractive with good architecture, layout and appropriate and effective landscaping.

4.31 Paragraph 174 states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and by recognising the intrinsic character and beauty of the countryside.



4.32 With respect to development within Areas of Outstanding Natural Beauty paragraph 176 of the NPPF states that:

*“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”*

and paragraph 177 states that:

*“When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”*

4.33 In addition to NPPF para 110-113 regarding transport, Circular 1/22 (December 2022) Strategic road network and the delivery of sustainable development sets out national government policy on transport matters. The purpose of the Strategic Road Network (SRN), of which the A23 in the vicinity of the appeal site forms part, is to enable safe, reliable, predictable, efficient, often long distance, journeys of both people (whether as drivers or passengers) and goods in England.

4.34 Paragraph 8 of the Circular states that:

*This document is the policy of the Secretary of State in relation to the SRN which should be read in conjunction with the National Planning Policy Framework (NPPF), planning policy for traveller sites, national planning policy for waste, planning practice guidance, national design guide, National Model Design Code, Manual for Streets (MfS), local transport note (LTN) 1/20 and all other material considerations when strategic policy-making authorities are setting policies and making decisions on planning and development proposals under the Town and Country Planning Act 1990.*

#### **Material Considerations**

4.35 In evidence (or within the Statement of Common Ground), reference is also likely to be made to:

- National Planning Policy for Waste (October 2014);
- National Planning Practice Guidance;
- High Weald Area of Outstanding Natural Beauty Management Plan 2019-2024 (4th ed, Feb 2019);
- National Character Area (NCA) 122 (High Weald), Natural England;
- Mid Sussex Landscape Character Assessment (2005) – High Weald; and
- Mid Sussex Landscape Capacity Study (Jul 2007) – Zone 7 and 8.
- The Design Manual for Roads and Bridges (DMRB)

4.36 The Council reserves the right to add further policy and guidance as may be required, particularly should issues arise as part of the Statement of Common Ground preparation.

## **5.0 THE COUNCIL'S CASE**

5.1 The appeals have been made on grounds (a), (b), (d), (f) and (g). The Council's case on each ground is outlined in turn below.

5.2 With respect to ground (a) as set out in paragraph 4.3 of the Enforcement Notice the Council considers that the development does not comply with the policies of the development plan as it is located in an unsustainable rural area unrelated to the need of agriculture and causes harm to its countryside location and is considered contrary to policies DP12 and DP16 of the Mid Sussex District Plan 2014 - 2031, policies W3, W4, W8 and W9 of the West Sussex Waste Local Plan 2014 – 2031 and also in paragraph 177 of the NPPF.

5.3 As an inert waste recycling facility on an unallocated site the key policies are those set out in the West Sussex Waste Local Plan, and in particular Policies W3 and W4. These define the criteria by which such applications are to be determined, in terms of the location of the of the development, whilst Policies W8 and W9 are concerned with the criteria against which applications for the deposit of waste on land are to be determined.

5.4 Policy DP12 of the Mid Sussex District Plan also states that development in unsustainable rural locations should be restricted to those which are related to agriculture, or another rural land based business or else is supported by some other policy in the plan. As the development is neither agricultural nor is by virtue of its nature related to a rural land use it is not considered compliant with these policies which seek to protect the countryside for its own intrinsic character and beauty.

5.5 In addition paragraph 177 of the NPPF is explicit in stating that when considering applications for development within Areas of Outstanding Natural Beauty, permission should be refused for major development, other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

5.6 The onus under these policies is on the Appellant to demonstrate that there is no suitable alternative site on which to undertake the development, as they acknowledge in the Statement of case, which they have not done, and why there are exceptional circumstances, and that the development is in the public interest. The Council will present evidence setting out the requirements of the policies and why these are not complied with and why the requirements of paragraph 176 that there are exceptional circumstances, and that the development is in the public interest, are not met.

5.7 Paragraph 4.4 of the Enforcement Notice identifies that the Unauthorised Development by virtue of its location, scale and appearance causes harm to the visual amenity of the rural area and the High Weald Area of Outstanding Natural Beauty in which it lies contrary to Policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031, Policies W11, W12 and W13 of the West Sussex Waste Local Plan April 2014 - 2031 paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the National Planning Policy Framework 2021.

- 5.8 Policies W11, W12 and W13 of the West Sussex Waste Local Plan and policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan set out the key criteria in relation to the impact of new development on character, in terms of design quality and on landscape. The Appellant has submitted a Landscape and Visual Impact Assessment as part of their Appeal Submission, which concludes that at national, regional, county and district scales the Unauthorised Development has had a Minor Significance (Adverse) impact since 2006 and that at a local scale it has had Minor to Moderate Significance (Adverse) impact since 2005 and Minor Significance (Adverse) impact after planting having become established, and that the cumulative impacts of the development are not significant. The Council does not agree with this assessment and will present evidence as to why it considers that the Unauthorised Development is not acceptable and is not compliant with Policies W11, W12 and W13, policies DP12, DP16, DP26 and DP29, Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the NPPF.
- 5.9 The Council will provide evidence as to how the unauthorised development causes harm to protected landscapes and is not compliant with national and local policies which protect the designated landscape and is not in accordance with objectives G3 (supporting fossil fuel-free development and travel alternatives), S2 (protect the historic pattern and character of settlement); W2 (enhance the ecological quality and functioning of woodland), FH2 (maintain pattern of small irregularly shaped fields bounded by hedgerows and woodlands), OQ4 (protect and promote the perceptual qualities that people value) of the High Weald Area of Outstanding Natural Beauty Management Plan 2019-2024.
- 5.10 Paragraph 4.5 of the Enforcement Notice states that the Unauthorised Development, by virtue of its location and scale would give rise to a severe impact upon the safety of the local highway network contrary to Policy DP21 of the Mid Sussex District Plan 2014 - 2031 and Policy W18 of the West Sussex Waste Local Plan April 2014 - 2031 and paragraphs 110 and 111 of the National Planning Policy Framework 2021.

5.11 Policy W18 of the West Sussex Waste Local Plan and paragraphs 110 and 111 of the National Planning Policy Framework 2021 seek to ensure that safe and suitable access to and from the site from the highway network can be achieved. The Appellant asserts that the operation of the Unauthorised Development would not result in an unacceptable impact on the safety of the highway network. The Council will present evidence in conjunction with National Highways as to why it considers this not to be the case, and therefore why the Unauthorised Development is not acceptable and compliant with Policy W18 and DP21, or paragraphs 110 and 111 of the National Planning Policy Framework 2021.

5.12 National Highways operates as the Strategic Highway Authority for the Strategic Highway Network and is a statutory consultee on any proposals that have the potential to impact on the safe, reliable and/or efficient operation of the SRN (the tests set out in C1/22 and NPPF) by virtue of

- a) The traffic attracted to, generated by or rerouted as a result of proposals and/or
- b) the construction, operation or maintenance of a site adjacent to or in close proximity to the SRN.

5.13 National Highways, on behalf of the Council, will provide evidence to demonstrate that the development has an unacceptable impact on the safety and operation of the of the A23. Evidence will be provided with regards to the original provision of the access and history of use of the access and that it cannot be relied upon in support of the current proposals. Evidence will also be provided that it is not possible to mitigate the safety and operational impacts in a manner that complies with DMRB. Consequently, it is not possible for the applicant to propose a means of operation or use of this access for the proposed purposes that complies with national policy in principle and/or could be the subject of any necessary, relevant and appropriate consents or agreements under, for example, the Highways Act in practice.

- 5.14 Paragraph 4.5 of the Enforcement Notice states that the that the Unauthorised Development by virtue of the use, siting, scale and material construction of the Unauthorised Development represents a risk to land and water contamination contrary to Policies DP41 and DP42 of the Mid Sussex District Plan 2014 - 2031 and paragraph 183 of the National Planning Policy Framework 2021.
- 5.15 It is noted that that the Appeal Site operates under an Environmental Permit issued by the Environment Agency for the operations on the site, and that the appellant states such a permit would not have been issued if there was any risk of contamination.
- 5.16 Whilst noted, the granting of an environmental permit is completely separate from the planning process. It is the responsibility of the operator who has been granted a permit to ensure the correct planning permission is in place before permitted activities commence and the issue of a permit does mean that the policies of the development plan are complied with.
- 5.17 Nevertheless it is noted that the potential for contamination is covered by and legislated by a separate legislative process and that should contamination occur that the Environment Agency would have powers to pursue and address any contamination under The Environmental Permitting (England and Wales) Regulations 2016 and the Environmental Protection Act 1990.
- 5.18 As such, and noting the planning process should not seek to address matters otherwise covered or legislated for under separate acts with separate authorities, the Council will not seek to provide evidence to defend the issue of the Notice on these grounds and will withdraw reason 4.5 from the Notice
- 5.19 Paragraph 4.7 of the Enforcement Notice states that the Unauthorised Development, by virtue of its use, siting and scale causes harm to the adjacent Ancient Woodland and biodiversity of the Land contrary to Policies DP27 and DP38 of the Mid Sussex District Plan 2014 - 2031 and Policies W14, W16 and W19 of the West Sussex Waste Local Plan April 2014 - 2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 174 of the National Planning Policy Framework 2021.

- 5.20 The Appellant argues that the Ancient Woodland is suitably distanced from the operations and therefore would not cause such harm. The Council remains of the opinion that the unauthorised use and the operational development lies within 15m of Ancient Woodland and therefore may not be in compliance with policy DP37 of the Mid Sussex District Plan.
- 5.21 However it is noted that the incursion into the buffer zone is slight and that the previous land use was ecologically poor. Therefore, whilst the development is contrary to the policy of the development plan and the Natural England Standing Advice on Ancient Woodland it is considered there is no likely significant impact on Ancient Woodland root protection areas, minimal regular disturbance, and no invasive species and as such is not considered to cause harm to the biodiversity of the land.
- 5.22 As such the Council will not seek to provide evidence to defend the issue of the Notice on these grounds and will withdraw reason 4.6 from the Notice
- 5.23 With respect to ground (b) the appellant has sought to argue that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The Appellant argues that the alleged breach of planning control to the deposition of waste material upon the land has not actually occurred and that there is no permanent deposit of waste on the land, and that the operations that actually take place are the transfer and treatment of construction and demolition waste, which is adequately covered by paragraph 3.1.1 of the Enforcement Notice. They therefore argue that the wording of the Notice should be amended so as delete reference to the “deposition of waste”.
- 5.24 The Council will present evidence as why it considers that there has been the deposition of waste on the land, including photographs and other documents.
- 5.25 The Council will also provide evidence as to the use taking place upon the Land, and the correct appropriate authority with responsibility for the planning function noting the appellant’s previous submissions to previous appeal APP/P3800/C/20/3247574



- 5.26 With respect to ground (d) the Appellant presents their case in relation to the Ground (d) appeal on the basis that the use of the land for ‘the *importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes*’ is immune from enforcement action by virtue of the passage of time.
- 5.27 The Council considers that the key issue in the determination of this appeal arises from the Ground (d) appeal in relation to which the main consideration for the Inspector is whether on the date when the Notice was issued, no enforcement action could be taken in respect of the breach of planning control stated in the Notice. The Council agrees with Appellant that the Ground (d) case ought to be considered first.
- 5.28 The breach of planning control stated in Section 3 of the Notice relates to an unauthorised change of use of land; in this case a material change of use of the Land from agriculture to a mixed use of: the importation, processing, storage and export of waste material upon the Land; the deposition of waste material upon the Land; the storage of building materials upon the land; and the storage of plant, machinery and containers upon the Land; and operational development comprising the laying and construction of hardstanding upon the Land.
- 5.29 The time limit for enforcement action of a change use, other than to use as a dwellinghouse, as set out in s.171B of the Town and Country Planning Act 1990 is 10 years beginning from the date of the breach.
- 5.30 The time limit for enforcement action of operational development, as set out in s.171B of the Town and Country Planning Act 1990 is 4 years beginning with the date on which the operations were substantially completed.
- 5.31 The Notice was issued on 28th February 2023 and the key consideration for the Inspector is whether the breach of planning control has taken place and been existing on the site for a continuous period within the time limits set of in s.171B. The Appellant does not state when the breach of planning control first started but merely asserts that they commenced by 28th February 2013, i.e. 10 years before the Enforcement was served, and they refer to when their activities on the Appeal Site first started in 2004.

- 5.32 As set out above the issue is entirely one of fact as to what the activities were and have been undertaken (a) without planning permission, and (b) when these were undertaken and in particular whether they were being undertaken and established on the Appeal Site within the time limits for enforcement action set out in s.171B of the Town and Country Planning Act 1990.
- 5.33 The key matter in relation to this ground for appeal is the chronology of events and what the available evidence shows in support of these events.
- 5.34 The Council will present evidence to demonstrate that the Appellant's activities on the Appeal Site, commenced in 2004 or thereabouts, following the commencement of works to implement the Agricultural Prior Determination Ref. 01/01232/AGDET issued by Mid Sussex District Council under the Town and Country Planning (General Permitted Development) Order 1995, Part 6 Agricultural Buildings and Operations, on the 17th July 2001 and the further Agricultural Prior Determination, Ref. Ref. 01/01613/AGDET also issued by Mid Sussex District Council on the 11th September 2001.
- 5.35 The Appellant did not initiate these works but took over operations on the site after the previous contractor, South East Tipping Limited, went into receivership. It is thought that the works to implement to the two Agricultural Prior Determinations may have started as early as late 2001 or early 2002.
- 5.36 Evidence relating to the implementation of the works associated with the two Agricultural Prior Determinations consists of aerial photographs and other documents which show that the works were not completed until after either late 2013 or in 2014. Aerial photographs confirm that the works were still on-going on the 6th June 2013 but completed by 12th April 2015. The area of the works included the area of The Compound within the Appeal Site, and insofar as they related to the implementation Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET the Council considers that they were not undertaken without Planning Permission. These works commenced well before 27th January 2010 and continued until after that date, i.e. until either late 2013 or 2014.

- 5.37 The Council will argue that there is no evidence to demonstrate that, on the balance of probability, the activities being undertaken on the Appeal Site before and on the 28th February 2013 were anything other than works associated with the implementation of Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET, or the subsequent Planning Permission Ref. WSCC/077/11/BK approved by West Sussex County Council on the 11th June 2012 (DTF013).
- 5.38 The Council's evidence will set out the details of the use and development of the Appeal Site extending back to 2001 and how these have progressed. The Council will present photographic and other documentary evidence in support of its case.
- 5.39 The Council will argue that the Appellant has not presented any evidence, and there is no other available, to indicate that use and development of the Appeal Site that constitute the breach of planning control stated in Section 3 of the Enforcement Notice have been ongoing continuously for beyond the time limits for enforcement action set out in s.171B of the Town and Country Planning Act 1990.
- 5.40 With respect to ground (f) an appeal under this ground should be made on the basis the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
- 5.41 However, the Appellant seeks to amend or vary a number of the requirements based on the presumed success of the ground (d) appeal (or as a fallback the ground (a) appeal. The appellant's statement of case does not seek to address the reasonableness or excessiveness of the requirements, rather seek to propose significant under enforcement so that the Notice is rendered ineffective.
- 5.42 The Council therefore provide evidence that the requirements address the breaches of planning control alleged and that should the appeals fail on ground (d) and thereafter on (a), that they are reasonable and necessary to address the harm to amenity.

- 5.43 The Council will also provide evidence that under-enforcement through even a partial success under ground (d), should the ground (d) and ground (a) appeal not be successful would in effect grant planning permission for development contrary to the policies of the development plan and would not address the harm to amenity. An appeal under ground (d) should not seek to address the planning merits of lawfulness of the activity alleged and that these matters should be addressed under the ground (a) and ground (d) appeal.
- 5.44 The Appellant takes issue with the scope of the Land upon which the Notice takes effect, in particular the access from the A23.
- 5.45 The Council will provide evidence to confirm the necessity in the scope of the land subject to the Notice in ensuring it is lawful and enforceable and addresses to the harm to amenity. Furthermore, the Council will address the concerns that the requirements are excessive and that they do not prevent the ongoing lawful use of the land.
- 5.46 With respect to the ground (g) appeal the appellant seeks to amend the time periods for compliance for periods of up to 18 and 24 months.
- 5.47 The Council will provide evidence that notwithstanding the financial implications of shorter compliance periods, that these are necessary, particularly in the case of highway safety to address the harm to amenity and severe harm to the safety of the highway network and that the appellant has been aware of the unauthorised nature of their operation yet has not sought to address the planning position either through regularising the use alleged in the Notice nor seeking to relocate the unauthorised development.
- 5.48 The Council will provide evidence as to scale and scope of the operations of the appellant that the requirements are achievable and are not unreasonable considering the resources of the appellant. The variations to the compliance periods as suggested by the appellant should the ground (g) appeal succeed would result in continued economic benefit solely to the appellant and would result in lengthy continuation of a high impact development which is contrary to the policies of the development plan.

## **6.0 CONCLUSION**

- 6.1 It is therefore considered that the issue of the Enforcement Notice is necessary to address a breach of planning control and a harm to amenity.
- 6.2 From an assessment of the identified planning issues, the Council's case will conclude by arguing that the scheme is contrary to national and local planning policy and that the appeal on ground (a) be dismissed.
- 6.3 By addressing the activity upon the site and the planning history the Council will conclude by arguing that the development as alleged is taking place as a matter of fact and that ground (b) be dismissed.
- 6.4 By addressing the history of the activity upon the site and the planning history the Council will conclude by arguing that the development as alleged has not been taking place continuously for a period either 4 or 10 years so as that the development(s) have not gained immunity through the passage of time and that the appeal under ground (d) be dismissed.
- 6.5 By addressing the lawfulness and necessity of the requirements of the Notice the Council will conclude that the suggestions of the appellant in respect of amendments to the requirements of the Notice go beyond that permissible under a ground (f) appeal and that they are in all respects necessary and reasonable to address the harm to amenity from the authorised developments and that the appeal under ground (f) be dismissed.
- 6.6 By addressing the planning history, planning harm and nature, scale and financial position of the appellant that the time limits for compliance of the requirements of the Notice are reasonable and achievable in order to address the harm to amenity and that the appeal under ground (g) be dismissed.
- 6.7 In respect of each ground of appeal it is anticipated that the Council will call witnesses to address the following matters:

- Planning matters, including need and the overall planning balance.
- Landscape;
- Highway safety
- The nature of the development
- The planning history of the site and the unauthorised development
- The requirements and time periods of the Notice

6.8 The Council's reserves the right to call on further witnesses should other matters arise.

6.9 The Council will respectfully request that the Inspector recommends that the appeal be dismissed on all grounds and that the Notice upheld in its entirety.