



MID SUSSEX
DISTRICT COUNCIL

Town and Country Planning Act 1990

PROOF OF EVIDENCE OF

ANDREW CLARKE BScEcon, PGDIP
SENIOR PLANNING OFFICER –
PLANNING INVESTIGATION AND ENFORCEMENT

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

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1.0 INTRODUCTION

- 1.1 My name is Andrew Clarke. I am employed by Mid Sussex District Council as a Senior Planning Officer in the Planning Investigations and Trees Team within the Development Management function of the Council.
- 1.2 I have been employed by Mid Sussex District Council as professional planning officer since 2004 and have been employed in my current role since 2014.
- 1.3 I have a Bachelor of Science Degree in Geography from University of Swansea (2002) and a post graduate diploma in Planning Policy and Practice from London South Bank University (2006).
- 1.4 I am eligible for full chartered membership of the Royal Town Planning Institute and National Association of Planning Enforcement
- 1.5 I have prepared this Proof of Evidence on behalf of Mid Sussex District Council to support the service of an Enforcement Notice on PJ Brown (Civil Engineering) Ltd, relating to land east of Dan Tree Farm, adjacent to the A23 at Bolney in West Sussex, for the following alleged unauthorised 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;*

And the

The operational development comprising:

- the laying and construction of hardstanding upon the Land*

- 1.6 My evidence is summarised in the Summary and Conclusions section at the end of this Proof.

1.7 I understand my duty to the inquiry. I confirm that the evidence which I have prepared is true and that the opinions expressed are my true and professional opinions.

1.8 Core Documents

The plans and documents referred to in this Proof are included in the list of Appendices listed on Page 48. These include all the documents referred to in Appendix 1 to MSDC's previously submitted Appeal Statement. Copies of all the Appendices are attached with this Proof. To assist the Inspector, documents are referenced by a number in the format MSCD001 etc. For ease the reference number is used as the file name for the pdf versions of all accompanying documents submitted with this Proof.

2.0 PLANNING HISTORY AND GROUNDS OF APPEAL

2.1 The following planning history is considered relevant to the determination of the appeal.

2.2 On 17th 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.

2.3 On 11th 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.

2.4 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.

- 2.5 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”*.
- 2.6 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.
- 2.7 Works to implement Planning Permission Ref. WSCC/077/11/BK commenced in 2013.
- 2.8 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.
- 2.9 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”*.
- 2.10 Both recipients of the Notice appealed, although West Sussex County Council withdrew the Notice in March 2021 prior to the appeal being determined.

- 2.11 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 (with any storage being ancillary), as alleged by the Enforcement Notice.
- 2.12 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.
- 2.13 It was thereafter considered that the unauthorised use upon the site should be described as 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.
- 2.14 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 31st March 2023. A valid appeal was submitted on 29th March 2023 and the requirements of the Notice have thereafter been held in abeyance.
- 2.15 The Enforcement Notice issued alleged the following unauthorised 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;*

And the

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

2.16 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.

2.17 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*

2.18 The notice gave a period of 7 days for compliance with requirement 1, 2 and 3 of the Notice.

2.19 The notice gave a period of 14 days for compliance with requirements 4, 5, 7, 8 and 9 of the Notice.

2.20 The notice gave a period of 28 days for compliance with requirements 6, 10 and 11 of the Notice.

2.21 The notice gave a period of 3 months for compliance with requirement 12 of the Notice.

2.22 The appeal by PJ Brown (Civil Engineering) Ltd has been submitted on the basis of the statutory grounds for appeal set out in s.174(2) of the Town and Country Planning Act 1990 (as amended), and specifically grounds (a), (b), (d), (f) and (g).

2.23 Ground (a) is *“that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted”*.

2.24 Ground (b) is *“that those matters have not occurred”*.

- 2.25 Ground (d) is *“that on the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters”*.
- 2.26 Ground (f) is *“that the steps required by the notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”*.
- 2.27 And Ground (g) is *“that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”*.

3.0 SCOPE OF EVIDENCE

- 3.1 This Proof of Evidence relates to the reasons for the issuing of the Enforcement Notice and the steps and times for compliance with the steps stated in the Notice.
- 3.2 My evidence relates directly and solely to the appeals made under ground (a), (b), (f) and (g).
- 3.3 With respect to the appeal under ground (a) and the deemed planning application it will focus on the planning merits of the alleged unauthorised development, having regard to the development plan and other material considerations in accordance with in Section 70 (2) of the Town and County Planning Act 1990 and Section 38(6) of the Town and Country Planning Compulsory Purchase Act 2004) in particular relating to the policies of the Mid Sussex District Plan 2014 – 2031 (the development plan) and the principle of the development within the a rural location within protected national landscape of the High Weald Area of Outstanding Natural Beauty.

- 3.4 Further evidence in respect of the ground (a) appeal will be provided by Andrew Sierakowski (WSSC) in respect of compliance with the policies of West Sussex Waste Plan, David Ellis (WSP) in relation to the landscape and visual impact of the unauthorised development, and Rupert Lyons (TPA) in relation to the effect of the development on the safety and operation of the strategic highway network.
- 3.6 With respect to the ground (b) appeal this evidence will address that the development as alleged within the Enforcement Notice has taken place as a matter of fact, or that any variation to the description of the development could take place without injustice to any party.
- 3.7 With respect to the ground (f) appeal this evidence will address that the requirements of the Enforcement Notice are necessary and appropriate to cease the harm to the amenity and cease the breach of planning control and that the proposed amendments by the appellants are not considered acceptable to the Council.
- 3.8 With respect to the ground (g) appeal this evidence will address that time limits for compliance with the requirements of the Enforcement Notice are reasonable and appropriate and that the proposed amendments by the appellants are not considered acceptable to the Council.
- 3.9 This Proof should be read in conjunction with the previously submitted Statement of Case already submitted to the Inspector.
- 3.10 With respect to the remainder of the evidence Section 4 refers to a description of the appeal site and surroundings, section 5 relates to the policies of the development plan, section 6 relates to an assessment of the deemed planning application against the relevant policies of the development plan taking into account all material considerations, section 7 relates to the ground (b) appeal, section 8 to the ground (f) appeal and section 9 to the ground (g) appeal. Finally section 10 sets out a summary and conclusions of the evidence in this Proof. A list of Core Documents and Appendices are included in section 11.

4.0 THE SITE AND ITS SURROUNDINGS

- 4.1 The Land subject to the Enforcement Notice is an area of land approximately 1.5ha which lies immediately east of the A23 trunk road with access directly from the A23.
- 4.2 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.
- 4.3 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.
- 4.4 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 1.5ha in size.
- 4.5 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.
- 4.6 The Appeal Site falls 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. The land comprising the primary waste importation and processing site, forms part of a larger landholding known as Bolney Park Farm, which include a substantial area of land to north, east and

south of the appeal site, but excludes the land to the west of the appeal site and the south of the Access Track. Bolney Park Farm is understood to extend to approximately 55ha and to be in the ownership of Mr Dane Rawlins on Bolney Park Farm upon which the Enforcement Notice was also served as the landowner.

4.7 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.

4.8 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 (known as Seven Acre Hanger), which is also a Site of Nature Conservation Interest (SNCI) and which through a 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.

5.0 LEGAL FRAMEWORK AND PLANNING POLICY CONTEXT

5.1 The appeal has been made on ground (a) and therefore a deemed planning application has been made.

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

5.3 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.”*

5.4 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

5.5 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 December 2023 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”*

5.6 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.

5.7 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.

5.8 The West Sussex Waste Local Plan 2014 – 2031 has been made and full weight can be given to the policies contained within the Plan.

5.9 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 referred to or relied upon in this evidence.

5.10 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 and will not be referred to or relied upon in this evidence.

- 5.11 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

- 5.12 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 DP1: Sustainable Economic Development
- 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

- 5.13 Policy DP1 of the District Plan set a target of creating an average of 543 jobs per year across the plan period. This is to be achieved through allocation of employment land and development which is otherwise compliant with the remaining policies of the Plan

- 5.14 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

- 5.15 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.
- 5.16 Policy DP21 of the District Plan seeks to ensure that development is accompanied by the necessary transport infrastructure to support development. Development should be 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.
- 5.17 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.
- 5.18 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.
- 5.19 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.
- 5.20 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.

5.21 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.

5.22 Policy W3 is a strategic based policy laying out criteria for the locating of new or extended waste management facilities. Of importance to this appeal are the criteria relating to the specific locality assessment and requirements where waste facilities are on agricultural land.

5.23 Policy W4 extends the requirements of policy W3 and relates to sustainable location of inert waste recycling; which is directly equitable to the use subject to the deemed planning application.

5.24 Policy W9 relates to the disposal of inert waste upon land that this should only take place at permitted sites or else could not practicably be reused, recycled or recovered, whilst also causing a pollution incident.

- 5.25 Policy W11 is a development management policy used for assessment of planning applications for waste uses and that development does not have an unacceptable impact upon the character, distinctiveness, and sense of place and reinforce the character of the main natural character areas (such as the High Weald AONB)
- 5.26 Policy W12 expands upon W11 by seeking to ensure waste developments are of a high quality, have regard to local character, landscape and topography.
- 5.27 Policy W13 relates to development within protected landscapes, including the High Weald Area of Outstanding Beauty and reflects the wording of paragraph 183 of the NPFF in stating:

Proposals for major waste development within protected landscapes will not be permitted unless:*

- (i) there is an overriding need for the development within the designated area;*
- and*
- (ii) the need cannot be met in some other way or met outside the designated area; and*
- (iii) any adverse impacts on the environment, landscape, and recreational opportunities can be satisfactorily mitigated.*

- 5.28 In the footnote it expands upon the definition of *major* development by describing it as:

'major waste development is development that, by reason of its scale, character or nature, has the potential to have a serious adverse impact on the natural beauty, wildlife, cultural heritage and recreational opportunities provided by the South Downs National Park or the natural beauty, distinctive character, and remote and tranquil nature of the Areas of Outstanding Natural Beauty (AONB). The potential for significant impacts on the National Park or the AONB will be dependent on the individual characteristics of each case.'

- 5.29 Policy W14 seeks to protect biodiversity whilst policy W16 seeks to prevent contamination of air, soil and water. The Council is not pursuing reasons 4.6 and 4.7 for the issue of the Enforcement Notice so will not be relying on these policies.
- 5.30 Policy W18 seeks to promote sustainable transport to waste site but where the need for road access can be demonstrated that there is safe and adequate means of access to the highway network and vehicle movements associated with the development will not have an adverse impact on the safety of all road users.
- 5.31 Copies of all the relevant Development Plan policies were included with the Council's previously submitted schedule of documents.

National Planning Policy

- 5.32 In December 2023 a revised NPPF was issued, containing revised guidance on the determination of planning applications. The following extracts are considered relevant.
- 5.33 The NPPF 2023 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.
- 5.34 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.

5.35 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.”

5.36 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.”

5.37 Paragraph 88 relates to rural economic development and supports sustainable development and diversification of agricultural and other land-based rural businesses.

5.38 Paragraph 114 ensures that safe and suitable access to the site can be achieved for all users.

5.39 Paragraph 115 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.

- 5.40 Paragraph 131 relates to design and seeks to ensure that are visually attractive with good architecture, layout and appropriate and effective landscaping.
- 5.41 Paragraph 180 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.
- 5.42 With respect to development within Areas of Outstanding Natural Beauty paragraph 182 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 183 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.”

5.43 This evidence will also make reference to:

- National Planning Practice Guidance;
- High Weald Area of Outstanding Natural Beauty Management Plan 2024-2029

Other Material Considerations

Mid Sussex District Plan 2021-2039 Consultation Draft

5.44 The District Council is reviewing and updating the District Plan. Upon adoption, the new District Plan 2021 - 2039 will replace the current District Plan 2014-2031 and its policies will have full weight. In accordance with the NPPF, Local Planning Authorities may give weight to relevant policies of the emerging plan according to the stage of preparation; the extent to which there are unresolved objections to the relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the NPPF. The draft District Plan 2021-2039 (Regulation 19) was published for public consultation on 12th January 2024 for six weeks. At this stage the Local Planning Authority does not know which Policies will be the subject of unresolved objections and therefore only minimal weight can be given to the Plan. As such, this planning application has been assessed against the polices of the adopted District Plan.

Relevant polices:

DPC1: Protection and Enhancement of the Countryside

DPC4: High Weald Area of Outstanding Natural Beauty

DPB1: Character and Design

6.0 THE COUNCIL'S CASE

Ground (a) appeal

6.1 The Inspector issued a first Pre-Inquiry Note, Pre-Inquiry Note 1 on 21st February 2024, and identified the main issues as including

- The effect of the location of the development in a rural area in a National Landscape;
- The effect of the development on the safety and operation of the strategic highway network.
- The contribution of the development to the sustainable management of waste and to the local economy; and
- Other considerations including the availability of alternative suitable sites, and whether any identified harm may be mitigated by the use of conditions.

6.2 Evidence pertaining to the impact of the development upon the highway network is being provided by Rupert Lyons of TPA on behalf of the Council and this evidence will not seek to address this matter.

6.3 Evidence pertaining to the contribution of the development to the sustainable management of waste and to the local economy is being provided by Andrew Sierakowski of WSCC on behalf of the Council and this evidence will not seek to address this matter.

6.4 With respect to the effect of the location of the development in a rural area in a National Landscape, David Ellis of WSP will be providing evidence on behalf of the Council in respect of the visual impact, however, the principle of the development and its location within a rural area within the High Weald Area of Outstanding Natural Beauty will be addressed in this evidence.

6.5 With respect to the appeal site's location within a rural location and within the National Landscape of the High Weald Area of Outstanding Natural Beauty, policy DP12 of the Mid Sussex District Plan makes it clear that development should only be located within rural areas where it is necessary for the purposes of agriculture or supported by a specific policy reference elsewhere in the development plan documents. The development subject to the deemed planning application is not related to the purposes of agriculture and is not compliant with the first arm of policy DP12.

- 6.6 With respect to compliance with other policies of the development plan no such policy support exists within the Mid Sussex District Plan with policy DP14 relating to sustainable economic development in rural areas not applicable to development within the Area of Outstanding Natural Beauty.
- 6.7 The policies of the West Sussex Waste Plan can provide support for new waste processing facilities (policy W3), however, this is predicated on them not being able to be provided on allocated sites (policy W10 of the Waste Plan) and as noted in other evidence, the appellants have not provided sufficient or substantial evidence that the unauthorised operations could not otherwise take place on allocated sites. This is addressed in the evidence of Andrew Sierakowski.
- 6.8 Returning to the principle of the development and its location, policy DP16 of the Mid Sussex District Plan makes it clear that development within the National Landscape will only be permitted where it conserves or enhances natural beauty and in particular:
- the identified landscape features or components of natural beauty and to their setting;
 - the traditional interaction of people with nature, and appropriate land management;
 - character and local distinctiveness, settlement pattern, sense of place and setting of the AONB; and
 - the conservation of wildlife and cultural heritage.
- 6.9 Policy DP16 does seek to support small scale proposals which support the economy and social well-being of the AONB and that are compatible with the conservation and enhancement of natural beauty, however, the development subject to the deemed planning application is not compatible with the conservation and enhancement of natural beauty and is not considered small scale.
- 6.10 Rather, and in accordance with the assessment required by footnote 64 to paragraph 183 of the NPPF, I consider the development to be '*major*' development for the purposes of paragraph 183 and therefore contrary to

paragraph 183 of the NPPF, policy DP16 of the District Plan and policy W13 of the Waste Plan.

6.11 Paragraph 183 states:

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.*

6.12 Footnote 64 to paragraph 183 makes it clear that the assessment of the development as ‘major’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. This approach is reaffirmed in Paragraph: 041 Reference ID: 8-041-20190721 of the National Planning Policy Guidance.

6.13 It is worth noting that, although the decision as to the definition of a development as ‘major’ rests with the decision maker, the development, by virtue of its site area and form of development alone fulfils the definition of ‘major development’ as laid out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Article 2 states 2:

““major development” means development involving any one or more of the following—

- (a) *the winning and working of minerals or the use of land for mineral-working deposits;*
- (b) *waste development;*
- (c) *the provision of dwellinghouses where—*
 - (i) *the number of dwellinghouses to be provided is 10 or more; or*
 - (ii) *the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*
- (d) *the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*
- (e) *development carried out on a site having an area of 1 hectare or more;”*

- 6.14 It is acknowledged that the assessment of ‘*major development*’ under footnote 64 does not relate or equate directly to the definition within the GDO, however, it is clear that for the purposes of advertising and determining any planning application for the development, it would be regarded as ‘*major development*’ by virtue of it being both ‘*waste development*’ and that the site area exceeds 1ha or more.
- 6.15 The assessment of *major* development should be made considering the reasons behind the designation and protection and characteristics of the AONB in question.
- 6.16 Areas of Outstanding Natural Beauty (National Landscapes) are defined and designated and thereafter protected by the Countryside and Rights of Way Act 2000 (CRoW Act). This identifies an AONB as an area protected for the purpose of conserving and enhancing the natural beauty of the area and to protect its landscape character and the wildlife, natural systems and cultural associations on which it depends in order that people, now and in the future, can enjoy its natural beauty.
- 6.17 As referred to in the High Weald AONB Management Plan, Government guidance relating to AONBs provides a useful non-technical definition:
- ‘Natural beauty’ is not just the look of the landscape, but includes landform and geology, plants and animals, landscape features, and the rich history of human settlement over the centuries.*

This includes scenic quality, tranquillity and cultural heritage (including the built environment), that makes the area unique.

6.18 The Natural Environment and Rural Communities Act 2006 clarified that land used for agriculture, woodlands, parkland or with physiographical features is not prevented from being treated as an area of '*natural beauty*'.

6.19 The High Weald AONB, as defined by the High Weald AONB Management Plan describes the natural beauty of the High Weald AONB as being derived from

'the essentially rural and small-scale landscape character, rich in wildlife and cultural features. It has been created by historic and locally distinctive agricultural and forestry practices, with the story of its past visible throughout. The extensive survival of woodland and traditional mixed farming supports an exceptionally well-connected green and blue infrastructure, with a high proportion of natural surfaces. Food production and semi-natural habitat are interwoven in a structurally diverse, permeable and complex mosaic supporting a rich diversity of wildlife. A dense network of historic routeways and public rights of way provides access for people to get close to nature and experience its natural beauty. The pattern and landscape setting of dispersed historic settlements enriches its natural beauty, with small, irregular fields and pasture, hedgerows and ancient woodlands interspersed with the rich clay-tiled roofscapes of historic buildings. Greenness, a sense of tranquillity and dark skies contribute to the perceptual and scenic qualities people enjoy

6.20 It is considered that the development subject to the deemed application does have a serious or significant adverse impact upon the landscape as described above and is therefore '*major*' development for the purposes of paragraph 183. As explained by Mr Ellis, the development is not compatible with the High Weald AONB Management Plan, and in landscape terms, the development has up to a moderate adverse impact on a high sensitivity landscape.

6.21 In way of explanation, the waste operation is not a historic use associated with the rural landscape and is neither related to agriculture or food production. The introduction of such a use, that of importation, deposition, storage and processing of waste, presumably predominantly from outside the immediate

area and almost certainly from not within the wider AONB (the appellant makes little reference to the location from which the waste is sourced) is an incongruous and disruptive commercial process which does not require a rural location in which to operate lest one within a protected landscape.

- 6.22 The presence of a commercial waste operation featuring as it does, large plant, machinery, commercial storage of items associated with the use, stored piles of waste material is an intensive, and continuous use, in addition to the traffic movements of large vehicles associated with the use, disrupts and harms the character and appearance of the landscape.
- 6.23 It is noted the wider agricultural unit has a commercial element, however, this is considered to be of a significantly lesser intensity and disruptive nature relating as it does to the keeping and breeding of horses. Additional whilst some storage of material used in the day to day upkeep of the unit (stored piles of chalk for instance) this is solely incidental to the lawful use and is in scale and impact considerably less than created by the unauthorised use.
- 6.24 With respect to storage upon the wider unit it is noted that a selection of non-agricultural items (such as portaloos, offices etc) which are not associated with or are either incidental to or ancillary to the agricultural use, are present upon the agricultural unit. They are considered to represent an unauthorised change of use of the land from agriculture to a mixed use of agricultural and storage which would also require planning permission. This storage remains under investigation by the Council but would potentially be subject to enforcement action if considered expedient for the same principled and visual reasons as the development subject to the appeal.
- 6.25 It is therefore respectfully requested that the storage of these items is not taken into account by the Inspector is assessing the overall character of the wider unit and landscape. Photos of these items are provided in MSDC01 and MSDC02.
- 6.26 Returning to the layout, appearance and scale of the unauthorised use, whilst the presence of the appellant upon the land for a number of years is noted, the layout of the site is not compatible with the lawful use and historic field boundaries of the agricultural unit and develops an area of land which was previously undeveloped and was solely in use in relation to the agricultural unit.

- 6.27 The visual impacts and history of the land are addressed in other evidence, but aerial photography of the site over the past 27 years (as shown in Appendices MSDC03, MSDC04, MSDC05, MSDC06, MSDC07 & MSDC08) indicate the spread of the operation and encroachment further into the agricultural unit. The earliest photo showing the landscape in 1997 (at which point it did benefit from the AONB designation) indicate a field pattern closer to that which would have been historically present and which now, as shown in photos over the past 10 years, has significantly eroded and change the historic field pattern and introduce a use which harms the greenness and tranquillity expected within the AONB and defined as one of the characteristics of the High Weald AONB.
- 6.28 Turning to the three limbs of paragraph 183, the need for the development has not been proved to be being able to be met on other sites within the area and evidence to this effect is given elsewhere.
- 6.29 Furthermore, as shown in the evidence of Andrew Sierakowski, the need does not exist in the wider county area, let alone within the AONB and that the need can be accommodated on existing or allocated sites. The second limb of para 183 is therefore not met.
- 6.30 With respect to the impact upon the environment, landscape and character of the AONB this is outlined in paras 5.20 to 5.26 above. In terms of mitigation the appellants are proposing the creation of a new bund (presumably created through the importation of further material) and a landscaping scheme, whilst also seeking a temporary permission for 4 years.
- 6.31 With respect to the bund, it is presumed this would be secured through the imposition of a planning condition, however, details of the scale, siting and construction of the bund are absent and presumably would also be secured by condition.
- 6.32 A full assessment of the creation of the bund, itself a sizeable and permanent engineering operation and feature, has not been made, but it is considered that such a development would fall outside of the scope and remit of a planning condition and would be *development* for the purposes of s.55 of the TCPA 1990 which would require explicit and separate planning permission in its own right.

- 6.33 Such a planning condition as to require a full assessment and submission of significant details (particularly in relation to highway movements) would be considered excessive and not compliant with the 6 tests required to be met for the imposition of planning conditions.
- 6.34 The bund in itself would be a permanent feature with potential for significant impact upon the landscape character and AONB. The appellants are seeking a temporary permission for 4 years but no mention of the removal of the bund is made. It is therefore presumed the bund would remain even after the waste operation has ceased. The mitigation would therefore be more permanent and harmful than the development it seeks to mitigate. As such the impact of the development cannot be moderated and the development and deemed planning application does not comply with the third limb of paragraph 183.
- 6.35 For all the reasons as outlined above and noting there is no identified need for the development and the impact it has upon the reasons for and statutory designation of the land within the High Weald AONB the development is considered to be *major* development for the purposes off paragraph 183 and cannot be considered in compliance with the NPPF.
- 6.36 It therefore fails to be considered to be *small scale* development for the purposes of policy DP16 of the District Plan and policy W13 of the West Sussex Waste Plan.
- 6.37 It is therefore considered that the development is contrary to the requirement of policy DP16, not only in respect of failing to be *small scale* but also in that the four identified criteria of the policy are not met.
- 6.38 The development does not conserve those elements of the AONB which are considered essential components of the natural beauty of the AONB and as outlined in the High Weald AONB Management Plan and the descriptions of the essential character laid out therein,
- 6.39 The development is not considered to have regard to appropriate land management and that a waste site, importing and processing material from

outside the planning unit and not for use on the land does not represent appropriate land management.

- 6.40 And as addressed at para 5.26 above and with reference to Appendices MSDC03, MSDC04, MSDC05, MSDC06, MSDC07 & MSDC08, the development erodes the historic field pattern and the settlement pattern of the farmstead and agricultural unit so as to be detrimental to the character and appearance and natural beauty of the AONB.
- 6.41 For this reason additionally the development is contrary to policy DP26 of the District Plan which seeks a high quality of design and appearance in developments. The site appears to be laid out in an ad-hoc manner and has developed and expanded over time without apparent consideration of field boundaries and siting with the site occupying a high point within the surrounding area and away from any other built form representing poor design and layout and which has a adverse impact upon the character of the AONB as identified and explained by David Ellis in this evidence.
- 6.42 Policy DP29 of the District Plan addresses all elements of pollution (noise, air and light) and the development is considered contrary to the aims of this policy. The policy makes is clear in respect of sites such as that under consideration that *'The degree of the impact of noise and light pollution from new development or change of use is likely to be greater in rural locations, especially where it is in or close to specially designated areas and sites.'*
- 6.44 The AONB is an intrinsically dark landscape and whilst it is not indicated that the development and use takes place during the hours of darkness and no significant artificial lights are present upon the site, this does not prevent the site being used during the hours of dusk or in winter months when nights draw in earlier and the site may be visible from further wider views.
- 6.43 The movement of plant and machinery with lights on would therefore pose and create light pollution harmful to the character of the AONB and an intrinsically dark area and again there does not appear to be any proposed mitigation in respect of potential light pollution.

- 6.44 The development is considered to cause an unacceptable risk to highway safety contrary to policy DP21 of the District Plan and paragraph 115 of the NPPF. The position statement of National Highways is noted and full evidence as to the compliance with highway standards is provided in the evidence of Rupert Lyons and it is considered the use, and the traffic movement created onto the substandard junction onto the A23 cause an unacceptable risk to highway safety.
- 6.45 The access is considered to be a junction and one which does not comply with the requirements and standards for just a junction. The initial position of National Highways and their comments relating to the substandard nature of the access and considerable additional requirements to attempt to address the issue, confirm that a risk to highway safety exists and which could not be mitigated.
- 6.46 I note the position statement of National Highways and whilst do not seek to give technical evidence as to the standards applicable to the access and junction would comment upon the proposed conditions, their enforceability and support for the temporary planning permission sought by the appellants.
- 6.47 With respect to the proposed conditions, these would appear to request significant additional information in the form of a transport assessment; an assessment usually required and assessed during the course of any planning application determination.
- 6.48 In this instance and with the appeal being made under s.174 of the Town and Country Planning Act 1990, the ground (a) appeal considered the deemed planning application to be the unauthorised development as described in the Enforcement Notice and the appellants grounds of appeal, statement of case and evidence being put forward in support of the appeal.
- 6.49 To date, and noting the submissions made by the appellant, no compliant transport assessment has been submitted. Were this a prospective planning application it would be respectfully suggested that planning permission could not be granted as the policies of the development plan relating to highway safety could not be adequately or appropriately assessed. It would not be expected

that such key matters would be relegated to reserved matters to be addressed through condition.

- 6.50 it is also unclear as to the situation or recourse should the proposed condition not be satisfied or complied with. The condition is a not pre-development or Grampian condition and does not prevent the development carrying on whilst the information is collated and considered. Should the assessment find that the level of traffic movements or the junction in itself incompatible with highway safety requirement or else no details are submitted pursuant to the condition this would not render the development subject to the deemed planning application unauthorised or unlawful and therefore the use (and associated traffic movements) could not be attacked or ceased by further planning enforcement notices.
- 6.51 Rather a breach of condition would have occurred, which whilst enforceable through a s.183a Breach of Condition Notice or a s.172 Enforcement Notice for the breach of conditions, these notices can only require compliance with the conditions as stated and could not address the harm to highway safety as is considered to exist.
- 6.52 The condition relating to the submission of the Operational Management Plan therefore fails to pass the 6 tests of conditions in respect of its enforceability and necessity in that it cannot address a matter which is considered key to the deemed planning application. I cannot therefore support the condition in so far as it requires information which should be considered as part of the deemed planning application at the inquiry,
- 6.53 It is noted and that it is not disputed nor varied by the appellants that the level of vehicle movements created by the unauthorised use was provided in the response of the appellant to the s.171C Planning Contravention Notice issued in April 2022 and upon which the Council sought the initial advice of National Highways. It is upon this evidence that the Council sought to issue the Notice and upon this information that reason 4.5 of the Notice was included.

- 6.54 It is therefore respectfully requested that the deemed planning application be considered on the evidence submitted to date and provided at the appeal and an assessment of highway safety made without additional information being required.
- 6.55 With respect to the support for the potential grant of temporary planning permission, the appellant seeks four years and it appears National Highways are in support of this were planning permission to be granted. For confirmation the Council would not be supportive of the issue of a temporary planning permission, not only in respect of the harm of permitting the use to continue and as outlined in reasons 4.2, 4.3 and 4.4 of the Enforcement Notice, but that the continuation of the use whilst the conditions are complied with and the details submitted pursuant are considered would be considered to be of such a lengthy period of time (potentially 6 months, substantially more should the condition not be complied with) that a large proportion of the approved time period may elapse so as to render the potential conditions rather pointless and the permit the unauthorised use to carry on and pertain without suitable control for some length of time.
- 6.56 The unauthorised development is considered to be contrary to policies W3, W4, W8, W9, W11, W12 and W13 of the West Sussex Waste Plan with respect to being inappropriately located and without identified need. These policies and matters are addressed in more detail in the evidence of Andrew Sierakowski.
- 6.57 With respect to any other material considerations, the level of employment is considered minimal and whilst the firm is an SME, no evidence as to the amount of employment directly attributable to the site has been provided, nor that the this site is paramount or necessary for the ongoing viability of the business. Little weight is therefore attributed to this.
- 6.58 The unauthorised development is considered contrary to the policies of the development and there are no other material considerations which mean the full weight of the policies should not be applied.

- 6.59 Addressing the three objectives of sustainable development as laid out in paragraph 8 of the NPPF it is not considered that the economic objective is met as there is no identified need for the development which cannot be accommodated elsewhere and the site is inappropriately located.
- 6.60 The development does not the social objective of paragraph 8 in not seeking to foster well designed or beautiful places as the development is considered to cause harm to the visual amenity of the area and a national landscape.
- 6.61 Finally the development does not make effective use of land, protect the natural environment and does contribute to the circular economy or the move to a low carbon economy and therefore does not meet the environmental objective of paragraph 8.
- 6.62 For the reasons and evidence given above it is considered the development subject to the deemed planning application is not sustainable development for the purpose of paragraph 8 of the NPPF and does not accord with the policies of the development plan and as such it is respectfully requested the appeal under ground (a) be dismissed.

7.0 Ground (b) appeal

- 7.1 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”.
- 7.2 With respect to this element in the appellants response to the s.171C Planning Contravention Notice dated May 2022 in response to the Council’s question regarding the scope of the alleged unauthorised use the appellants state at paragraph 5.7 of their response that:

An additional number of other supporting documents are also included as part of this questionnaire which support the use of the facility for the importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes

- 7.3 A copy of the PCN response has previously been provided but is again as document MSDC09.
- 7.4 This assertion is repeated at paragraph 5.10 of the PCN response but without further context or explanation.
- 7.5 The distinction of deposition and storage should also be noted as the Enforcement Notice alleges both but does separate out the deposition element as this is distinct and separate element from the processing and storage of the waste brought onto land.
- 7.6 The waste has been deposited upon the land above and beyond that used in association with WSC/077/11/BK and has been used to form additional bunds and raised areas of land and hardstanding, excluding that encompassed by allegation 3.2 of the Notice.
- 7.7 This includes the raised areas to the north and east of the appeal site which have thereafter been used to facilitate the storage of containers or to form the raised trackway to enable lorries delivering the collecting waste to circulate the site.
- 7.8 These elements are shown by way of example in MSDC10, MSDC11 and MSDC12 circled red and annotated A where appropriate.
- 7.9 This material has been brought onto the land and whilst may have been processed remains a waste material as a result of an industrial process for which no permission for its deposition exists.
- 7.10 Deposition would be considered a permanent retention of waste upon the land, potentially for some other purpose, whereas storage would suggest a temporary retention of the material (for an undisclosed period of time) prior to it being removed for use elsewhere.

- 7.11 The appellant does seek to address and clarify this in their statement of case by suggesting an amendment to correct the breach to include the word '*temporary*' before '*deposition*'. Noting the above that *deposition* has a substantial degree of permanence to its meaning, and that *storage* would indicate a more transient or temporary period of time the waste material would remain upon the land, it unclear as the meaning or purpose of the proposed amendment other than to suggest and acknowledge that the deposition has taken place, but that the appellant may choose to remove it in the future.
- 7.12 That being the case it is suggested that the allegation in paragraph 3.1.2 has taken place as a matter of fact and is correct in its assertion.
- 7.13 Notwithstanding the above should the Inspector take a different view as to the effective definition of *deposition* and that in itself it does mean a degree of permanence then the Council would not consider the appellants proposed amendment would cause an injustice to any party nor that it would render the Notice a nullity as the alleged development would remain and any amendment would solely be for the purposes of clarity.
- 7.14 The appellant also seeks to address the scope and extent of the land subject to the Enforcement Notice and that the requirements of 5.12 of the Notice would impede upon the lawful use of the land or incorrectly addresses the planning unit.
- 7.15 For clarity, and it does not appear the appellant disputes this either, the Council is not alleging that the junction access onto the A23 is unauthorised or unlawful not is requiring the stopping up of the access or the prevent of its lawful use as an agricultural access. The access road was unauthorised at point of construction and completion but was regularised through the grant of Planning Permission Ref. WSCC/077/11/BK on the 11th June 2012 (see Appendix MSDC018).

- 7.16 It is acknowledged and not disputed that the access track is within the red line of the Enforcement Notice and that it is included within the planning unit. The access is used, it appears predominantly by and for, the unauthorised use and whilst crosses land ownership is (the access) neither a planning unit in its own right nor has a *mixed use*.
- 7.17 It is incumbent upon a local planning authority to identify the land to which the unauthorised development relates and in this instance it considered that the access road is integral to the unauthorised operation and that without it the waste operation and unauthorised use could not operate. It is noted, and not disputed, that the vehicles and waste solely enter the processing site via this access and road. The Council is therefore of the opinion that the access road forms part of the planning unit and that to not include it within the red line of the Notice could render the nullity in failing accurately the land upon which the unauthorised development relates.
- 7.18 For clarity the Notice does not allege the unauthorised creation of the road and its formation, improvement or use are not included within the allegation. Additionally the requirements of the Notice make no specific reference to the road in seeking its stopping up, cessation or use or explicit remove of the hard surface. The Council is not seeking or expecting the removal of the access road.
- 7.19 The Notice includes reference to *hardstanding* in the allegation and requires its removal in requirement 5.10, This area is specifically and adequately addressed by the addition of a 'blue line' area within the main waste site. This area does not encompass the access road and requirement 5.10 does not require the road to be removed.
- 7.20 The appellant suggests concern over requirement 5.12 of the Notice and this would require the reinstatement of the road to its former condition and may contravene the judgement in *Miller-Mead v MHLG 1963*.
- 7.21 In respect of this judgement alone *Miller-Mead v MHLG 1963* sought a wider challenge to a Notice and whether the allegation and requirements were accurate. It is not apparent that this case would be applicable in this instance and that Notice is clear in its allegation (it makes no mention of the formation of the access track) and the requirements address the alleged unauthorised

development and the requirements are specific to address the unauthorised development.

- 7.22 Requirement 5.12 does require the reinstatement of the land subject to the unauthorised use its former condition and this would be at the point at which the unauthorised use began (subject to the ground (d) appeal). It is acknowledged and seemingly not disputed that the track predates the unauthorised use and was construction between late 2001 and 2005. The track was therefore in situ at the commencement of the unauthorised use.
- 7.23 Requirements of Enforcement Notices can only seek to address the alleged unauthorised development and therefore where necessary reinstate land back to a condition immediately prior to the unauthorised development taking place. Therefore in this instance the former condition would include the access track in its form as approved under Planning Permission Ref. WSCC/077/11/BK and its retention would not be a contravention of the requirements of the Enforcement Notice.
- 7.24 The requirements of the Enforcement Notice do not require the cessation of the use of the access and noting the lawful agricultural use of the land to which the access road also serves the Notice would not prevent the unfettered use of the land for its lawful purpose and complies the Mansi principle (*Mansi v Elstree RDC* [1964]) in not preventing the lawful use of the land.
- 7.25 Notwithstanding the above, and noting the access serves an agricultural holding, and that this holding existed and survived for many years prior to the formalisation and hard surfacing of the track in the early 21st century, even were the Notice be considered to require the removal of the hard surface to reinstate the land to its former condition, it is not considered this would contravene the Mansi principle as it would not prevent the lawful agricultural use taking place and that the land could still be accessed elsewhere or by agricultural farm machinery for which a hard surfaced road is not necessary.
- 7.26 As noted in the Council's response to Pre-Inquiry Note 2 (included as Appendix MSDC019) the Council is content that the Notice satisfactorily outlines the alleged breach of planning control and in relation to allegation 3.2 and that the location of hardstanding is defined in requirement 5.10.

7.27 Should, however, the Inspector be minded to amend allegation 3.2 to include reference to the land outlined in blue on the Notice, then the Council believes this amendment could be made without prejudice to either party and would be solely for the purposes of clarification and would not fundamentally alter the Notice, the allegation or the requirements.

7.28 Noting the above evidence and clarification I would respectfully request the appeal under ground (b) be dismissed.

8.0 Ground (d) appeal

8.1 The primary evidence in respect of the Council's case in respect of the ground (d) appeal is provided by Andrew Sierakowski

8.2 I will, however, make comment regarding the 'second bite provision' and clarification that it is considered to apply in this instance.

8.3 The Council is content that the development to which the Notice relates has taken place continuously since the service of the first enforcement notice in 2020 and is materially the same planning unit as that to which the 2020 Enforcement Notice issued by West Sussex County Council. The 2023 Notice seeks solely to address the change in authorised body and LPA issuing the Notice as the development was assessed (and noted to be by the Inspector in the aborted inquiry in March 2021) to be a mixed waste and storage use, rather than a primary waste use with ancillary storage (which was the subject of the original notice and would otherwise have been a matter which would fall under jurisdiction of West Sussex County Council as the authority with responsibility for waste matters).

8.4 The 2023 notice attacks the same development as the original notice, albeit the development is described in different ways (i.e. mixed waste and storage, rather than primary waste with ancillary storage). In respect of the red line of the Notice this has been amended to reflect the full extent of the planning unit and the land upon which the authorised development is taking place, but also to reflect the boundaries of the land ownership in respect of the western boundary of the site.

8.5 The result is the Notice subject to the appeal incorporates an area of approximately 400m² additional land than the 2021 Notice (noting the total area covered by the red line equates to 15000m²). The application of the second-bite provisions can be addressed by legal submissions if necessary. Nevertheless, to be clear, even if, contrary to the LPA's primary position, the second-bite provisions do not apply, I am still of the view that the activity has not gained immunity from enforcement action. This is addressed more fully in the evidence of Mr Sierakowski, on the ground (d) appeal.

9.0 Ground (f) appeal

9.1 The appellants seek to appeal on ground (f) predominantly on the basis that the development (and the ancillary development identified) is immune from enforcement action through the passage of time. These matters are addressed predominantly by the evidence of Andrew Sierakowski in his evidence under ground (d) but I would make the following comments in respect of the operational development and requirements to remove items from the land.

9.2 With respect to allegation 3.2 of the Enforcement Notice, this relates solely to the hardstanding as identified in blue on the Notice. The Council notes the immunity period for this operational development is 4 years and is not seeking its removal under the Murfitt principle.

9.3 Rather, and noting no evidence appears to have been provided to support the development's immunity, that the hardstanding has been in situ for more than 4 years and is therefore not immune from enforcement action.

9.4 Again notwithstanding the '*second bite*' provision being considered to apply the Council is of the opinion that the hardstanding was not present in 2019, 4 years prior to the hardstanding being created.

9.5 Whilst again, and the full planning history as laid in the evidence of Andrew Sierakowski makes clear, the appellant may have had a presence upon the site for in excess of 10 years, the permanent hardstanding necessary for the operation of the unauthorised waste use was not laid until some time later and within 4 years of the Notice being served,

- 9.6 Appendix MSDC03 shows the aerial image of the site in 2018 and that the hardstanding was not present at that time. This is further supported by Appendix MSDC020 showing a photo taken by Council Officers looking north-east across the site and showing the land stripped and bare but with no hardstanding present.
- 9.7 No evidence to support the assertion the hardstanding was laid between October 2018 (when the photo was taken) and February 2019 (4 years prior to the Enforcement Notice being served) has been provided rather the appellants state the hardstanding was situ for more than 10 years (so prior to 2013), however, appendix MSDC020 sheds doubt on this assertion such that were the appeal on ground (d) be on this operational development alone that it would fail.
- 9.8 That being the case the hardstanding is not considered immune from development and its removal is necessary and reasonable as a requirement to cease the identified breach of planning control.
- 9.9 With respect to the requirements of 5.4, 5.5 and 5.9 from the land, these items are considered intrinsic and are solely used to facilitate the unauthorised use. Again the appellants have sought to suggest that thee items, and their presence on the land, represent a previous, lawful, use of the land and that the storage of plant, machinery and containers is part of the lawful mixed use of the land.
- 9.10 This would appear to contradict evidence provided under the ground (d) appeal that that alleged unauthorised use is immune from enforcement by virtue of having been taking place for more than 10 years and utilising the same items requirements 5.4, 5.5 and 5.9 (and 5.8) seek to remove.
- 9.11 It would not seem possible that plant and machinery were used to facilitate and ancillary to a use, but also be stored at the same time, and it is the opinion of the Council that they have been used solely for the past 6 years in association with the unauthorised use.
- 9.12 To remove these requirements would permit the items to remain on the site but for no purpose, and therefore would be stored even though no planning permission or certificate of lawful use exists for such as a use and it would be considered unauthorised.

- 9.13 Furthermore in order to cease the unauthorised development it be necessary for the items which facilitate that use to be also removed and it is noted considered these items are development in their own right or exceed the Murfitt principle.
- 9.14 With respect to requirements 5.7 and 5.8, the appellant contends that the portacabin be retained as it "may" be ancillary to the lawful use of the land for agriculture. Whilst the Council is content the portcabin is not operational development and therefore a similar item could be placed on the land lawfully were it be to be used ancillary to the lawful use, the retention of the item on site, when the ancillary use has not commenced, is not clear and may not take place would appear nonsensical and could permit the retention of an item for neither a nil use or, and if no ancillary use took place, for the permanent storage of the portacabin.
- 9.15 The portacabin serves no current other purpose other than to serve the unauthorised use and that it may have a lawful use in the future is not a consideration of the appeal. Again to address the unauthorised development and ensure compliance with the development plan policies the portcabin should be removed from site.
- 9.16 With respect to the requirements of the Notice relating to the disconnection of the cabin from services, should this have already have taken place, or else the services are not present, would mean the requirement has already been complied with. Therefore the appellant would not be at any disadvantage or loss should they not have to undertake works to comply with the requirement.
- 9.17 However, and as is likely considering the use of the portcabin for staffing facilities, it is connected to services, them to ensure its removal from site the Council would require a requirement stating its disconnection as necessary.
- 9.18 Therefore in respect of the ground (f) appeal it is considered that the appellants are seeking to argue many items to be removed are immune through the passage of time, yet this does not form part of their ground (d) appeal. Rather the Council is of the opinion that it is necessary that these items be removed from the land as they facilities the unauthorised use and to allow them to be retained would, in effect, grant a planning permission for storage of these items

upon the land when this is not a use under consideration in the ground (a) (or ground (d) appeal) and for which no planning permission exists.

9.19 It is therefore respectfully requested the appeal under ground (f) be dismissed.

10.0 **Ground (g) appeal**

10.1 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.

10.2 The appellant seeks to support this considerable amendment and extension to the requirement periods on the basis of the potential loss of employment from the site and the perceived requirement to source, obtain planning permission and bring to operational readiness a replacement waste processing site.

10.3 On the predication that the facilities which the unauthorised site provides require replacement and duplication, as noted in the evidence of Andrew Sierakowski (paras 7.7 – 7.37 of his proof of evidence), it not considered there is a need for the additional inert waste recycling capacity within West Sussex and the site simply is not required to provide net self-sufficiency.

10.4 The site therefore represents an expansion of sites available to the appellant rather than being considered necessary to address inert waste processing need within the County. That being the case, and notwithstanding the operational disruption the cessation of use of the appeal site might have, it is not considered necessary for the appellant to source a new site and that capacity already exists on current and policy compliant sites. An extended period to allow a new site to be sourced and planning permission to be obtained is therefore not necessary.

10.5 With respect to the loss of employment the appellant does not provide evidence as to how many employees are directly employed at the site or an FTE who may be reliant on the site for employment. The scale of the business and total employment numbers of PJ Brown (Civil Engineering) Ltd is noted, but I am also aware that the business operates from a number of sites and that there has been no evidence that the loss of the appeal site will fatally or substantially undermine the business has been provided.

- 10.6 The requirement to cease the unauthorised operation will, no doubt, have an impact upon potential employment levels at the business, however, to what level cannot be quantified and noting the appeal on ground (g) (which does not seek to permanently allow the use to continue) and that the appellant seeks a 4 year temporary permission, these jobs will inevitably be lost in the medium term anyway. The loss of employment is therefore noted but not considered of such a level or significance as to suggest or permit the unauthorised use and the harm it creates to carry on for any longer and that a period of 24 months as suggested by the appellant would be excessive, represent half the time they are seeking in the grant of the temporary planning permission and perpetuate the harm to the area and to highway safety to an unacceptable degree.
- 10.7 The compliance periods are considerable reasonable and that the unauthorised uses of waste importation, processing and storage and the wider storage on the site can be adequately and reasonably ceased within 7 days, whilst the removal of the operational development and reinstatement of the site is given in periods of months rather than days.
- 10.8 The Council is therefore content that time periods for compliance are reasonable, achievable and do not place an undue burden upon the appellants and that it is respectfully requested the appeal under ground (g) be dismissed.

11.0 SUMMARY and CONCLUSION

- 11.1 The following comprises my summary proof of evidence.
- 11.2 My evidence relates to the ground (a), (b), (f) and (g) appeals with commentary on the ground (d) appeal and clarification on the application of the second bite provision.
- 11.3 It considers in respect of the ground (a) appeal that the deemed planning application is that as outlined in the alleged breach and that it be considered against the policies of the development plan and that there no material considerations which means the policies shall not be applied in full.
- 11.4 It is considered that the unauthorised development, by virtue of its impact upon the attributes and reasoning for the designation of the AONB in which he site

lies, is *major development* for the purposes of paragraph 183 of the NPPF and associated footnote 64. The development does not provide public benefit and there is no exceptional circumstances to permit *major development* in the AONB which is considered to cause harm to the character and natural beauty of the area.

- 11.5 The development is considered contrary to the policies of the development plan seeking to protect and enhance the National Landscapes of the AONB and rural location and is contrary to the aims and objectives of the High Weald AONB Management Plan.
- 11.6 The development also has an unacceptable impact upon highway safety, and is contrary to policies relating air, noise and light pollution.
- 11.7 The appeal under ground (b) seeks to undermine the Notice with respect to the inclusion of the access road within the red line of the Notice, however, this is necessary to accurately portray the planning unit and it is confirmed that the Council has granted planning permission for the track and that the requirements of the Notice in respect of reinstatement do not apply to the road and would require reinstatement to a period of time when the road already exists and was lawful.
- 11.8 With respect to deposition of waste evidence is provided to show deposition has taken place and that the proposal of a *temporary* deposition is unclear and does not guarantee its removal in future.
- 11.9 With respect to the appeal under ground (f) this seeks to primarily argue items inextricably linked and associated with the unauthorised development are immune from action. Evidence is given by the Council to show the hardstanding is less than four years old and that should the requirements be amended to permit the retention of plant and machinery that this would permit a storage use for which no consideration as its lawfulness or planning merits have been made.
- 11.10 Rather it is necessary that the items listed in the requirements are removed from the site as they relate to or facilitate the unauthorised use and to have them retained would not be in compliance with the policies of the development plan

- 11.11 The ground (g) appeal seeks considerable extension to the time periods on the basis of seeking alternative sites and employment, however, evidence shows that there is no need for the use or else it can be accommodated on other sites and therefore there is no requirement to extend the use further.
- 11.12 The appellant is an SME but it is not indicated what level of employment is directly attributable to the site itself nor that there are any economic benefits which would warrant a significant extension of the requirement periods.
- 11.13 The Council is not supportive of the grant of a temporary planning permission and that the harm to highway safety and the High Weald AONB are such, and that there is no need for such an inert waste processing facility, that the grant of planning permission for four years would not address the harm and remain in conflict with the policies of the development plan.
- 11.13 Finally the proposed conditions and mitigation, including the forming a bund would be operational development for which planning permission would also be required and may cause further potential harm in itself and is beyond the scope of a planning condition.
- 11.14 There is therefore no mitigation or means of remedying the harm short of compliance with the requirements of the Notice.
- 11.15 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.

12. APPENDICIES AND CORE DOCUMENTS

1. MSDC01 Authors photo unauthorised storage Feb 2024 (1)
2. MSDC02 Authors photo unauthorised storage Feb 2024 (2)
3. MSDC03 MSDC Aerial photo 2018
4. MSDC04 MSDC Aerial photo 2012
5. MSDC05 MSDC Aerial photo 2007
6. MSDC06 MSDC Aerial photo 2001
7. MSDC07 MSDC Aerial photo 1997
8. MSDC08 Google Aerial photo 2024
9. MSDC09 WSCC Enforcement Notice 2020
10. MSDC010 Authors photo waste deposition Feb 2024 (1)
11. MSDC011 Authors photo waste deposition Feb 2024 (2)
12. MSDC012 Authors photo waste deposition Aug 2018 (3)
13. MSDC013 MSDC Enforcement Notice Feb 2023
14. MSDC014 Appellant Response to MSDC PCN May 2022
15. MSDC015 MSDC PCN to PJ Brown April 2022
16. MSDC016 MSDC PCN Map to PJ Brown April 2022
17. MSDC017 MSDC PCN Appendix to PJ Brown April 2022
18. MSDC018 Planning Permission Ref. WSCC/077/11/BK June 2012
19. MSDC019 MSDC response to Pre-Inquiry note 2 July 2024
20. MSDC020 MSDC photo October 2018