

APPEAL BY PJ BROWN (CIVIL ENGINEERING) LTD



regarding the service of an enforcement notice by Mid Sussex District Council alleging that, Without Planning Permission:

3.1 The material change of use of the Land from agriculture to a Mixed Use of:

3.1.1 the importation, processing, storage and export of waste materials upon the Land;

3.1.2 the deposition of waste material upon the Land;

3.1.3 the storage of building materials upon the Land;

3.1.4 the storage of plant, machinery, and containers upon the Land;

3.2 Operational development comprising of the laying and construction of hardstanding upon the land

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

August 2024

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1.0 PERSONAL

- 1.1 I am Brian Woods. I hold a Bachelor of Arts Degree in Town Planning that I obtained at South Bank University in London. I am also a Member of the Royal Town Planning Institute (RTPI) and have an ONC in Surveying, Cartography and Planning.
- 1.2 I have over 47 years' experience in planning, employed by various local authorities in Surrey, West Sussex and Hampshire, culminating as Head of Development Control at Runnymede Borough Council until 1989. I was subsequently employed as the Planning Manager at Commercial Property Developers, Crest Nicholson Properties, then as an Associate of Planning Consultants, Bryan Jezeph and Partners. I established WS Planning (now trading as WS Planning & Architecture) in 1992, of which I am now the Managing Director.
- 1.3 We act on all sides of planning disputes: for developers, landowners, local planning authorities and local residents.
- 1.4 I have appeared as an expert planning witness at Inquiries and Hearings on behalf of local authorities, companies, residents' associations and landowners covering proposals as diverse as office developments, industrial developments, housing proposals, retail and leisure uses, proposals relating to Conservation Areas, developments relating to farms and the use of land and buildings in the countryside and Green Belt. I have also appeared as an expert planning witness on behalf of Waverley Borough Council on a number of planning appeals particularly with regard to housing.
- 1.5 The evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared and is given in accordance with the RTPI Code of Professional Conduct 2023 and I confirm that the opinions expressed are my true and professional opinions.

2.0 **INTRODUCTION**

2.1 WS Planning & Architecture are instructed by PJ Brown (Civil Engineering) Ltd, (“the Appellant”) to progress an appeal against an enforcement notice served by Mid Sussex District Council (“the LPA”).

2.2 The Enforcement Notice (“the Notice”) was served on 28 February 2023, and alleged that,

“Without Planning Permission:

3.1 The material change of use of the Land from agriculture to a Mixed Use of:

3.1.1 the importation, processing, storage and export of waste materials upon the Land;

3.1.2 the deposition of waste material upon the Land;

3.1.3 the storage of building materials upon the Land;

3.1.4 the storage of plant, machinery, and containers upon the Land;

3.2 Operational development comprising of the laying and construction of hardstanding upon the land”

2.3 The appeal was lodged on 29 March 2023, and was made under grounds (a), (b), (d), (f) and (g) of section 174(2) of the Town and Country Planning Act 1990 against the Enforcement Notice served by the District Planning Authority.

2.4 The appeal proposes to be dealt with by way of a Public Inquiry as there is evidence that will need to be given under oath regarding the matters of the Ground (d) appeal, and the history of the hardstanding and change of use that is the subject of the enforcement notice. In addition to this, the matters to be considered under Ground (a) are complex, and technical in nature, and will require formal examination.

2.5 WS Planning & Architecture are retained as Agents for the Appellant, and confirm that Jonathan Clay of Cornerstone Barristers is due to represent the Appellant in proceedings.

2.6 Additionally, the appellant intends to call the following witnesses with regards to the planning merits:

- Nick Harper BA DipLA CMLI of *Harper Landscape Architecture LLP*
- Toan Chau MSc BEng(Hons) MCIHT of *Cora IHT Ltd*
- James Legate of *PJ Brown (Civil Engineering) Ltd*

2.7 At the time of preparing proofs, the appellant still intends to call a number of witnesses to attest to matters of fact, including those for whom unsigned statutory declarations were provided, these persons being:

1. Peter John Brown,
2. Dave Fleming,
3. Dane Rawlins
4. James Legate,
5. Greg Powell,
6. Graham Upton,
7. Claire Inglis,
8. Caroline Edgeley,
9. Mark Wickens,
10. Marie Mepham,
11. James Brown,
12. Manuel Cardoso, and
13. Sergio Cardoso.

Persons 5-13 will provide completed Statutory Declarations alongside the proofs, whilst persons 1-4 will be providing full proofs of evidence based on the submissions made thus far.

2.8 For clarity, and to ensure that the Inspector is aware, reference within the appeal documents, and evidence provided by third parties, to the Appellant will be to PJ Brown (Civil Engineering) Ltd, and associated companies, including but not limited to, PJ Brown (Construction) Ltd, who were the appellants at the time of the previous appeal's submission.

3.0 DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA

3.1 The appeal site description, and its surrounding area, is agreed within the Statement of Common Ground, and was set out previously within the appellants statement of case. I will not repeat it herein. I will however repeat the Aerial Image provided, see **Figure 1** below.



Figure 1 Aerial Image of Appeal Site (edged Red)

4.0 PLANNING HISTORY

- 4.1 The history of the appeal site is agreed within the Statement of Common Ground, and was set out previously within the Appellants Statement of Case, I will not repeat those matters here.
- 4.2 I will however set out that the appellant does not accept the LPA's assertion of Second Bite validity in this instance. It should be noted that the question of Second Bite" under section 171B(4)(1) of TCPA 1990 was not relied on in the issue of the enforcement notice or the statement of case of the local planning authority. It relates to different boundaries and uses of land. The amendment of the enforcement notice would be required and would be likely to lead to injustice. The appellant will address this issue in full through legal submissions from the appellant's counsel.

5.0 THE ENFORCEMENT NOTICE

5.1 The Enforcement Notice was served by Mid Sussex District Council on 28 February 2023.

5.2 The Notice alleges:

Without Planning Permission:

3.1 The material change of use of the Land from agriculture to a Mixed Use of:

3.1.1 the importation, processing, storage and export of waste materials upon the Land;

3.1.2 the deposition of waste material upon the Land;

3.1.3 the storage of building materials upon the Land;

3.1.4 the storage of plant, machinery, and containers upon the Land;

3.2 Operational development comprising of the laying and construction of hardstanding upon the land

5.3 The Notice requires:

5.1 Cease the use of the Land for the importation, processing and export of waste material,

5.2 Cease the use of the Land for the deposition of waste material,

5.3 Cease the use of the Land for the storage of waste and building materials.

5.4 Cease the use of the Land for the storage of plant, machinery, and containers.

5.5 Remove from the Land all plant, machinery, equipment, containers and vehicles.

5.6 Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the Unauthorised Development.

- 5.7 Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked "A" on the Plan.
 - 5.8 Remove from the Land the portacabin sited in the approximate position marked "A" on the Plan.
 - 5.9 Remove from the Land the containers sited in the approximate position marked "B" on the Plan.
 - 5.10 Remove from the Land the hardstanding marked outlined in blue on the Plan.
 - 5.11 Remove from the Land to an authorised place of disposal all debris material as a result of compliance with steps 5.10 above.
 - 5.12 Reinststate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land.
- 5.4 The Notice requires the above steps be complied with,
- 5.1, 5.2, and 5.3 within 7 Days,
 - 5.4, 5.5, 5.7, 5.8, and 5.9 within 14 Days,
 - 5.6, 5.10, and 5.11 within 28 Days,
 - And 5.12 within 3 months of the Notice taking effect
- 5.5 A copy of the Notice is provided at **CD1.1**.
- 5.6 An appeal was lodged on 29 March 2023, seeking to progress grounds (a), (b), (d), (f), and (g). A copy of the appeal forms are provided at **CD1.2**, together with the appellants grounds of appeal and supporting evidence at **CD1.3-.5**.

6.0 GROUND (B) – THE ALLEGATION

6.1 The Ground (b) There are five component uses alleged in the Notice. Ground (b) of the section 174 appeal is made in order to ensure that the correct description of the use and development of the site taking place at the time of the issue of the Notice is correctly stated as the basis for the appeal; always provided that any amendment can be made without injustice to the parties. It is also progressed in part to secure correction of the Plan.

The Allegation

6.2 For clarity for all involved in the proceedings, it is necessary to establish that the alleged deposition of waste material upon the Land (3.1.2) does not actually occur on site.

6.3 The “deposition of waste” suggests that material is imported to the land and **permanently** deposited there such that natural ground levels are changed as a result, and that an engineering operation has taken place, not a material change of use.

6.4 The use described in 3.1.1 adequately describes uses where waste products are brought to a site and turned into recycled aggregates for resale within the local economy. It is the case that material is imported and set down on the land to be screened, but the permanent deposition of material does not occur as part of the development that has and continues to be undertaken at the site. This is a use which has been found by the Courts to be *Sui Generis*, although it does embody elements of storage and distribution.

6.5 As set out in the Grounds of Appeal, the appellant will be calling witnesses of fact, being those who operate at the site, to attest to this matter and this will explicitly demonstrate that what activities have and continue to take place are the **transfer and treatment of construction and demolition waste**, and not the alleged *permanent* deposit, which is considered to be adequately covered by 3.1.1.

6.6 The LPA however sustain the dispute over this point. The appellant has sought on multiple occasions clarity on this point, which has not been adequately

reciprocated by the LPA. The appellant remains notably unclear where, within the defined red line of the enforcement notice, it is alleged that material has been permanently deposited.

- 6.7 This point is further confounded by the LPA when they provided the authorisation report (**CD5.9**). The only reference to “Permanent Deposition” is in Paragraph 5 of Page 2 of the report:

“The importation, processing, and export of waste takes place then it is removed from the site as waste either destined for further processing or permanent deposit elsewhere unconnected to this site.
The waste is delivered by large 16t HGV’s and thereafter separated by heavy plant piles for removal from the site by the same large HGV’s.

The LPA clearly recognised in the authorisation report that the deposition of waste does not occur on the land, and that any permanent deposit occurs elsewhere, unconnected to the appeal site. It is therefore the case that the LPA had **no** evidence at all when serving the Notice to allege permanent deposit, and have sustained the point in the absence of any evidence.

- 6.8 Whilst the onus may be on the appellant to demonstrate that no permanent deposit occurs on the land, I consider it highly unreasonable of an authority to allege breaches speculatively, and without evidence. The concern that arises here is that the Inspector may be tasked with re-drafting the Notice at the public inquiry, which is not the appropriate setting for a complete re-drafting, and would be substantially prejudicial to the appellant, who by virtue of the uncooperative behaviour of the LPA, have been forced to prepare on the basis that the Notice as framed and appealed, is what will be considered in the evidence.

- 6.9 The only other clarity the appellant has on the matter is from the Draft SOCG, in which the LPA state (at Para 4.4),

“The LPA purports that not all material imported onto the site has been thereafter removed following processing and has been deposited upon the site within boundaries of the Enforcement Notice plan.”

If this is the extent of the LPA's case, then the appellants response remains as set out. The Notice is imprecise in its allegation, as the appellant does not know what matter is referred to here. Clearly, as the appellant has submitted multiple times, it is the appellants case that the permanent deposition of waste does not occur. If the LPA were inclined to be cooperative, their own evidence would have set out where, within the boundaries of the Enforcement Notice Plan, they consider permanent deposition to have occurred. Had the LPA done this, the appellant could have considered and prepared, and this may have even led to the ground (b) appeal being reduced in scope, or not pursued after common ground reached. The LPA have provided no such clarification, and any clarification after the fact is therefore prejudicial to the appellant who has been provided no opportunity to properly consider the matter.

- 6.10 Nonetheless, the appellants position remains the same. The evidence provided by the appellants witnesses demonstrates that no permanent deposit of "waste" on the land has occurred within the period alleged by the Notice. This is confirmed by Mr. James Legate who was one of the employees of the appellant tasked with laying the original hardcore material, which forms the hardstanding surface, in 2007.
- 6.11 Therefore, by virtue of the ambiguous wording and the technical meaning of "*deposition of waste*" suggesting that a permanent deposit has occurred, this wording must need to be deleted from the Notice in its entirety, and this can only be done if it does not cause prejudice to the parties.
- 6.12 In the absence of such a correction to the Notice, the appellants are prejudiced on account of being said to be undertaking activities that are not being undertaken at all.
- 6.13 The issue with this allegation is in relation to any success on the appeal. If the Inspector determines the use to be immune from enforcement action, or granting planning permission, then the "knock on" effect of this wording changes the nature of the works actually undertaken, and as a consequence of other legislation, the development may be misdescribed, and not properly considered or permitted by

other legislation, or the County Planning Authority (i.e. considered as a Waste Deposition site as opposed to a Waste Transfer site).

The “From” Use

- 6.14 This is not a matter which could have reasonably been raised prior to review of the LPA’s enforcement authorisation report, as it is not the appellants case that this is correct. However, a notable point arises that I do consider will need to be considered.
- 6.15 The LPA set out at Paragraph 7 of Page 4 of the Authorisation Report that,
- “In response to the PCN’s issued by MSDC, PJ Brown state that the development, whilst unauthorised, is exempt from enforcement action by virtue of having been carried on for more than 10 years. Whilst it is acknowledged that the site may not have been in agricultural use for a number of years and that PJ Browns first had an interest in the site in 2007, the use in the immediate period following 2007 mainly related to ad-hoc storage and storage related to the ongoing developments taking place on the adjacent land. The processing and the importation of waste did not commence until 2018 and it is at this point that the mixed use is alleged to have commenced. It is therefore within the 10 year period for enforcement by the LPA.”**
- 6.16 The LPA appear to be over-enforcing if this is their case, as the allegation as framed is further rendered incorrect on account of the fact that they do not include the referenced storage use. Presumably, if this is the basis on which the LPA served the Notice, then the allegation should refer to breaches 3.1.3 and 3.1.4 as a part of the “From” use, as clearly, based on the LPA’s own evidence, the appeal site was not in “Agricultural” use prior to the unauthorised change of use alleged.
- 6.17 The LPA cannot clearly be completely correct and the appellant completely wrong, but if one works on the basis that one party’s case is correct as a finality, then the LPA’s own case detracts the content of the Notice itself.

6.18 The consequence of the “from” use is this, if the case of the LPA is correct, then the use of the land for storage purposes would be the last lawful use, and therefore the Notice is incorrect in its allegation, insofar as the “from” use is concerned, but the effect extends to the requirements being rendered excessive, and representative of over-enforcement.

6.19 It is on the basis of the LPA’s authorisation report that I introduce this matter into consideration.

The Plan

6.20 Another fundamental issue to be considered, the same issue was raised during previous proceedings against the Notice brought by the CPA, is the Plan.

6.21 It is acknowledged that this is a development of the Grounds of Appeal as it was not an issue originally raised under Ground (b), and was originally an issue identified under Ground (f), following further review however it is considered necessary to be raised, as it ties in with the appeal under Ground (f), and if raised at this stage, it does not prejudice the parties should the Inspector find it appropriate to consider the Plan under Ground (b).

6.22 These considerations are put forward following discussion with the landowner, who has expressed concerns regarding the inclusion of the access road in the Notice.

6.23 It is important to note that the access used to link the site to the A23 and the adjacent sites has planning permission and history that are relevant considerations.

6.24 The access relied upon is an existing access which has been in situ for an excess of 10 years. It is lawful, and immune from any action that can be purported to be taken by the Planning Authorities. Whilst restrictions to the use of the access could be deemed appropriate, the appellant will provide their consideration on these matters within the Ground (a) section of this statement.

6.25 The issue which is taken with the Notice, and the Plan attached, is that with the requirements worded as they are, on an ordinary reading of the Notice, it could be construed that the access road itself is required to be removed up to the point

where it connects to the junction with the A23, as it is within the use that is alleged within the Breach. Technically, with the red line of the plan depicted as it is, it incorporates a wider Mixed Use, and other planning units. These uses are the established uses as discerned from the planning history. In this regard, due to the extended scope of the Red Line, the appellant considers the requirements of the Notice could purport to interfere with the lawful uses of the Land, and the lawful use of the access onto the A23.

- 6.26 Whilst the notice does not require the closing of this access or the ceasing of its use, it has failed to make clear that the access is lawful and can continue to be used as such, and requirement 5.12 further develops this issue, by requiring “the Land”, as in the land edged Red on the Plan, to be reinstated and restored to its former condition and topography in keeping with the surrounding agricultural land.
- 6.27 As set out, the appellants do not consider this is a fundamental issue, and would be capable of correction by amending the Red Line of the Plan. However, were the LPA to dispute this issue or claim that it would prejudice them, it presents a significant issue to be considered in the proceedings, and will necessitate legal submissions be made on the matter. In short, given the framing of the Notice, and its requirements, the steps required are excessive and would purport to interfere with the lawful uses of the Land, as in the land edged Red on the Plan, and so they would not meet the *Miller-Mead*¹ test and the Notice could therefore be deemed a nullity.
- 6.28 As this issue is intertwined with Ground (f), this statement will not seek to repeat the position when consideration is given to the Requirements of the Notice, but it is requested that the issues surrounding the plan are considered under both Ground (b) and Ground (f).
- 6.29 With this said, the LPA have confirmed in exchanges that they would not object to the allegation, and subsequent requirements, being amended to reflect only the

¹ *Miller Mead v MHLG* [1963] 2 QB 196

Hardstanding within the “blue area”. Whilst this would be a late amendment to the Notice, it would provide the necessary specificity to resolve the issue.

7.0 **GROUND (D) - THE CASE FOR IMMUNITY FROM ENFORCEMENT**

Preliminary Matter 1 – Permanent Deposit

7.1 As set out in the appellants statement of case, the appellant considers the following development to be immune from enforcement action by virtue of the passage of time,

“the importation, *temporary* deposit, reuse and recycling of waste material and the use of the land for storage purposes”

In short, the appellant does not seek to claim immunity for the breach as alleged, as the breach as alleged has not occurred as a matter of fact.

7.2 However, with that said, the appellant has had to prepare on the basis of the evidence provided to date, and the lack of cooperation by the LPA in clarifying what “*permanent deposit*” is alleged.

7.3 The LPA have not deigned to provide the necessary clarity, and as such the appellant will not surmise hypothetical scenarios, or prepare a case on such a basis. The evidence of the appellant demonstrates that there has been no permanent deposit on the land.

Preliminary Matter 2 – The Planning Unit

7.4 Consideration also needs to be given to the “planning unit” which is as set out with Ground (b), and the issues raised on the Plan. The appellant does not seek to claim immunity for works outside of the established area, which is not the Land as defined by the Red Line on the Plan.

7.5 Whilst the LPA had been silent on the matter, it is noted that a copy of the Enforcement Authorisation Report has since been supplied. It remains to be seen exactly what the position of the LPA actually is on this matter.

7.6 As previously stated, if the position of Mid Sussex District Council as the Local Planning Authority reflects the position of West Sussex County Council as established within previous proceedings, then it is understood that the crux of the Ground (d) case lies in whether or not the activities on the Appeal Site up to at least June 2013 formed part of the works to implement the Agricultural Prior

Determination Ref. 01/01232/AGDET and only after these were completed and the works to implement Planning Permission Ref. WSCC/077/11/BK had commenced, that the use appeal site for separate activities might have become a consideration.

- 7.7 This has not been clarified at all within the LPA's case, and whilst efforts were made to seek clarity through the SOCG, the LPA were not receptive to the negotiations, and determined instead that the appellant should in effect "remain in the dark" about the matter. Nonetheless, the onus is on the appellant to demonstrate on the balance of probabilities that the use alleged has been continuous throughout the requisite period.

The Case for Immunity

- 7.8 Notwithstanding the issues which subsist, what is established within the SOCG is the following specific points of dispute,

- *Whether the "second bite" provisions in Section 171B(4)(b) apply, in relation to the service of the first enforcement notice.*
- *Whether or not the material change of use to the mixed use contained within the alleged breach in the Notice began 10 years prior to the taking of enforcement action, and continued throughout this period, and thus has become immune from enforcement action.*
- *Whether or not the operational development contained within the alleged breach defined by the Notice was completed 4 years prior to the taking of enforcement action, and thus has become immune from enforcement action.*

- 7.9 On the first matter, I retain the position as set out in the Statement of Case, and consider this a matter for legal submissions. I will make no commentary on it, beyond stating that the appellants evidence does not falter either way. It remains clear and unambiguously demonstrated that the use of the site alleged has continued throughout the requisite time period in either case.

- 7.10 The LPA evidence in their officer report that from at least 2018 the continuity of the use is not contested.

7.11 The LPA set out at Para 5.31 of their Statement of Case that the appellant has not stated when the breach of planning control first started, and “merely asserts that they commenced by 28 February 2013”. As such, I find it trite that the LPA introduced into their case late on assertions about the second bite, after the clear inconsistencies prior to that correspondence.

7.12 To be clear, the appellants case is this:

In mid-2007 the appellant company first began formally using the land (by way of a tenancy agreement), for the storage of planings, aggregates and machinery. This was within a relatively concise area, and was wholly independent of any other activities occurring on the wider land, or neighbouring properties. In short, the appellants were occupying the yard prior, but in association with permitted works. Later in that same year (2007), the appellants began using the site for its current mixed purpose, importing waste material until there was sufficient quantity to be screened, processed, and exported from the site. From 2010 their activities at their prior base of operations (Holmbush) began winding down, as the permission was expiring and further development of that land was due to commence (the site is now Kilnwood Vale – a housing development) and the appeal site began being used more intensely. From 2010 to the present day, the site has been used in a mixed use of storage, of equipment, plant, machinery, and building materials, and the importation, storage/temporary deposit, processing and export of waste material.

7.13 Case law is clear that the intensity of a use does not affect its lawfulness, or reset the clock. Any component part of a mixed use can wax and wane over time, and at certain moments there may be a clear lesser intensity, but this does not change the overall mixed use. The typical way in which a mixed use is rendered unlawful, or for the “clock to be reset”, is for a new component to be introduced into the overall mixed use. This is not alleged by the LPA.

Planning Practice Guidance (PPG)

7.14 The Planning Practice Guidance is a web-based resource that was published in November 2016 and updated in October 2019, setting out national planning guidance.

7.15 Under the “Lawful Development Certificates” chapter, it is noted that
“in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”.

Whilst this section relates to LDC’s, its content is relevant for Ground (d) appeals as well.

Legislation

- 7.16 Section 171B of the Town and Country Planning Act 1990 (“the Act”) states that,
- (1) **Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.**
 - (2) **Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.**
 - (2A) **There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).**

- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.**
- (4) The preceding subsections do not prevent—**
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or**
 - (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach**

7.17 Section 191 of the Act states that:

- (1) If any person wishes to ascertain whether—**
 - (a) any existing use of buildings or other land is lawful;**
 - (b) any operations which have been carried out in, on, over or under land are lawful; or**
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.**
- (2) For the purposes of this Act uses and operations are lawful at any time if—**
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and**

- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
- (a) the time for taking enforcement action in respect of the failure has then expired; and
 - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Case Law

- 7.18 In *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin) it was established that the burden of proof is squarely on an Applicant to demonstrate that a present use of the land is, on the balance of probabilities, immune from enforcement action and can be granted a Certificate of Lawfulness on the basis of the passage of time. It is not for the Decision Maker on the application, to seek out evidence or draw inferences from gaps in the evidence.
- 7.19 In *Secretary of State for the Environment v Thurrock Borough Council* [2002] EWCA Civ 226, [2002] JPL 1278 it was established that the breach of planning control must have been continuous, such that the planning authority could at any point have taken enforcement action.
- 7.20 In *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited* [2012] EWHC 277 (Admin)) the court established that that “**more of the same**” cannot in itself amount to a material change of use, even if it results in a major environmental impact, there has to be a change in the character of use itself, in other words a material change in the definable character of the land.
- 7.21 In *Lilo Blum v Secretary of State and Anr* [1987] JPL 278, Simon Brown J stated, at page 280, that

“It was well recognised law that the issue whether or not there had been a material change in use fell to be considered by reference to the character of the use of the land. It was equally well recognised that intensification was capable of being of such a nature and degree as itself to affect the definable character of the land and its use and thus give rise to a material change of use. Mere intensification, if it fell short of changing the character of the use, would not constitute material change of use.”

- 7.22 The Court held in *FW Gabbitas V SSE and Newham LBC [1985] JPL 630* that the Applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted. In this case there is also evidence that corroborates the Appellants evidence.

Immunity from Enforcement

- 7.23 Taking into account the preliminary matters, guidance, and relevant legislation, the appellants case is that the alleged breach of planning control is immune from action. The appellant maintains their position that there has been no permanent deposit of waste to the site in the requisite time period, and therefore

The Hardstanding

- 7.24 On the matter of the hardstanding, as set out in the preliminary matters section, this is not a breach which was included within the first Notice. As such, even if the LPA were to argue that the hardstanding is “Part and Parcel” of the material change of use, the validity of the second bite must be considered, however “part and parcel” is no longer the test noting the recent ruling of *Caldwell*². Ancillary or incidental operational development cannot be subject to the 10-year limit as “*part and parcel*” to changes of use where they are not fundamental to or causative of that change of use. If the second bite is valid, then the hardstanding cannot be treated as being a part to the development previously alleged, and I consider that such a determination would cause clear injustice to the appellant, given that the

² *SSLUHC v Caldwell & Timberstore Limited [2024] EWCA Civ 467*

prior notice served by the County Planning Authority didn't actually require removal of **any** hardstanding. The County Planning Authorities under-enforcement cannot be reneged upon and now claimed part and parcel of the development alleged by the LPA, and be subject to a legitimate "second bite".

- 7.25 Furthermore, the LPA clearly appear to accept that the requisite period of time for the hardstanding is four years. This is stated at 4.2 of the Notice, 5.30 of the LPA's statement of case, and point (2) of Page 8 of the Authorisation Report, as well as at 5.5 of the Draft SOCG.
- 7.26 I do not consider the appellant needs to rely upon any oral evidence to support the facts of this element, given that the hardstanding would be clearly immune from enforcement on the basis of the four year rule by virtue of aerial imagery alone, notwithstanding the LPA's own records and site inspection notes.
- 7.27 I attach at **Appendix 1** a copy of WSCC's 04 March 2014 Site Visit Photos, at **Appendix 2** the site visit photos of 22 January 2015, and at **Appendix 3** the site visit photos of "JN" taken 03 January 2019.
- 7.28 Coupled with the aerial images, attached at **Appendix 4**, I consider it is abundantly clear on the balance of probabilities that the hardstanding is immune from enforcement action.
- 7.29 The Notice must therefore be quashed entirely, or corrected such that the Operational Development alleged under breach 3.2 is deleted from the notice, alongside requirements 5.10-5.12.

The Material Change of Use

- 7.30 As was set out within previous proceedings, it is the appellant's case that any information which was provided to either the County or District Authority by Nick Page should be given little weight. Nick Page did not, at any stage, have authority to speak on behalf of PJ Brown (Construction) Ltd, or associated companies, regarding any matters which related to their activities on Bolney Park Farm, and any comments and submissions made by him were done so without the knowledge or consent of the appellant.

- 7.31 Within the previous proceedings, the appellant set out that any comments made by Nick Page should be taken in this context, and that it was evident that he was not in the right state of mind to properly make any such comments from the fact that he sadly took his own life, not long after those comments were made. The appellant has been put in a difficult situation regarding their history of activities on the appeal site, given that the appellant did not authorise him to speak on their behalf, and cannot give any reason as to why he made the comments that he made. In this regard, the appellant will refer to the PCN issued by the LPA on 28th April 2022, and the response provided to this, both of which are attached at **Appendix 5**.
- 7.32 The appellants evidence sets out that the sites overall usage from as early as 2007 to the present day has of course grown with that of PJ Brown and Associated companies, with varying levels of activity having taken place on the site, such as their involvement with the A23 works and crushing of road planings in 2013 and 2014 being one of their most prominent projects in the area, but the core premise of what the site has been used for has remained the same, namely the physical treatment/separation and storage of inert materials and aggregates, alongside open storage of containers and other paraphernalia, for the requisite period of time.
- 7.33 The appellants first worked on the land in late-2001 to 2002 when they undertook works for South East Tipping in relation to the implementation of 01/01232/AGDET. As affirmed by Mr. Rawlins, they were contracted to import the necessary material through 2002, and it was in 2004 that South East Tipping abandoned the reclamation project suddenly, and the appellant took over these, and saw them through to completion in 2007.
- 7.34 From then, the appellant (formerly PJ Brown (Construction) Ltd, assumed a tenancy contract, originally for the use of the land for storage. As set out by the evidence, the tenancy expanded a degree to enable the waste transfer operations to take place. These operations commenced in late 2007.
- 7.35 Various parties, including employees of the appellant company and third party users of Bolney Park Farm witnessed the operations in this period. The evidence

of Mark Wickens, Marie Mepham, and Graham Upton in particular cover the period between 2007 and 2010, although all the evidence goes beyond that date.

7.36 After this time, the evidence of James Legate, Manuel Cardoso, Sergio Cardoso, James Brown, Greg Powell, Caroline Edgeley, and Claire Inglis all confirm the use continuing after this time, whilst Mr. Peter Brown, Mr. Dave Fleming, Mr. James Legate, and Mr. Dane Rawlins, all provide sufficient testimony of the use continuing to date.

7.37 The County Planning Authorities own evidence (the Site Inspector Reports) also confirm that,

- In February 2014 there was a “considerable pile” of material,
- In March 2014 there was material, plant, equipment, and machinery stored on the site,
- In January 2015 there was the same extent of hardstanding (reduced in size) as witnessed in 2014, it was recorded that material had been imported to the site (the appeal site), and that, at least, a screener and pallets of bricks stored were still present. It is noted that the CPA recorded this area to be the remit of the District Council and outside of the control of the planning permission.
- In July 2015 it was recorded that, present within the appeal site, were stockpiles of inert, screened material ready to be sent out to another site. I note that despite this report provided within the previous appeals proceedings referencing photos, none were actually provided. Of note however is that the officer clearly records the Operators Compound being outside the red line of the planning permission, and requiring regularisation. The report also records the presence of the hardstanding.
- In October 2018 it was recorded that there were 2 separate stockpiles: one of crushed brick, and another of aggregate. It was also recorded that Mr. Rawlins, and his use of the land, was as a horse owner with a farm rather than a farmer with horses, suggesting that the wider site is

actually Equestrian in use, rather than Agricultural as alleged. This report also records photos, but none are provided with it.

- In January 2019, the reports clearly record the activities ongoing at present.

Given that the LPA intend to call Andrew Seriakowski of WSCC in respect of Ground (d), I am preparing on the basis that the evidence he will provide will not be materially dissimilar to his prior evidence in the appeal against the CPA's Notice.

- 7.38 The CPA's case in that instance alleged a spurious point, asserting that the appeal site had been used for part of the works to implement the Agricultural Prior Determination Ref. 01/01232/AGDET, until at least June 2013, and appeared to infer that no breach had taken place as a consequence. To this, I request the Inspector consider the evidence of Mr. Rawlins, who explicitly sets out the works concluded in 2007. The CPA cannot refute this point, as there exists no evidence to the contrary.
- 7.39 The Land Reclamation works, which sought the infilling of an old bomb crater, were approved under 01/01232/AGDET. As is attested to by Mr. Dane Rawlins, the landowner, these works came to conclusion in 2007. The final part of the land involved was then left to settle for just over two years prior to commencing planting of crops.
- 7.40 A series of aerial images, annotated, which encompass the wider site are attached at **Appendix 6**. What is important to note about these images is that they show a snapshot in time. The images alone are not evidence of the use, or the lack thereof, but serve to corroborate evidence under oath that will be made. I remind all parties to this appeal that component parts of a mixed use can wax and wane without rendering the overall mixed use altered in any form.
- 7.41 I also note that one can refer to Streetview Imagery taken from the northbound lanes of the A23. I provide these at **Appendix 7**. Whilst inferences need to be made, what these images demonstrate is Browns using the access through June 2011, which is prior to them commencing works on the adjoining property.

7.42 I do submit the following timetable of events is representative of the facts presented thus far,

2001	Appellant begins occupation of land, as evidenced by licence dated 2001 (Appendix 8) and letter from PJ Brown to South East Tipping (Appendix 9)
2004	Appellant succeeds South East Tipping in completing Land Reclamation project on wider land, as will be affirmed by P.J. Brown and D. Rawlins
2005	Use of appeal site continues as separate and independent operations to surrounding activities. Separate yard established for works on 01/01232/AGDET (Appendix 4 – Aerial dated 01/01/2005)
Mid-2007	Appellant begins renting of yard, as confirmed by invoice (Appendix 10). Yard clearly exists as evidenced by Aerial Imagery
Late-2007	Works to implement 01/01232/AGDET “complete” – reach stage where no further engineering operations necessary, only placement of topsoil, to enable top section to be planted.
2007-09	Reclamation works “finish”, having reached the point where the top section was planted. Further, separate works were then undertaken without planning permission having been obtained.
June 2011	Streetview Imagery confirms two HGV’s (at least) entered site. Indicate third HGV exited and travelled northbound after traversing junction south.
March 2012	Aerial Imagery evidence yard established to extent it is at present
June 2012	CPA Approve WSCC/077/11/BK relating to the Wright’s land to the southwest of the site.

Late 2012	Works on WSCC/077/11/BK commenced (stripping of topsoil) as evidenced by the aerial image of the wider site dated September 2012. Use of appeal site continues as separate and independent operations to surrounding activities, and note land to east of site subject to further works not associated with 01/01232/AGDET.
Mid-2013	Bund construction works involved in WSCC/077/11/BK start, as evidenced by the aerial image of the wider site dated June 2013
2013-2014	Appellant involved with Carillion project on A23, appeal site used for storage and crushing of road planings, and storage of equipment involved in those works. (Invoices for works with Carillion attached at Appendix 11)
April 2015	Works on bund construction continue as evidenced by aerial image dated April 2015. Separate yard for these operations established (Appendix 4 – Aerial dated 12/04/2015). Use of appeal site continues as separate and independent operations to surrounding activities.
September 2015	Work on bund construction completes and works to restore land to former state undergoing as evidenced by aerial image dated September 2015. Separate operational yard present south of hedgeline.
2016-2018	Use of appeal site continues as separate and independent operations to surrounding activities. Appellant provided materials for a variety of developments in local area.
October 2018	Bund constructed to north of appeal site (outside of Red Line area)
2019	CLEUD Application submitted
2020	County Enforcement Proceedings instigated, site continues to operate as normal, despite pandemic due to construction operations being exempt.

2021	County Enforcement Proceedings continue, site continues to operate as normal. Enforcement Notice withdrawn March 2021.
2022	Site continues to operate as normal. District Authority begin enforcement investigation, PCN Served.
2023	Site continues to operate as normal. District Authority formal Enforcement proceedings instigated.

7.43 If the District Authority do indeed purport to follow the same justification as the County Planning Authority did within prior proceedings, then it would appear to be the LPA's case that works on 01/01232/AGDET reached a point where they were substantially completed, and then the landowner made the decision to undertake no further works for some 7 years, and left the land out of rotation for this time, or indeed out of any use or purpose. It would also be their case that, due to the appellants involvement with the Wright's development, that it is "reasonable" to assume that the yard was a base of operations for these works. The key point to be made in response to the latter is that the Wright's development clearly relates to a separate parcel of land, outside of the ownership of Mr. Rawlins. If there were no agreement in place for the appellant to operate from the appeal site, in whatever form, then there is no reason to assume that as a landowner Mr. Rawlins would permit the appellant to stay on the site whilst those works (WSSC/077/11/BK) are undertaken. With regard to the former, it is nonsensical to consider this to be the reality of matters.

7.44 With regards to the use of the appeal site in association with any of the permitted operations on the adjoining land, both that of Mr. Rawlins and that of the Wright's, due consideration needs to be given to the actual facts, and not the assumptions made by the LPA and CPA on these matters. The annotated aerial images denote the apparent locations of the various compounds associated with these activities specific to those activities, and it is quite clear the purpose of these compounds are separate from the operations of the appeal site.

7.45 I therefore conclude on the balance of probabilities that the appellants version of events is more than likely to be correct, and that the uses alleged are immune from

enforcement action. Their involvement and operations may have waxed and waned over time, and indeed they have been involved in the adjoining land, but they have been there, on the appeal site, and they have been successfully operating from the yard, in their current form, for in excess of 10 years.

8.0 GROUND (A) - THE DEEMED PLANNING APPLICATION

- 8.1 If Ground (a) falls to be considered, then it is presumed that Ground (d) will have failed. Ground (b) could be successful, and the Notice corrected, subject of course to whether or not such a correction would cause prejudice. On this basis the LPA's case would be deemed to be correct, i.e the use immediately following the appellants interest in the land commencing in 2007 was ad-hoc storage and storage related to the ongoing developments taking place on the adjacent land, and the processing and the importation of waste did not commence until 2018. In other words, the "*ad-hoc storage and storage related to the ongoing developments taking place*" or simply, *Storage Use*, was a use of land that became immune from enforcement action, and was the subject of a further material change of use in 2018. I note that had the appellant not pleaded ground (d) this would likely be the basis on which any Ground (a) appeal would be determined.
- 8.2 Evidently, the LPA's position is **not** accepted by the appellant, but I highlight the point as the LPA's own submissions result in a flawed assessment of the merits. They have assessed the site as a greenfield site when considering the expediency of enforcement action, when, based on their own evidence, they appear to accept the land has been used for storage purposes for an excess of 10 years.
- 8.3 I do not intend the above paragraphs to be relied upon as any evidence or conclusion that the other grounds of appeal hold no merit. However, the conclusions of the Inspector in reaching Ground (a) would be that the LPA's case is correct, and that the appellants evidence does not demonstrate on the balance of probabilities immunity from enforcement action. Accordingly, I assess the planning merits on this basis, and will therefore refer to Section 57(4) of the Act, and that it allows the reversion to the last lawful use of land prior to any unauthorised change of use of land following successful enforcement action.
- 8.4 **It is** the LPA's case, as set out within their own Authorisation Report, the processing and importation of waste **did not commence until 2018**, and **that the use in the immediate period following 2007 mainly related to ad-hoc storage and storage related to the ongoing developments taking place on the adjacent land**. It therefore appears to be conceded by the LPA that between 2007

and some time in 2018, the land was subject to material change of use for storage purposes, presumably the storage uses alleged within 3.1.3 and 3.1.4 of the Notice.

- 8.5 Where an enforcement notice relating to a breach of planning control is appealed on ground (a) the deemed planning application seeks permission for the development as alleged within the Breach described in the Notice. An appellant may seek planning permission for part of the alleged breach only, but cannot seek planning permission for a different scheme. In this regard, the framing of a Notice must be sufficient to allow an appellant to seek permission for the breach of planning control that they have undertaken. Deliberate under-enforcement and exclusion of matters that have occurred will often result in prejudice to an appellant.
- 8.6 The scope of this deemed application as derived from the alleged breach can be defined adequately as:

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

- (a) the importation, processing, storage and export of waste materials upon the Land;**
- (b) the deposition of waste materials upon the Land;**
- (c) the storage of waste materials upon the Land;**
- (d) the storage of plant, machinery, and containers upon the Land**

alongside Operational development comprising of the laying and construction of hardstanding upon the land

However, as set out, I do not consider the Ground (b) and (d) appeals will fail in their entirety, particularly in respect of the hardstanding, but also that there appears to be a position presented by the LPA that the last prior use was for Storage Purposes, and this could represent a material fallback position were the Notice to be upheld and complied with.

8.7 The appellants deemed application for planning permission is put forward on a without prejudice basis, in the interests of trying to secure negotiations with the County and District Planning Authorities. At present, without the appeal site, the appellants operations cannot continue, and it was on this basis, that in the event that the Ground (d) appeal were to fail, a temporary permission for 4 years was sought. This was in light of the Highway objections outlined, which do now appear to have been retracted by Highways England. In light of this, I do submit that a permanent permission may also be granted, but ultimately, what the appellants seeks is finality, one way or another, for these matters such that they can simply progress past it. A temporary permission has its benefits, and would be a compromise for the CPA and LPA, whilst a permanent permission may give rise to further litigation or persistent interference, which is why it was a temporary permission offered from the outset in the appellants submissions.

8.8 The appellants outlined their considerations for the development with the Grounds of Appeal and again in the Statement of Case.

8.9 I will address each reason for the Notice being issued, where it relates to planning merits, in turn. However, I will first begin with an assessment of the development against local plan policies.

Policy Context

8.10 The Deemed Application seeks permission for both a storage use, a District matter, but also a Waste use, which is a County matter. As such, the development will have to be assessed against the policies of the Waste Local Plan as well.

8.11 The relevant policies are set out within Para 6.3 of the currently draft SOCG. For completeness, I will repeat them here,

- Mid Sussex District Plan 2014-31 – Policies DP12 and DP16, DP21, DP26, DP27, DP29, DP38, DP41, and DP42;
- West Sussex Waste Local Plan 2014-31 – Policies W3, W4, W8, W9, W11, W12, W13, W14, W16, W18, and W19;

- National Planning Policy for Waste 2014 paragraph 7 and Appendix B,
- National Planning Policy Framework, paragraphs 114 (previously 110), 115 (111), 180 (174), 182 (176), 183 (177), and 189 (183).

8.12 Policy DP12 regards the Protection and Enhancement of Countryside. The policy sets out that development in the Countryside will be permitted provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and it is necessary for the purposes of agriculture; or it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan. I acknowledge that meeting this policy will be subject to two factors, the first being whether or not it maintains or enhances the quality of the rural and landscape character of the District, and the second being whether it complies with other policies, such as W3 of the West Sussex Waste Local Plan. Policy DP16 is also relevant, and regards the High Weald AONB (now National Landscape).

8.13 I accept that the development does not represent development desired by this policy, and that there is some inherent conflict as a result, but I defer to Mr. Harper's judgement on the landscape impacts in this regard.

8.14 I will however opine that the alleged harm to the countryside character is limited. This site is by no means "pristine" and has for a significant period of time had a major road close by. Furthermore, based on the LPA's own submissions in the Authorisation Report, they accept the last lawful use as storage. The appellant also submits the hard standing is immune from enforcement. This sets the context in which the deemed application needs to be assessed, and if accepted (the hardstanding) would support my conclusion that the site is not pristine.

8.15 On the other hand of this the need for this site (and the absence of any available alternative location), should be given great weight when considered against any policy conflict arising from the sites location within a protected landscape.

8.16 Turning to the West Sussex Waste Local Plan. WLP Policy W3 supports built waste management facilities on unallocated sites provided that, amongst other things, they cannot be delivered on either permitted or allocated sites, and they are either in Areas of Search or small scale facilities to serve a local need. The area of search is defined below by **Figure 2**. It adds that such proposals must only be located on a greenfield site if it can be demonstrated that no suitable alternative sites are available, and be well-related to the Lorry Route Network.

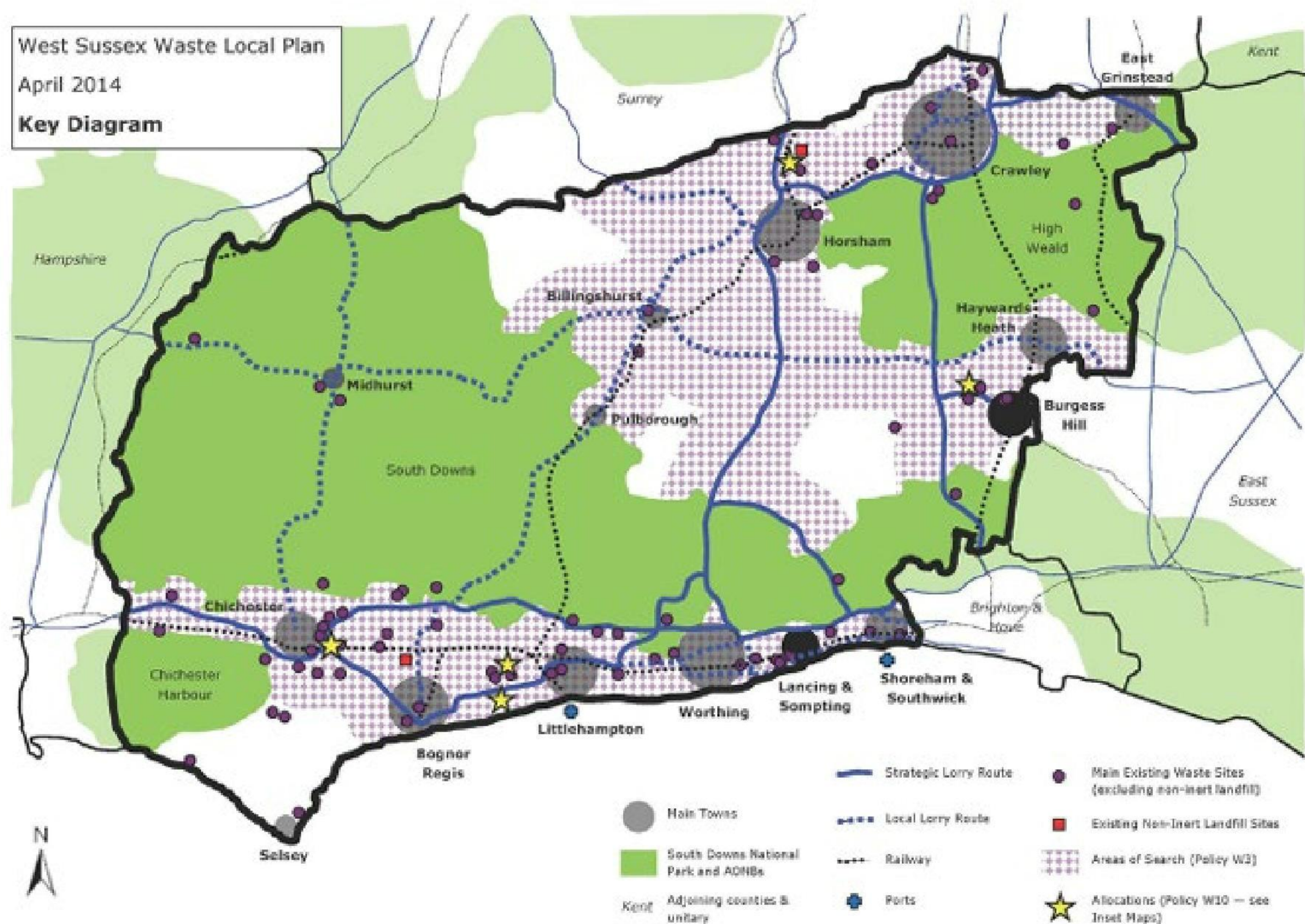


Figure 2 WSCC Key Diagram extract from WLP

8.17 Turning to the first criterion of Policy W3(a), this development cannot be located on another permitted site, or on the sites allocated for such a purpose. The reason for this is that within a 15 mile radius of the appeal site, all operational sites are run by competitors. No availability is present on these sites, and even if there were capacity, there is no power available to the LPA or CPA to enforce allowing the appellant to operate at a sufficient capacity. That power lies solely with the landowner and/or leaseholder. To rely upon existing operational sites, that do not offer any actual capacity, would undermine the economic objectives of sustainable development. It would in effect place the appellant in a chokehold and at the mercy

of competitors. This position is supported by the appellants proofs (those of Jim Legate and Peter J Brown).

8.18 Of the sites allocated by W10,

1. Site north of Wastewater Treatment Works, Ford (Policy Map 1);
2. Hobbs Barn, near Climping (Policy Map 2);
3. Fuel Depot, Bognor Road, Chichester (Policy Map 3);
4. Brookhurst Wood, near Horsham (Policy Map 4); and
5. Land west of Wastewater Treatment Works, Goddards Green (Policy Map 5).

8.19 Site 1 is situated in Ford, to the west of Littlehampton. In all reasonableness, it is far outside the operational catchment of the appellant (some 32km from the appeal site). Notwithstanding this, permission was granted (WSCC/096/13) for a Materials Recovery Facility, with a 2013 reference. Subsequent applications have been withdrawn, and this site currently has no permission in place for the desired use. Whilst it may be relied upon for the desired use, it is occupied currently, and therefore unavailable.

8.20 Site 2 is situated near Climping, again far outside the operational catchment of the appellant. Permission was granted (WSCC/067/15) for a waste transfer station with 50,000tpa capacity, and is currently occupied by Arun Waste Services Ltd, who state they have been permitted to move 75,000tpa. Whilst it may be relied upon for the desired use, it is occupied currently, and therefore unavailable.

8.21 Site 3 is situated in Chichester, again demonstrably outside the operational catchment of the appellant. Permission was granted (WSCC/058/13/O) and expired for a waste transfer station, it appears to be undeveloped, and so whilst not immediately available as an alternative, in the context of a county-wide search, this site would appear to be available, although it is clear from specific review of its history that the desired use may no longer be appropriate in this location. Permission was granted (in outline form) for redevelopment of the site to a mixed use, but excluding a corner of the site identified as allocated for "Waste Purposes".

However, I note that amongst the uses approved is a Hotel, Class D2 Leisure, Class A3, mixed A3-A4 and mixed A3-A5 Food and Drink Establishments, and so the future of this site, and any waste use, has been impacted, and in my view this represents a genuine likelihood of the allocation not being fully realised. Whilst there may be scope for some use, what form it takes, and what scale is realised, is not likely to be that originally envisaged in its allocation, as the site has gone the way of alternative development.

- 8.22 Site 4 is situated near Horsham. The site does lie within the operational catchment of the appellants, however, like their Burlands Farm base, it is situated within the Water Neutrality area. Any development like that desired, which would need to expand the capacity of the site, would not be able to achieve water neutrality with ease, and so it would likely not be a “quick fix” i.e. unlikely to be secured within the next few years. Furthermore, the site is operated by a competitor. It is therefore unsuitable.
- 8.23 Site 5 is located in good proximity to the appeal site, and would represent a viable alternative location. However, as recorded by the LPA in the most recent Monitoring Report, no applications have come forward on this site. Furthermore, the appellant has held discussions with the landowner who was reluctant to release the land for its allocated purpose, and when asked what the rate would be for leasing the land, were he to release it for waste purposes, the figure quoted was extortionately high, such that on review it demonstrated relocating to that location would be economically unviable for the appellants. The difficulty with site 5 is that whilst it is allocated the landowner is reluctant to release the site for its purpose, and even if they were, it would render the small operation of the appellants unviable. Whilst it is suitable and allocated, it is a genuinely unrealistic alternative site, and is one of the difficulties operators, and even housing developers, face when sites are allocated without there being an envisaged operator or developer aiding in site promotion. In short, it gives an unreasonably high level of control to a landowner and allows a site to be held to ransom. Of course there are measures available to authorities to combat this, but to date they have not been employed.

8.24 On Site 5 the appellant would note that were compulsory purchase powers used to aid in progressing the site, the appeal site might not be necessary, but as it stands the appellant is not able to purchase the site outright, nor able to afford any tenancy, were one to be offered. The consequence of this renders this site unsuitable.

8.25 As a consequence, W3(a)(ii) is triggered. The area of search is quite limited in scope, but more importantly significantly impacted by current water neutrality requirements. To give an approximate overview, see the figure below (**Figure 3**).

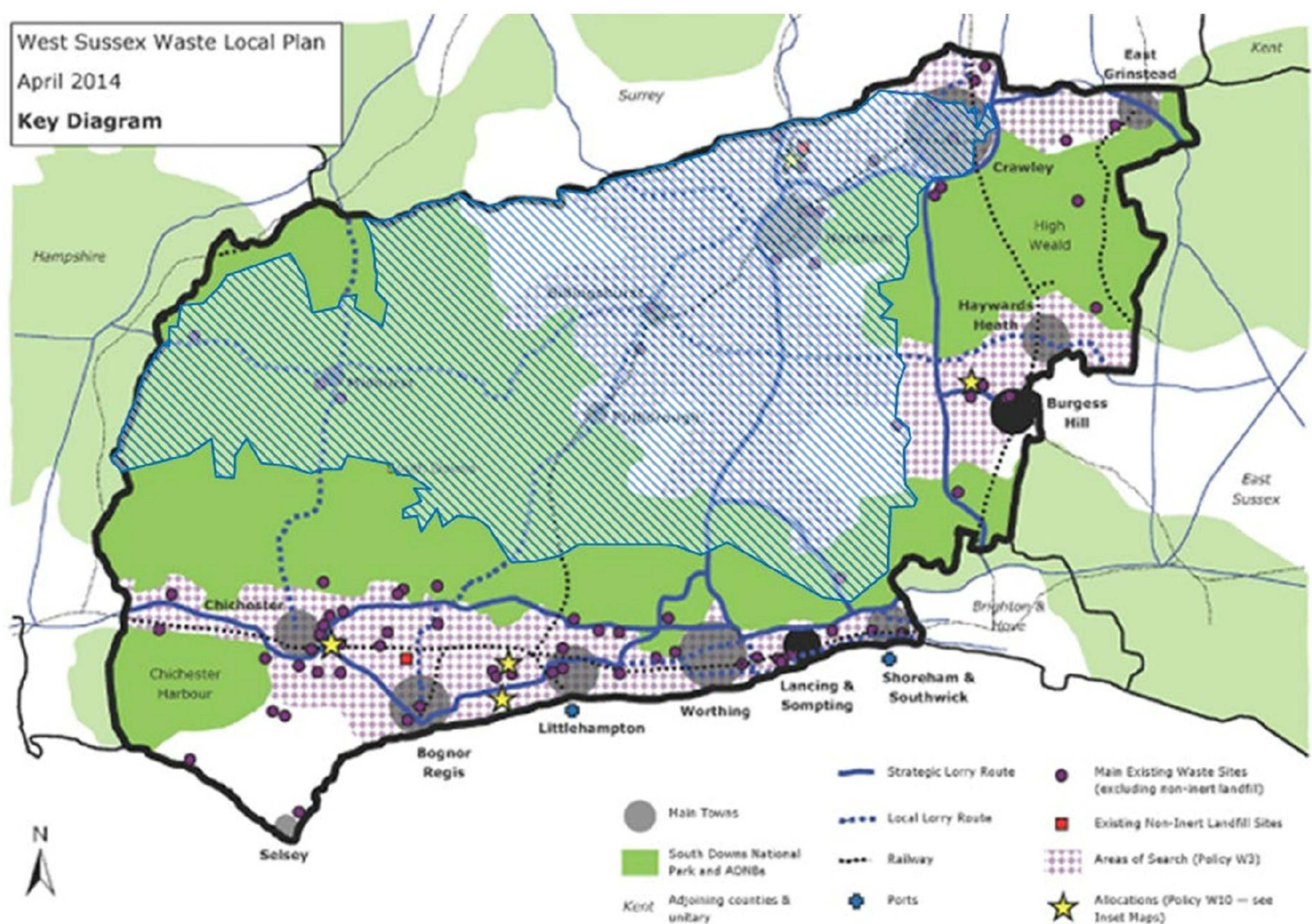


Figure 3 Key Diagram with Water Neutrality area shown cross-hatched (Approximate)

8.26 As set out, the southern area along the coast would be outside the operational catchment for the appellants, and as such whilst it presents a solution to the Water Neutrality issue, it doesn't represent suitable alternative locations for the development and the end user (the appellant). Water Neutrality limits the scope of the area of search to the areas around Burgess Hill and Haywards Heath, and the area between Crawley and East Grinstead. The site is not however located within this limited area of search.

- 8.27 As such, W3(a)(iii) is triggered. The development, to comply with this policy must be small scale, and serve a local need. “Small Scale” is generally defined within the WLP as a facility with a capacity of no more than 50,000tpa. The definition of ‘local’ as used within the WLP will depend upon the type of facility and its catchment area. In this case, I do not consider there is any merit in arguing that the development does not serve a local need.
- 8.28 Policy W3 also requires that new development that, where located on a “greenfield site” it is demonstrated that no suitable alternative sites are available, and be well related to the Lorry Route Network. I consider that there can be no argument that the site is not well related to the lorry network, given the site accesses the A23 directly, and the A23 is designated a part of the Lorry Route Network. I also consider it has been demonstrated that there are no suitable alternative sites available.
- 8.29 Policy W4 permits proposals for the processing and recycling of inert waste where located in accordance with Policy W3.
- 8.30 Policy W11 requires no unacceptable impact on the character of the area, and Policy W12 seeks high quality development. Policy W13 states that Proposals for waste development within protected landscapes will not be permitted unless they are allocated, the proposal is small scale and serves to meet local needs and can be accommodated without undermining the objectives of the designation, and where *major*³ there is an overriding need that cannot be met in some other way or met outside the designated area, and any adverse impacts on the environment, landscape, and recreational opportunities can be satisfactorily mitigated.
- 8.31 Safe and adequate means of access to the highway network, and no adverse impact on the safety of all road users is required by Policy W18. This also aims to

³ As set out in the WLP, in the case of waste proposals, all applications are defined by the Town and Country Planning (Development Management Procedure) Order 2010 as ‘*major*’. However, for the purpose of this policy, 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.

minimise vehicle movements by the optimal use of the vehicle fleet. Policy W19 concerns public health and amenity.

8.32 Overall, I do consider the Inspector is likely to conclude there is some policy conflict, owing primarily to the location of the development within a designated landscape. However, the scale of harm attributed to this conflict, I consider to be limited, and in this regard I do defer to the evidence of Mr. Harper whereby the cumulative impacts are judged as being Not Significant. On the other hand the absence of alternative sites and the scale of need for this kind of use in this general location should be given very substantial weight in favour of the ground (a) appeal and the deemed application.

Reason 4.3 – Location

8.33 Reason 4.3 states that the development is located in a rural area and is unrelated to the needs of agriculture. Whilst this may be correct, when considering the planning merits and expediency of enforcement action, the LPA clearly considered an incorrect baseline context of the site. It will be open to the Inspector to determine a date of when the material change of use occurred, and if this aligns with the position of the LPA (i.e. 2018), then I consider that the evidence will have demonstrated the appropriate baseline context of the site would have been for storage purposes. This is an important consideration, albeit not one I will consider from the outset here.

8.34 The appellants evidence demonstrates the search for alternative sites. Their existing base has been found unsuitable. A potential alternative site was likewise found unsuitable. The outstanding allocated site is unviable due to the landowner. Existing operational sites are not feasible due to the existing occupants, being competitors to the appellants.

8.35 In short, there are no reasonably available alternative sites that can accommodate the development.

8.36 Whilst some inherent policy conflict can be alleged to arise, the policies of the Waste Local Plan do permit greenfield sites under the circumstances. The

appellant submits that, when considered alongside the material considerations, the balance tips in favour of a permission.

Reason 4.4 – Harm to Visual Amenity of the Rural Area and National Landscape

- 8.37 As previously stated, I will defer to the appellants landscape witness regarding the consideration of this matter.
- 8.38 Mr. Harper concludes in line with the LVIA, and that there has been Not Significant Landscape Character and Visual Impacts and Effects as a result of the Recycling Operation. The Recycling Operation has become an established Landscape Receptor with an incremental influence on the Landscape Character since its inception in 2005. The Landscape Strategy proposals for the new earthworks and native planting would incrementally enhance this local area of the National Landscape, High Weald AONB in terms of Landscape Character, Views (it would further obscure and screen the few, rare, partial medium to long distance obscured views, seen in winter only) and it would enhance Biodiversity.
- 8.39 As the Landscape Character, Visual and Biodiversity Benefits would offset the Not Significant Adverse Impacts and Effects it is judged that the Recycling Operation has not resulted in unacceptable detrimental 'harm upon the visual amenity of the rural area,' (4.4) nor to the Landscape Character in this part of the National Landscape.

Reason 4.5 – Severe impact upon the safety of the local highway network

- 8.40 National Highways confirmed by way of a letter dated 12 February 2024 that they would not be engaging with the Inquiry on the matter, contrary to the submissions of the LPA within their Statement of Case.
- 8.41 It is understood that the reason for this is the historic nature of the access, and that it has fallen below standards through the passage of time, as opposed to being a new access entirely, and unacceptable on those grounds. National Highways set out an important consideration in that the junction employed by the use alleged is a legacy of the scheme to improve the A23, which dates back to the 1990s, and evidence suggests the access existed prior to those improvement works as well.

In short, the presence of an access onto this high-speed section of the SRN has already been accepted, and should not be objected to. Existing use rights for the access cannot now be removed.

- 8.42 The issue is not pursued by National Highways, and whilst was stated to not be pursued by the LPA, this position was subsequently reversed a week after that advice was given.
- 8.43 The LPA's case on highway matters is unknown, and accordingly, the appellants do reserve the right to submit rebuttal evidence, depending on what case the LPA mount on this ground, whilst discussions with National Highways are progressed with a view to seeking common ground, and withdrawal of their objection.
- 8.44 The appellant does consider the behaviour of the LPA unreasonable to an extent, and considers they have not fully considered their case when making submissions, despite the notable additional time granted to them by the Inspector.
- 8.45 I will however defer entirely to the appellants Highways witness on this matter, who concludes there would be no harm arising from any increase in risk to highway safety. Paragraph 115 of the Framework states: *"115. 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."* Neither the LPA, nor National Highways, have suggested that there is an unacceptable impact on highway safety, or any severe cumulative impact on the road network.
- 8.46 The final note I will however make on the matter is to reflect what was set out within the Statement of Case, there are reasonable courses of action to ensure any potential perceived risk is reduced. This could take the form of a condition, and legal obligation, such as one which provides for operational activities to **not** take place at peak times, and to limit, within reason, the vehicular movements to and from the site.
- 8.47 For completeness, the operations that continue to this day ranges between 30 to 60 HGV arrivals per day, and the site is operational within the standard working hours of 0700 to 1700 hours Monday to Friday and 0900 to 1300 hours on a

Saturday (with no operations on a Sunday). A compromise on operational times may be capable of being achieved, and secured both by condition and legal agreement, such that peak times are excluded, and that the appellant would have to adjust operations accordingly, and “plan ahead” in this regard. Whilst it may not be ideal, it is a compromise that is offered, and would be subject to the Inspector’s decision.

- 8.48 The position of the appellant is that the continued operation of the use, from this access, would not have a significant or unacceptable impact on highway safety in accordance with the NPPF.

Reason 4.6 – Risk to land and water contamination

- 8.49 The LPA confirmed within their statement of case that they would not be pursuing this matter, and were not seeking to present evidence on it. This is in light of the provision of the sites’ permit for the use, issued by the environment agency, and 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.
- 8.50 Accordingly, I do not consider any planning harm arises from this matter, and that it is neutral in the overall balance.

Reason 4.7 – Harm to adjacent woodland and biodiversity

- 8.51 Reason 4.7 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.

8.52 As was set out in the grounds of appeal, the development is located over 15m from the boundary of any ancient woodland designation. I provide below in **Figure 4** an aerial extract from DEFRA's magic maps, recording the distance of the closest point to the AW. It is approximately 15.9m.

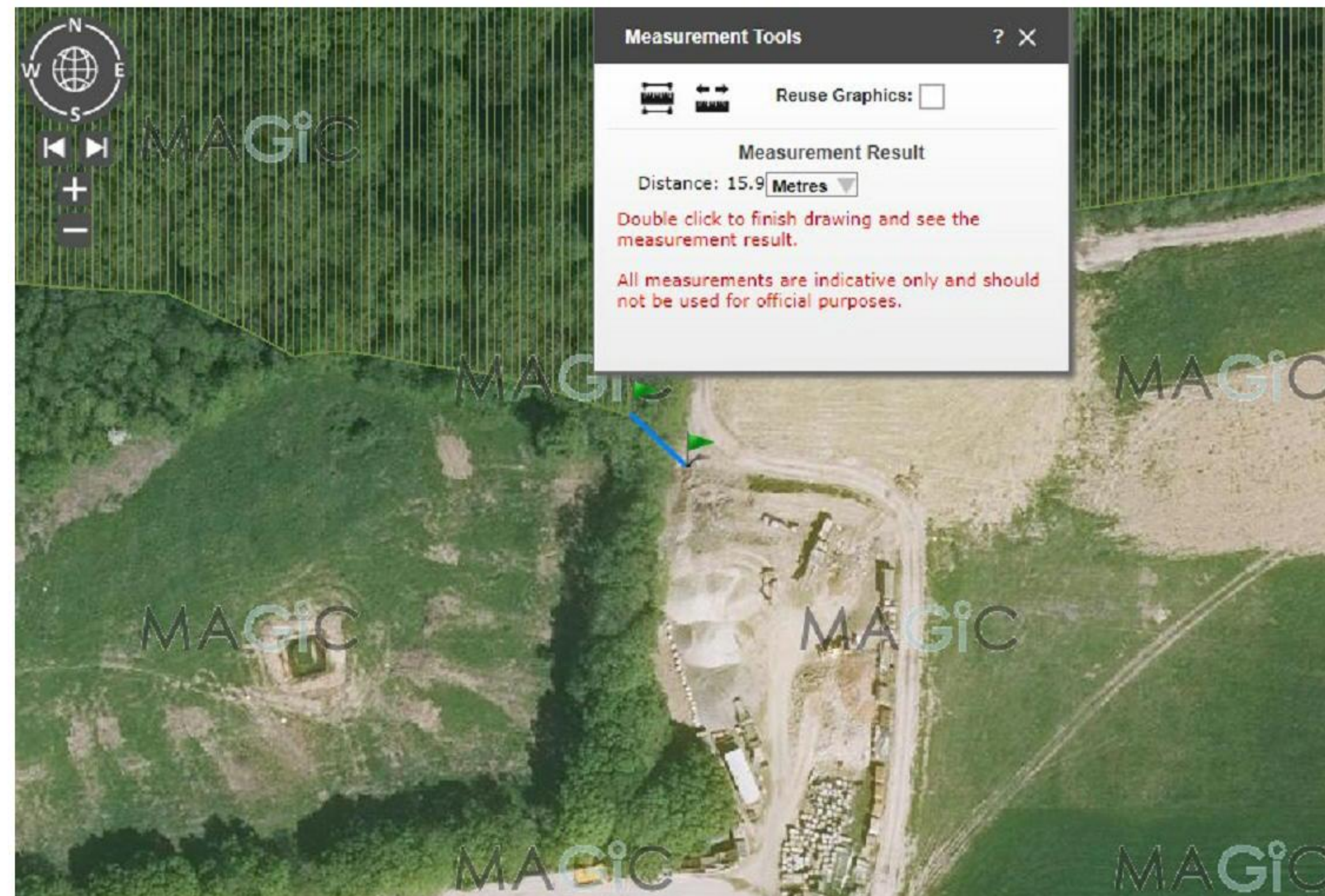


Figure 4 DEFRA Magic Maps extract

8.53 This is a sufficient distance to not encroach onto the AW designation, and as the LPA recognise the ecological value of the land prior was poor, and as such, the development itself is unlikely to have had any impact.

8.54 I would also note that the AW designation has added protection, given the presence of the track around Bolney Park Farm providing a clear delineation between Mr. Rawlins farmland, and the AW area. Furthermore, the boundaries of the appeal site are set out, and an expansion of the site would represent a breach of planning control in itself.

8.55 The LPA do confirm in their Statement of Case that they will not seek to provide evidence to defend the issue of the Notice on these grounds and will withdraw reason 4.7 from the Notice. Given the LPA state that it is not considered the development would have caused harm to the biodiversity of the land, I consider the matter neutral in the overall balance.

8.56 The LPA have however included within the Draft SOCG reference to the site falling partially within a “recognised Local Wildlife Site” and partially within an “amber zone” for the purposes of Natural England guidance for the issue of district licences for the protection of Great Crested Newts. The purpose of this being included

appears specifically as a statement of fact, having been discussed, but not as matters for consideration or pursuit in the appeal. I therefore do not consider them further.

Material Considerations

8.57 The appellant submits the following matters as material considerations to the determination of this appeal,

- The lack of alternative sites for the appellant's operations, and the Economic Need for the appellant's to continue operations here,
- The likely location of alternative sites, given county-wide constraints (Water Neutrality, Landscape, Road Networks),
- The Circular Economy, and the contribution the business has to achieving this and other sustainability objectives,
- The end destination for the recycled material on site that has already been processed, i.e. the contribution the operation has had to local level sustainable developments,

This statement will consider these matters in more detail shortly.

The lack of alternative sites for the appellant's operations, and the Economic Need for the appellant's to continue operations here

8.58 Attached at **Appendix 12** is a copy of a recent appeal decision regarding Kilmarnock Farm. This site was in essence an industrial site where a variety of uses were undertaken, and adjoined Gatwick Airport.

8.59 For a number of issues, including water neutrality, which the appellant who is the appellant in this case, were forced to concede on, the appeal was dismissed.

8.60 However, the key issue taken from the decision, given that the other matters had prospect of being adequately resolved, was the highways implications. It rendered not only that site, but the appellants base of operations at Burlands Farm which is closely located, incapable of being relied upon as a fallback, or alternative.

- 8.61 In essence, the loss of these two sites as potential alternatives means that the appellant cannot continue to operate as they do without the appeal site. As such, the consequences of dismissal of this appeal will likely mean administration for the appellant company, and the loss of employment within West Sussex. I afford this matter substantial weight in the overall balance, given that a determination against the development would evidently stunt economic activity, employment, and growth, and in turn have its own knock on effect on the circular economy.
- 8.62 Turning to existing sites, attached at **Appendix 13** is a list of local sites. A number of these are under the control of competitors as I have already set out, and are exclusive to these competitors (such as the Britainiacrest site). Their exclusivity renders them unsuitable, full stop. Were the LPA, or CPA, to suggest the appellant *should* seek to resort to these sites, the appellant has opined this as being flawed, and fundamentally wrong.
- 8.63 The appellant has opined that no reasonable authority can expect an economy to flourish if they only permit one restaurant to exist in a town. It removes choice, and promotes a monopoly. With only one restaurant, you have only one option, and they can demand of you whatever price they see fit. As such, the reliance upon existing operational sites in the hands of competing businesses in this sector is not appropriate. Sites have to be vacant, or at least due to become vacant, for the appellants to be able to continue operation.
- 8.64 Other sites are too small. They would not be able to accommodate the operations undertaken by the appellant on the appeal site, and so the appellant would have to rely upon multiple sites, which in turn has a knock on effect to the overall sustainability of their operations. Currently they have the appeal site, where material is processed, and various paraphernalia stored, which is well situated in terms of the lorry route network, and does not place reliance upon local roads to be used at all (as would be the case with the Goddards Green allocation albeit a relatively short stretch). This site accesses the lorry route network directly, and vehicles travel between the appellants base at Burlands Farm, where an LDC was granted for the use as a civil engineering and haulage contractors yard, involving the use of an existing workshop and attached single storey extension for the repair,

servicing and maintenance of lorries, vans and plant, along with ordinarily incidental or ancillary storage, parking and the use of a building for administrative office purposes. The appeal site has a single access and is generally distant from residential locations all of which assists in creating a secure environment with little chance of any impact on amenity or public safety.

- 8.65 The appeal site is not so constrained as other sites, and is suitably located for the appellants needs. They can operate from here without needing to travel excessively long distances, or manoeuvre country lanes. Whilst it is situated within the National Landscape, it is a suitable site for the use undertaken.
- 8.66 The CPA, being involved in proceedings may reference the sites allocated within the Waste Plan. These have been considered, and at this stage, and these sites set aside in the waste plan aren't actually available sites. This is a fact that has been highlighted in applications put forward dating back to 2013-14.
- 8.67 One application was that presented by Sweeptech, seeking permission for the *Change of use from storage and distribution (former builders merchant depot) to waste recycling facility (Sui Generis) including the erection of a storage building and modular building, and installation of solar panels* on Land at former Wolseley UK site, Shoreham Road, Henfield, West Sussex. In this case, as recognised in the Committee Report attached at **Appendix 14** the applicant demonstrated no available alternative sites. Whilst prior to the full adoption of the WLP, the submission version did exist, and did include a number of the allocations present within the adopted version.
- 8.68 The appellants note also very recently that permission was granted under WSCC/021/23 for the extension of an existing Waste Transfer facility within Arun. A copy of the report is attached at **Appendix 15**. Again, in this case it was accepted that there was an absence of alternative sites.
- 8.69 I acknowledge it is necessary to observe further detail, and therefore I provide the below table setting out the alternative sites:

Location	Policy Ref	District	Current Use	Suitable?	Reasons
Waste Local Plan Allocations					
Site north of Wastewater treatment works, Ford	Policy Map 1	Arun	waste treatment and residual waste treatment facility (Occupied	No	As set out already.
Hobbs Barn near Climping	Policy Map 2	Arun	Waste Transfer & Skip Hire (Occupied)	No	As set out already.
Fuel Depot , Bognor Road, Chichester	Policy Map 3	Chichester	Understood to be vacant, but potential for land use conflict given recent PP	No	As set out already.
Brookhurst Wood, Horsham	Policy Map 4	Horsham	Waste Transfer (occupied)	No	As set out already.
Land west of WW treatment works Burgess Hil	Policy Map 5	Mid Sussex	Vacant	Potential	As set out already.
Monitoring Report Dormant/Inactive Sites					
Former Wealden Brickworks, Langhurstwood Road, Horsham		Horsham DC	Recorded as Inactive in AMR	No	Operated by competitor – Current situation of site not known – Appears occupied by other uses.
Eastlands Farm, Lewes Road, Scaynes Hill		Mid Sussex DC	Recorded as inactive in AMR	No	Site recorded as operation throughput capacity of 5,000tpa. Insufficient size.

Horsham DC Brownfield Register					
Nyeswood Court, Billingshurst	SA032	Horsham DC	Lapsed planning application DC/15/1325 permitted 20 August 2015 – Building in office use with lapsed permission for dwellings	No	Site measures 0.26ha, within urban area, use inappropriate to location
West Point, Horsham Denne	SA198	Horsham DC	Retail Use	No	Too small / town centre location
Old Pumping Station, Rusper Road	SA285	Horsham DC	Earmarked for residential use	No	Too small / urban location within immediate proximity of residential use
Envision House 5 North Street Horsham	SA490	Horsham DC	Earmarked for residential use	No	Existing building, close proximity to Residential Use
The Fox Inn, Rudgwick	SA529	Horsham DC	Earmarked for residential use, Listed Building	No	Located within the settlement of Bucks Green and surrounded by linear residential development
Okash, Worthing Road	SA537	Horsham DC	Earmarked for Residential Use	No	Earmarked for Resi use, and within proximity to resi uses
Land at the Post Office Depot, High Street, Storrington	SA550	Horsham DC	Earmarked for Residential Use	No	This site is located in Storrington High Street, and is situated in a designated Conservation Area.

Post Office & Library Car Park, off High Street	SA554	Horsham DC	Limited commercial use / earmarked for Residential	No	The site is located in Henfield Conservation Area and the Post Office is a Grade II listed building.
Horsham DC SHELAA (5 sites recorded deliverable in years 1-5 – these are considered)					
Henfield Business Park	SA194	Horsham DC	Business Park	No	Occupied by other uses and existing buildings – Site unsuitable for use
Land North of Horsham	SA296	Horsham DC	allocated for the development of at least 2,500 homes	No	Permission granted for 46,450sqm business park – At best, temporary occupation of this site could occur whilst other developments progressed.
Brinsbury	SA831	Horsham DC	a range of B1, B2 and B8	No	Currently occupied by other business uses.
Nowhurst	SA401	Horsham DC	B2 / B8	No	A planning application (DC/16/2941) for industrial (B2) and storage (B8) use was refused in June 2017. Further proposals were submitted for commercial use on this site (DC/17/2131) for B1 (office), B2 and B8 uses. Resolution to permit this application has now been granted subject to a S106 agreement.

Units 1-15 Star Road Trading Estate Partridge Green	SA471	Horsham DC	B1, B2 and B8 uses as part of planning permission DC/15/2787	No	Within Built up area, close proximity to residential uses.
Mid Sussex SHELAA					
Land at Northlands Farm, A2300/A23, Hickstead	602	Mid Sussex DC	Agriculture – Extant permission for Relocation of Haywards Heath Market and Associated Small Businesses including access to Jobs Lane via new roundabout and associated works	No	Technically Greenfield, but extant permission. Site could be suitable subject to securing use. Available in SHELAA for employment uses, but unclear if available for Waste uses.
Hangerwood Farm, Foxhole Lane, Bolney	665	Mid Sussex DC	Agriculture	No	Greenfield site. Flood Zone 2/3, Ancient woodland. Refused LDC for use of agricultural buildings for B2 (Industrial) and B8 (Storage and distribution) uses. Available in SHELAA for employment uses, but unclear if available for Waste uses.
Land at Dumbrells Farm, south of	801	Mid Sussex DC	Agriculture	No	Listed in SHELAA for use as Science Park.

the A2300, Hurstpierpoint					
Bolney Nursery, Cowfold Road, Bolney	865	Mid Sussex DC	Horticulture	No	Unsuitable due to proximity to existing residential dwellings
The Home Farm, Brighton Road, Pease Pottage	886	Mid Sussex DC	Agriculture / Offices	No	Listed in SHELAA for B1 business uses only.
The Walled Garden, behind the Scout Hut, London Road, Balcombe	913	Mid Sussex DC	Agriculture	No	AONB / Listed Buildings – not preferable compared to appeal site.
Area south of Redbridge Lane at junction with London Road, Balcombe	915	Mid Sussex DC	Agriculture	No	AONB / Listed Buildings – not preferable compared to appeal site.
Burgess Hill Town Centre	932	Mid Sussex DC	Retail uses	No	Town centre, inappropriate use.
Northlands Farm, Stairbridge Lane, Bolney	946	Mid Sussex DC	Agriculture	No	Site adjoins 602, Flood Zone 2/3. Available in SHELAA for employment uses, but unclear if available for Waste uses.
Land between A2300 and Jobs Lane, Bolney	947	Mid Sussex DC	Agriculture	Potential	Part of site identified as WSCC ownership. Suitably sized (1.3ha). Located away from residential use. However, adjoins balancing pond, and

					notable Surface Water flood risk.
Land south of A2300 adjacent to Pookbourne Lane	948	Mid Sussex DC	Residential / Agricultural	No	Recorded as Flood Zone 2/3, and AW designation. Site occupied partially by residential uses.
Old Court House, Blackwell Hollow, East Mid Sussex DC Grinstead	952	Mid Sussex DC	Community Services	No	SHELAA recorded only potential as B1 uses. Within residential area.
Extension to Silverwood, Snow Hill (A264), Copthorne	991	Mid Sussex DC	Vacant	No	SHELAA records as available for variety of uses, unclear if Waste uses suitable. Close proximity to residential uses renders unsuitable.
Additional land at Crawley Garden Centre, Copthorne Road Copthorne	993	Mid Sussex DC	Storage / Residential	No	Residential development adjacent. Unsuitable for waste uses.
Friday Farm (Additional land at Barns Court) Turners Hill Road Copthorne	994	Mid Sussex DC	Residential	No	Residential development adjacent. Unsuitable for waste uses.
Additional (employment) site on land to north of A264 Copthorne	999	Mid Sussex DC	Vacant	Potential	SHELAA rules out General Industrial type uses. Unavailable.

Land at Hazeldene Farm North of Orchard Way Warninglid	1005	Mid Sussex DC	Agriculture	No	AONB – no more preferable than appeal site.
Crawley Down Garage and Parking Site, Snow Hill, Crawley Down	1007	Mid Sussex DC	Vehicle Parking	No	Residential development adjacent. Unsuitable for waste uses.
Bolney Valley London Road Bolney	1017	Mid Sussex DC	Storage	No	SHELAA rules out General Industrial type uses. Unavailable.
Land north of Mill Lane, Sayers Common	1038	Mid Sussex DC	Agriculture	Potential	Potential alternative, but residential use present. Requires suitable location and mitigation. Not known if site available.
Land south of Mill Lane, Sayers Common	1047	Mid Sussex DC	Agriculture	Potential	Potential alternative, but residential use present. Requires suitable location and mitigation. Not known if site available.
Little London garage and Gardeners Arms, Ardingly	1058	Mid Sussex DC	Storage	No	SHELAA rules out General Industrial type uses. Unavailable.
4 Front Motorhomes, Nursery Lane, Warninglid, RH17 5JS	1142	Mid Sussex DC	Storage	Potential	AONB – not preferable compared to appeal site. Existing caravan storage use would be lost, requires use of

- 8.70 Treating the matter realistically, there would be 5 potential alternative locations, that may be better suited than others to the development. All of them are greenfield sites however. One is an allocated site recorded as being undesirable for Waste uses by the landowner. The others are, bar one site, all represented in the SHELAA as Medium-Long term deliverability. The one site that may be immediately available is MSDC Site 947, however this site is split ownership between WSCC and a private individual (WSCC recorded as owners of title WSX417751). There would be prospect, if the County Planning Authority felt the genuine need to support the appellant enterprise to negotiate this site, however, this site is visually exposed to the A2300. The site also appears landlocked without an access directly on to the A2300, crossing recently constructed pedestrian walkways, or through the adjoining land, and relying upon Job's Lane, which has restrictions on vehicular access (no vehicles over 7.5t except strictly for access). Accordingly, I find it unsuitable after detailed consideration.
- 8.71 In summary, in light of recent decisions and the increase in constraints within the operational areas where an alternative site may be located (Horsham and Mid Sussex), there is no suitable alternative site that is available, and can accommodate the appellant and their operations. As such, when considering Ground (a), and indeed, Ground (g), the Inspector must consider the implications of dismissing the appeal.
- 8.72 The appellant continues their search for alternatives, and as confirmed in the Grounds of Appeal, and by other representatives for the appellant, they remain open to discussing with the LPA and CPA relocating should a suitable alternative present itself.
- 8.73 Were Ground (a) to fail, I do consider it imperative that a suitable period of time be allowed, otherwise there will be real world consequences for any requirement of compliance with the Notice.

The likely location of alternative sites, given county-wide constraints (Water Neutrality, Landscape, Road Networks)

- 8.74 The first point to consider under this matter is Water Neutrality, and West Sussex. Attached at **Appendix 16** is a map showing the extent of water neutrality affected areas within the County. I have also provided at **Figure 3** a snapshot of the water neutrality area and the WLP Key Diagram.
- 8.75 Water Neutrality is defined as development that takes place which does not increase the rate of water abstraction for drinking water supplies above existing levels. It is a requirement to be met by any development within the Sussex North Water Resource Zone, which is sourced from abstraction points in the Arun Valley, which includes locations such as Amberley Wild Brooks Site of Special Scientific Interest (SSSI), Pulborough Brooks SSSI and Arun Valley Special Protection Area/Special Area of Conservation and Ramsar site. Natural England issued a position statement in 2021 which set out that water abstraction for drinking water supplies is having a negative impact on the wildlife sites in the Arun Valley. They advised that any new development that takes place must not add to this negative impact, and now all development must seek to achieve water neutrality within this area. In my view, this is challenging for an operation such as this, as the activities require the need for dust suppression and wheel washing, which themselves use up a lot of water resources if not replacing a similar operation within the Neutrality zone. LPAs have taken the approach of refusing permission for development that does not demonstrably achieve no net increase in water extraction from certain sites.
- 8.76 Suffice to say, taking a glance at this map, it is evident that a lot of sites will be severely hampered by water neutrality. Achieving water neutrality for such a development is also a matter which presents significant issue. Dust suppression measures, alongside wheel washing requirements, **and** being water neutral are unlikely to be achievable, and so I consider the Water Neutrality area does not represent a suitable alternative location in its entirety, at least not one which could be relied upon in the immediate future. Any solution to Water Neutrality requirements would take time to investigate and secure, which would not support

the relocation, or even expansion, of the business in the immediate future were it required.

8.77 The second point is the extent of West Sussex within the AONB. It is significant, as detailed within the Key Diagram, which also denotes the extent of the SDNP. New sites will be likely located in the Countryside, as many industrial sites are progressing to other uses, and inevitably within the AONB, as they would be unsuitable to be located in urban centres, due to noise and pollution disturbance to the human population.

8.78 In short, the use undertaken and sought permission for through Ground (a) is a use which is not really compatible within many other uses. This is recognised in the National Planning Policy for Waste (Appendix B (I)).

8.79 The third is access to the strategic road network. Taken in combination with the sustainability objectives, and the aim to work towards reducing climate change impacts, operational sites should realistically be located close to strategic road networks to reduce travel distances, and in particular the reliance on local roads. The key route for West Sussex, and indeed for the appellant with their own clientele, is the A23 corridor. As such, whilst there could be the suggestion for them to relocate their operations towards existing sites, many of these are located towards Chichester, and the other side of the South Downs National Park. It would be counterproductive, to sustainability goals, for them to accept this as a solution, as it would mean the appellants increase their carbon footprint.

8.80 The appeal site is located suitably well for the appellants purposes.

The Circular Economy, and the contribution the business has to achieving this and other sustainability objectives

8.81 The Circular Economy Initiative presented by the UK government commits to keeping resources in use as long as possible, and extracting maximum value from them, minimizing waste and promoting resource efficiency.

8.82 Chapter 4 of the 25 Year Environment Plan sets out how England will work towards achieving these goals.

- 8.83 It is evident from review of this document that sites such as the appeal site, where construction and demolition waste material is screened and recycled into other developments, are essential in achieving these objectives.
- 8.84 Further to this, is the requirement of WSCC to deliver such sites, and there appears, from review of annual monitoring reports, to remain a reliance on the pandemic affecting operational levels.
- 8.85 The development comprises the transfer and physical treatment of construction and demolition waste (by sorting, separating, screening and crushing) and the export of recovered materials for reuse. As set out, the operations at the site benefit from an Environmental Permit, which specifies the activities that can be undertaken at the site and the waste types and quantity that can be accepted at the site. The Permit provides the site serving as an inert and excavation waste transfer station with treatment consisting only of manual sorting, separation, screening or crushing of waste into different components for disposal or recovery.
- 8.86 A key element of the West Sussex Waste Local Plan (WLP) 2014 is the aspiration to have zero waste to landfill by 2031 (paragraph 2.10.13 of the Waste Local Plan (2014)). Thus, the need for the transfer, recycling, and treatment of construction, demolition and excavation waste is recognised in the WLP. The ambition of zero waste to landfill cannot be achieved without sufficient recycling facilities, such as that which the appeal site provides.
- 8.87 The Review of the WLP (2024) states that construction, demolition and excavation waste arisings could be 282,000 tonnes higher than the original high growth forecast at 2013 included in the WLP. That is quite a significant level, even if lesser than the prior review.
- 8.88 Whilst the CPA indicate that sufficient sites are coming forward to meet demand, without the appeal site that situation will likely change. Particularly if the consequence of the dismissal of the appeal is the administration of the appellant business, and thus the loss of the throughput produced.
- 8.89 The development does treat waste that arises in the local area, and thus supports the West Sussex principle of net self-sufficiency, and moving waste up the waste

hierarchy by either recovering materials for reuse or recycling the materials and supports the push to encourage use of recovered aggregate in place of primary aggregate where appropriate.

- 8.90 The appellant considers it has been demonstrated that there is a need for sites such as the appeal site, not only at a national level when considering the circular economy and other sustainability benefits, but also at a County level, as required by the Waste Plan.

The end destination for the recycled material on site that has already been processed, i.e. the contribution the operation has had to local level sustainable developments

- 8.91 The generation of recovered aggregate at the site is consistent with Government Policy. It is promoted by the Government to seek the recovery and regeneration of products and materials whenever possible.
- 8.92 This development, as set out, provides a positive contribution to the Circular Economy by recovering materials for reuse, encouraged by National Government Policy and consistent with the management of waste at the highest level possible in the waste hierarchy.
- 8.93 The processing is done in accordance with the existing Environmental Permit to produce a valuable recovered aggregate suitable for use in construction, and this is the end destination of much of the material that is processed through the appeal site.
- 8.94 The principle of the Circular Economy is to keep resources in use for as long as possible in order to extract the maximum value from them and to minimise the use of raw materials. Without sites such as the appeal, the reliance will return to raw materials.
- 8.95 The Northern Arc is a major future construction project including approximately 3,000 homes and three new schools, and is approximately 5km from the development. A project such as this should seek to source material locally, including the type of material exported by the appellants. The development will

also need local facilities to deal with the construction and demolition waste arising from the construction operations and to provide recovered aggregate for use in the development where appropriate. Dismissal of the appeal would remove a vital part of the economy for this project, as a local supplier, and processor, would be lost. Leaving the development reliant upon material imported from farther afield, or giving a monopoly to existing operators within the County.

- 8.96 Whilst this ultimately this matter has limited bearing when taken on its own, when considered in the broader context, I do consider that the appeal site, and the development, are needed, and are a valuable asset to the County, and to District level developments for Housing.

The Alternative Scenario

- 8.97 As I have set out, based upon the LPA's case, and the submissions within the authorisation report that the alleged mixed use did not start until 2018, I consider, were the Inspector minded to dismiss the Ground (d) appeal, and conclude that the LPA's position is correct, that the correct assessment of the deemed application would need to rely upon S57(4) of the Act, and the accepted position of the LPA that the last lawful use of the land was for Storage purposes. I do not accept the LPA's case is correct however.
- 8.98 Based on the LPA's authorisation report, I consider they have incorrectly assessed the planning merits of the use, and this is likely to become an important consideration dependent on the outcomes of the Ground (d) evidence.
- 8.99 Accordingly, I find that the Inspector must reach a conclusion on when the mixed use started. If it is determined that the LPA's position is correct, then the baseline context across all the considerations is the site being used for storage purposes. This includes within it any visual impact of open storage, vehicular movements associated with such a use, and of course whether it renders more appropriate the change to a mixed use.
- 8.100 Under this context, I consider the balance falls demonstrably in favour of a grant of permission.

9.0 **GROUND (F) - THE REQUIREMENTS OF THE NOTICE**

9.1 I note the Inspector's comments on this matter, and have already highlighted the potential, arising from the LPA's own Authorisation Report, for over-enforcement to be occurring. I consider that the Inspector will need to reach a conclusion on the matter before considering the requirements of the Notice, as if the LPA are presumed to be correct, and that the last use was for storage purposes, and the appellants evidence on when the land reclamation works finished is found correct, then there exists sufficient other evidence to determine the last lawful use of the land, for the purposes of the Act, was for storage purposes, and so the requirements of the Notice become excessive.

The Requirements

- 9.2 Requirement 5.1 requires cessation of the use of the Land for the importation, processing, and export of waste material. If the Notice is to be upheld, it is reasonable, necessary, and appropriate. No issue arises with this requirement.
- 9.3 Requirement 5.2 requires cessation of the use of the Land for the deposition of waste material. Whilst taken on a broad view, it appears suitably worded, the appellant sustains issue on account of Ground (b).
- 9.4 Requirements 5.3, 5.4 and 5.5 are at risk of be excessive in nature, particularly if the LPA's position is deemed to be correct. The clear evidence of the Authorisation report suggests that these requirements are representative of over-enforcement.
- 9.5 Requirement 5.6, insofar as it relates to the waste transfer activities is reasonable, but as with 5.3-.5, is at risk of representing over enforcement, on the basis of the LPA's conclusions established within the authorisation report.
- 9.6 Requirement 5.7 is reasonable, but in part unnecessary dependent on the determination of other grounds. The same is correct of 5.8 and 5.9. With reference to Requirement 5.7, it is excessive and unnecessary due to the fact that the Portacabin unit is not actually connected to any services.

- 9.7 Requirement 5.10 is considered to be unnecessary, and excessive. Whilst the Inspector is correct in identifying this issue relies on other grounds of appeal, the appellant considers the LPA have imposed a indefensible requirement, as it is the CPA's own evidence, understood to be referenced within the authorisation reports "attachment", alongside the appellants own prior evidence, which contradicts the inclusion of the hardstanding within the Notice at all. Accordingly, if the Notice is to be upheld, this requirement, alongside 5.11, are wholly unreasonable and unnecessary. They are matters that should not have been included within the Notice at all.
- 9.8 With regard to requirement 5.12 this requirement is imprecise, given that the "former condition" of the land is disputed, but at the same time not. The LPA clearly record and rely upon evidence which states the hardstanding has been in situ for an excess of 10 years, the aerial imagery supports this, and accordingly, the appellant considers the hardstanding would be the "former condition".

10.0 GROUND (G) - TIME FOR COMPLIANCE WITH THE NOTICE

- 10.1 The appellant is a small business who operate in the South East, with their main base of operations being located a short distance north of Crawley, in Charlwood. The appellant has actively been seeking to secure a continued base for their operations and have been looking at suitable new alternative sites from which they can operate. Thus far, all ventures to accommodate this have failed, including the repurposing of their main base of operations in Charlwood.
- 10.2 The County Planning Authority and their Waste Local Plan have not progressed, and the use of the appeal site is integral to the continued operations of the business, and the employment that it provides, both at the appeal site, and at their base of operations.
- 10.3 PJ Brown (Civil Engineering) Ltd is a small sized business operation comprising about 120 employees in total, with approximately 40-50 HGV movements in each direction from the site. The appeal site has become a fundamental part of their day to day operations, and without the site, or a suitable alternative becoming immediately available, the business operations would falter, and dwindle to the point that the business itself would become unsustainable.
- 10.4 The LPA assert, within the authorisation report, that the appellant, and their operators, have other sites from which they can lawfully operate from. This is wholly untrue, as there exists no other sites they can operate from, and Mr. Legate explores this point in his evidence.
- 10.5 Therefore, there is the genuine risk of the employment opportunities and the economic benefits of the business from being forever lost. Whilst the Planning Merits are appropriate to be considered under Ground (a), there is nevertheless the need to consider the economic impacts which could result from the loss of the development, but also the general set back the loss of the development, and the business, that would result from dismissal of the appeal. Carbon Net Zero, and the environmental objective of sustainability seek to secure the sustainable re-use of materials in future development, and reflect the objectives of the Circular Economy. The appeal site takes building waste and repurposes it, with a large

proportion of material that has been through the processes of the site having been used in nearby developments, and road infrastructure across the county region. Therefore, it is considered essential for the operations to be able to continue in some form and degree, for a suitable period of time.

- 10.6 There exists a number of inherent difficulties for businesses such as the Appellants in securing a site for the importation, and processing of waste. Such sites need to be suitably well located with good access to the highway network such that large vehicles are able to access and exit the site without increasing the risk to highway safety. Furthermore, it is necessary for such a use to be located away from residential properties due to the likely impacts on noise and local air quality as a result of the activities that take place as a part of that use. Thus, it is inevitable that such uses will be located in the countryside, which in itself often means the subsequent refusal of planning permission due to many authorities requiring an overriding justification for a countryside location.
- 10.7 In addition to this, any such site would then need to be granted planning permission. We have been working with the appellant on another such site, that they had originally intended to use for their business operations. This site, which also fell within the jurisdiction of West Sussex County Council, went through a pre-app, was refused, and remains pending decision at appeal. It seeks a temporary permission for the works only and would not be a permanent alternative base. This alternative site has been in the planning system since April 2018, when it was submitted as a Pre-app, and pending a Planning Application decision from December 2019, which was received in July 2020, and pending appeal determination since February 2021. Suitable alternatives are hard to come by, but even more tangible than that is the duration of time which would be necessary to actually secure an alternative site, by promoting it through the planning application process. As such, a suitable period of time is essential.
- 10.8 I consider it has been demonstrated from the appellant's previous attempts to obtain planning permission for an alternative site, that would have been suitable for the use proposed on a temporary basis, that without a base of operations from which to continue the appellant company would not be able to continue operating.

- 10.9 The Notice requires compliance with all aspects of the Notice within a total period of 3 months, with as short as 7 days for the cessation of the use of land for storage of waste and building materials, importation, processing and export of waste, and the deposition of waste material on the land. 7 Days is woefully short, particularly when compared to the 6 week timeframe suggested by the County Authority, and would in essence require the day to day business operations to cease in their entirety at such short notice that employees would likely have to be laid off upon issue of any appeal decision.
- 10.10 I consider it has been evidenced that the period for compliance is unreasonably short, and expects an immediately available alternative location to be magicked up. Put simply, under Ground (g) the appellant seeks to continue operating from the appeal site out of necessity. In this respect, given that evidence demonstrates that any long term harm is nominal, particularly noting the withdrawn objection from Highways England, it is requested that a period of 18 months be allowed to comply with requirements 5.1-.3, a further 3 months to comply with requirements 5.4-.11, and a further 3 months to comply with requirement 5.12. This would extend the total time for compliance to 24 months, but would effectively only provide a stay of execution for 18 months for the actual operations of the yard.
- 10.11 The appellant will again set out, that should an alternative site be considered through discussion with the LPA and CPA, that a shorter compliance period would be agreeable. The period of 24 months for compliance is sought in the interests of the business, and the recycling operations undertaken, being continued and not lost in their entirety, as would occur with the compliance time set out by the LPA.

11.0 PLANNING BALANCE, SUMMARY, AND CONCLUSION

- 11.1 In conclusion, it is again requested that the LPA reconsider the Notice itself, and review the evidence submitted under Ground (d) before the appeal progresses to the event. There are significant issues that have been raised, and the appellant is keen to securing a mutually beneficial outcome to proceedings.
- 11.2 However, should the appeal progress, I consider the evidence demonstrates on the balance of probabilities the appellants version of events to be correct. I have not seen any evidence of the CPA or LPA which leads me to a contrary view. As such, should the Inspector concur, the Notice should be quashed.
- 11.3 I submit that two separate operational developments have been undertaken, and one of the earlier of these developments (the access and the original hardstanding as it was in 2005) are immune from enforcement, and thus the notice should be quashed if it is not amended. What has occurred, which is not evidenced within the Notice is the extension of this operational development previously undertaken.
- 11.4 Furthermore, the Notice attacks the mixed use of the land, failing to account for the fact that the evidence which has already been presented, and appears accepted by the LPA as stated within the authorisation report is that the storage uses alleged had been continuous for a 10 year period, and thus taints the entirety of the LPA's basis on the service of the Notice.
- 11.5 In respect of the Ground (a) appeal and the deemed application, as has been previously set out should the development be deemed harmful, the appellant would accept a temporary permission being granted, on the proviso that the CPA work with them to secure an alternative location, which is a reasonable alternative.
- 11.6 I do not consider the development to be significant in any scale of harm. There is policy context, but the resulting harm is outweighed by the economic benefits, and the objectives of economically and environmentally sustainable development, as well as the objectives of the circular economy.
- 11.7 In the event that the Ground (a) appeal is considered, it will be submitted that planning permission ought to be granted for the development. Whilst the development may be found to not be wholly compliant with local policies, particularly given the expected objection from the LHA, it is considered that the

material considerations at play, taken against the proposed use of conditions, can ensure that the development is found to be acceptable, and that it would not give rise to long lasting harm.

- 11.8 It will be requested that the Requirements of the notice be reviewed, having regard to both s173 (11) of the Act, and to the case progressed under Ground (d).
- 11.9 It is well established that enforcement action should be remedial, and not punitive. As has been set out, the current proceedings have been initiated by the District, and follow withdrawn action by the County.
- 11.10 As such, in the event the Notice is upheld, it will be requested that a period of 24 months be allowed for compliance with the Notice. This is to ensure that a successful business, which make a significant contribution to the circular economy and wider sustainability objectives, can survive the ordeal.

12.0 APPENDICES

Appendix 1	WSCC's 04 March 2014 Site Visit Photos
Appendix 2	WSCC's 22 January 2015 Site Visit Photos
Appendix 3	Photos of "JN" taken 03 January 2019
Appendix 4	Aerial Imagery (Focussed on Appeal Site)
Appendix 5	2022 PCN & Response
Appendix 6	Aerial Imagery (Annotated over Wider Site)
Appendix 7	June 2011 – Streetview Imagery
Appendix 8	Licence Agreement dated 2001
Appendix 9	Letter from South East Tipping
Appendix 10	Bolney Park Farm – Invoice May 2007
Appendix 11	Carillion Invoices
Appendix 12	Kilmarnock Farm Appeal Decision
Appendix 13	Local Waste Sites List
Appendix 14	WSCC/084/13 – Committee Report & Decision Notice
Appendix 15	WSCC/021/23 – Committee Report
Appendix 16	Water Neutrality Map