WS PLANNING & ARCHITECTURE
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APPEAL BY PJ BROWN (CIVIL ENGINEERING) LTD

STATEMENT OF CASE

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

July 2023

Our Ref:	J004451
PINS Ref:	APP/C3620/C/21/3269098
LPA Ref:	2020/0102/ENF

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1.0 INTRODUCTION

1.1 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").

1.2 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"**

1.3 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.

1.4 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.

1.5 The appellant has lodged an appeal under Ground (a) without prejudice to all other grounds of appeal. It is by no means an acceptance that the development is not immune, but is an acceptance of Ground (a) being necessary for business continuity should the Ground (d) appeal be unsuccessful. As set out in the Grounds

of Appeal letter dated 28 March 2023, the use of the appeal site is essential to the continued operations of the appellant, and is sought as such. If an alternative site were to present itself, or be presented, then the appellant would be open to discontinuing the appeal on account that the business itself would be capable of continuing to operate. Currently, the appellant cannot cease operations at the site, as there would be significant economic impacts to the employees of the business, and the longevity of the business itself. Furthermore, there is a shortage of facilities for the recycling of demolition materials and re-use as a sub-base in highways and other infrastructure in the region. Loss of this site would have far-reaching impacts on the ability of the area to deliver new development, including much-needed new housing.

1.6 The appellant requests that the Ground (a) appeal take a backseat in proceedings, and that much of the submissions in relation to this be written in nature. The LPA indicated within the email sent in relation to submission of their Appeal Questionnaire that they would seek to engage with the appellant, and to date, no further correspondence has been received. As such, the main issues for the Ground (a) appeal are unclear, and this statement will seek to set out the appellants skeleton case on the Ground (a) appeal, whilst providing further evidence in relation to the other grounds of appeal.

1.7 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. Dependent on cooperative behaviour from the LPA, and West Sussex County Council ("the CPA") who have authorised MSDC to act on behalf of them, the number of other witnesses may vary. However, at present, the appellant expects to call a number of witnesses to attest to matters of fact, and a number of expert witnesses in relation to Ground (a), pending whether any points of dispute can be resolved.

1.8 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.

2.0 DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA

2.1 The appeal site forms a discrete area of land within a wider agricultural holding known as Bolney Park Farm, which lies approximately 1km, as the crow flies, from Bolney. Bolney Park Farm is situated off of Broxmead Lane. An Aerial Photograph of the appeal site is shown at **Figure 1**.

Figure 1 *Aerial Image of Appeal Site (edged Red)*

2.2 The appeal site is accessed via an access road onto the A23. This access is also used by a residential property situated to the west of the site, Dan Tree Farm, and only allows vehicles to join the southbound flow of traffic. The access has been there since at least 2005, although through the evidence put forward by the appellant it will be demonstrated that it was a Highways construction undertaken much earlier.[see Google Earth photographs]

2.3 The Appeal Site falls entirely within the High Weald Area of Outstanding Natural Beauty (AONB). It is not within an area at increased risk of flooding and is not subject to any ecological or historic designations.

2.4 To the north of the site is an expanse of woodland area, which is designated Ancient Woodland. No work from the commercial use of the land by the appellant takes place within 15m of the woodland boundary, and the actual activities take place circa 45m from the edge of the woodland, as seen on the ground.

3.0 PLANNING HISTORY

3.1 The history of the appeal site will need to be given careful consideration, and this is due to the uncertainty, in light of the lack of communication from the LPA, as to whether or not the action taken on 28 February 2023 is deemed to be "Further Enforcement Action by the Authority" or if it is independent of this. Due consideration will need to be given to whether or not, in the case of the former, that the Notice is a valid "Second Bite".

3.2 In regard to the above, the most pertinent history of the site to be considered is the enforcement proceedings progressed by West Sussex County Council under INV/2018/10/WSCC, which was an enforcement notice relating to the *Material Change of Use of the land from agriculture to sui generis waste use for importation, processing, and export of waste, and deposition of waste to the Land along with ancillary storage*. This notice was appealed, and following the opening of the Inquiry, the Notice was withdrawn by the CPA for a multitude of reasons, including the need for a substituted plan due to failure of service on interested parties, the allegation of the Notice stating the storage use as being ancillary, that the District Council were not consulted on the enforcement action, the fact that the Notice did not require the alleged breach to cease, and that the requirements of the notice were vague and not specific.

3.3 Set out below is a list of applications and their references relating to Dan Tree Farm, and its neighbouring land.

BK/009/92	Outcome unknown (LPA No Objection)
Temporary permission for aggregate crushing/recycling plant @ *Land East Of Dantree Farm A23 London Road*	
BK/049/93	Refused
Discharge of condition restricting occupation of house to a person employed in agriculture @ *Dan Tree Farm London Road*	
BK/001/96	Refused
Removal of condition attached to planning permission f/51/36/b restricting occupation of house to person employed in agriculture @ *Dane Tree Farm London Road*	
BK/019/96	Granted

Removal of condition attached to planning permission f/51/36/b restricting occupation of house to person employed in agriculture @ *Dane Tree Farm London Road*	
BK/028/97	Granted
Outline application: proposed replacement dwelling @ *Dan Tree Farm London Road*	
01/01232/AGDET	Granted
Agricultural determination application for the infilling of the old bomb crater, levelling and re-seeding of area; easing of the slope of the field, and banking and planting of the lower slope @ *Bolney Park Farm Broxmead Lane*	
01/01613/AGDET	Granted
New hardcore farm track @ *Bolney Park Farm Broxmead Lane*	
05/01963/REM	Withdrawn
Replace existing building with new building further east on the site. Reserved matters following outline permission BK/02/1515/OUT @ *Dantree Farm London Road*	
08/00185/CMA	Refused
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise track and engineering operation to form bund adjacent to A23 @ *Park Farm Cottage Broxmead Lane*	
10/00068/CMA	Refuse
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise track and engineering operation to form bund adjacent to A23 - Application 4 @ *Park Farm Cottage Broxmead Lane*	
10/00069/CMA	Refuse
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise track and engineering operation to form bund adjacent to A23 - Application 1 @ *Park Farm Cottage Broxmead Lane*	
10/00174/CMA	Refuse
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise track and engineering operation to form bund adjacent to A23 (resubmission of BK/185/08) - Application 2 @ *Park Farm Cottage Broxmead Lane*	
10/00175/CMA	Refuse
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise	

track and engineering operation to form bund adjacent to A23 (resubmission of BK/185/08) - Application 3 @ *Park Farm Cottage Broxmead Lane*	
11/04078/CMA	Granted
Development of equine rehablilitation and physiotherapy centre comprising of treatment block, horsewalker, sand school, car park, grass paddocks, exercise track and engineering operation to form bund adjacent to A23 (resubmission of WSCC/001/10/BK and 10/00175/CMA) @ *Park Farm Cottage Broxmead Lane*	
WSCC/077/11/BK	Granted
Development of equine rehabilitation and physiotherapy centre comprising treatment block, horse walker, sand school, car park, grass paddocks, exercise track and engineering operation to form a bund adjacent to the A23 (resubmission of WSCC/001/10/BK) @ *Park Farm Cottage, Broxmead Lane*	
DM/18/5080	Refused
Erection of replacement dwelling, including acoustic bunds along east, west and side boundaries @ *Dane Tree Farm London Road*	
DM/19/1868 / WSCC/050/18/BK	Refused
Erection of replacement dwelling, including acoustic bunds along east, west and side boundaries @ *Dane Tree Farm London Road*	
WSCC/070/19	Refused
Importation, deposit, re-use and recycling of waste material and use of land for storage purposes (LDC) @ *Bolney Park Farm (Appeal Site)*	
DM/20/2788	Granted
Erection of replacement dwelling, including acoustic bund along west boundary @ *Dane Tree Farm London Road*	
DM/21/3566	Withdrawn
Proposed engineering works and extensive native planting scheme to facilitate the creation of a grass training and exercise arena, together with facilities for an elite show jumping horse breeding program requiring a new barn construction and additional paddocks. The grading works will completed using 37833m3 of clean inert soils/materials to the farm. Construction access is proposed via an existing access from the southbound carriageway of the A23. Additional supporting documents received 03.12.2021 and 03.03.2021 to include updated ecological reports and arboricultural report, updated flood risk assessment, highways technical note and additional certificate B @ *Broxmead Farm Broxmead Lane*	

3.4 In the interests of progressing on the same basis, it is considered that the LPA, and CPA where applicable, should provide clarity to unknowns and provide copies of decision notices and Site Location Plans for the above applications. These

documents can be submitted to the Inspector, and contained in an agreed Core Documents List.

3.5 Previous enforcement action was taken by the County Planning Authority, West Sussex County Council, with a Notice alleging,

> **Without planning permission, the making of a material change of use of the use of the Land from agriculture to sui generis waste use for importation, processing, and export of waste, and deposition of waste to the land with ancillary storage**

The Notice was served on 27th January 2020, and an appeal was lodged 24 February 2020, under grounds (d), (e), (f), and (g).

3.6 Following the onset of COVID-19, which led to delays in arrangements for proceedings, alongside the request to change the procedure to a Public Inquiry, the event was finally held on 10 March 2021. Prior to the event however, the appellants wrote to the CPA and PINS to advise of new grounds being put forward under Ground (b). The Inspector shared the same concerns as the appellant, and ultimately this resulted in the CPA withdrawing the Notice following the opening of the Inquiry. A copy of the Notice, the grounds of appeal, and the letter dated 04 March 2021 are attached at **Appendices 1, 2,** and **3** respectively.

3.7 The Notice subject of this appeal was served by the District Planning Authority, Mid Sussex District Council, on 28 February 2023, and an appeal was lodged on 29 March 2023. A copy of the Notice, Appeal Forms, and Grounds of Appeal letter are attached at **Appendices 4, 5,** and **6** respectively.

4.0 THE ENFORCEMENT NOTICE & GROUND (B)

4.1 The Ground (b) appeal is progressed solely to the secure agreement of all parties that the allegation as it is framed is correct in what it states is taking place. It is also progressed in part to secure correction of the Plan.

The Allegation

4.2 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.

4.3 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.

4.4 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.

4.5 As set out in the Grounds of Appeal, the appellant will be calling witnesses, those whom 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 permanent deposit, which is considered to be adequately covered by 3.1.1.

4.6 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. Alternatively, the breach is corrected with the addition of the word "temporary" before "Deposition".

4.7 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.

The Plan

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

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

4.10 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.

4.11 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.

4.12 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.

4.13 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.

4.14 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* test.

4.15 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).

5.0 THE CASE FOR IMMUNITY FROM ENFORCEMENT

Preliminary matters

5.1 A correction to the Appellants Grounds of Appeal is necessary, as it is noted that the Ground (d) case outlined describes the use deemed to have immunity to not reflect the Ground (b) appeal. As such, this paragraph serves to clarify that 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"**

5.2 Due consideration will also need 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.

5.3 Despite requests having been made to the LPA for a copy of the Enforcement Authorisation Report, no such document has been supplied, and as such this may necessitate a response statement to be provided. However, 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.

5.4 On the basis of the position set out by WSCC during the proceedings for APP/P3800/C/20/3247574, it is reasonable to presume that Mid Sussex DC will seek to proceed on the same basis during these proceedings.

5.5 However, proceeding on this basis may in itself be flawed. Whilst the CPA's case is known, the Local Planning Authorities case is not, and so it is unclear if they are proceeding on the same basis, in which case it is irrelevant whether or not the

second bite provisions are at play as the alleged change of use could only, according to the Council's, occurred after June 2013, and so the time for enforcement action remains. However, if the LPA are alleging a case of Second Bite, or "Further Enforcement Action", the validity of such action will need to be tested within these proceedings. Put simply, the appellant does not consider this notice to be a "valid" second bite, or further action, and so the baseline from which a continuous period of use must be evidenced is 27 February 2013.

5.6 On the matter of the second bite, the issuing authority (the CPA) in previous proceedings elected to withdraw the Notice served, due to the inevitable impacts prejudicing the local planning authority. In areas where two tier authorities remain it is for the District Council to take enforcement action unless what appears to be the alleged breach of planning control relates solely to a County matter as defined. The first Notice served on the land alleged that,

> *"Without planning permission, the making of a material change of use of the use of the Land from agriculture to sui generis waste use for importation, processing, and export of waste, and deposition of waste to the land with ancillary storage."*

It was served solely by the County Planning Authority, without consultation with the District Council. This is the first matter, and due consideration need be given to the fact that it is a different authority taking action in this instance.

5.7 In the most rudimentary form, Mid Sussex DC as the LPA were not, as a result of WSCC's failings, consulted on the prior action taken, and as such the view could be taken that as LPA they would be entitled to take further action if the Notice were withdrawn.

5.8 It is acknowledged that for the purposes of the Act (Section 1(1)), Local Planning Authorities and County Planning Authorities are stated to be one and the same, and references in the planning Acts to a local planning authority in relation to a non-metropolitan county shall be construed, subject to any express provision to the contrary, as references to both the county planning authority and the district planning authorities. The matter to determine whether or not this is a "first bite" or a "second bite" however is not as clear cut.

5.9 The CPA, by virtue of their involvement in previous proceedings, will be aware of the appellants previous reliance upon *ESCC v Robins [2009] EWHC 3841 (Admin).* Given that the CPA appear to remain involved in proceedings, it is hoped that this case law has been shared and discussed by the authorities. Reference is made to Paras 39-42 of the judgement,

> *"39 It follows that, broadly, waste planning functions are a "county matter". The functions of the local planning authorities are set out in subsequent provisions and at paragraph 11(b) the functions of the local planning authority in respect of the issuing of enforcement notice under section 172 are those of the district planning authority subject to the provisions of subparagraphs (2) to (4). In other words, unless otherwise provided by sub-paragraphs 11(2) to 11(4), enforcement notices must be served by the district planning authority. Paragraphs (2) to (4) provide as follows:*
>
> *"(2) In a case where it appears to the district planning authority the district of the non metropolitan county that the functions mentioned in subparagraph (1) relate to county matters, they shall not exercise those functions without first consulting the county planning authority.*
>
> *(3) Subject to subparagraph (4) in a non metropolitan county those functions should also be exercisable by a county planning authority in a case where it appears to that authority that they relate to a matter which should properly be considered a county matter.*
>
> *(4) In relation to a matter which is a county matter by virtue of any provisions of paragraph 1(1)(a) - (h) the functions of a local planning authority specified in subparagraph (1)(b) shall only be exercisable by the county planning authority in their capacity as mineral planning authority."*
>
> *40. Therefore, unless the case is one where it appears to the county planning authority that the breach of planning control relates to a*

matter which "should properly be considered a county matter", then it is for the district planning authority to bring enforcement action.

41. The district planning authority is not prohibited from taking enforcement action if that action includes enforcing against breaches of planning control which are county matters, although it must first consult with the county planning authority before doing so. If the matter, however, is wholly a county matter, then the power to take enforcement action is only exercisable by the county planning authority: see paragraph 11(4).

42. This being a case where both district and county elements were intermingled, and the breach of planning control was not considered to be solely a county matter, this was a case which fell within paragraph 11(2) of Schedule 1 to the 1990 Act - namely a case where the enforcement notice should have been served by the district council albeit in consultation with the county council as county planning authority. I make it clear that this is not a case where the County Council sought to argue that, as a matter of reasonable judgment, the breach could properly be considered in the round as solely a county matter e.g. by reference to its predominant character. That case was not before the inspector or the Court."

For the purposes of this appeal, it will be submitted that the Notice to which the appeal relates is the first bite, and that the time for immunity extends back 10 (and 4) years from the date that it was issued. The judgement of *ESCC v Robins [2009] EWHC 3841 (Admin)* will be referenced in these proceedings, and a copy is therefore attached at **Appendix 7.**

5.10 In addition, whilst it is acknowledged that the development which is subject of this Notice is notably materially the same as that which is the subject of CPA's action, having considered all aspects of this case, and that Section 171B(4) of the Town and Country Planning Act 1990 (as amended) makes provision to take further enforcement action for breaches of planning control within four years of the previous enforcement action being taken, it will be submitted that the "time limit for immunity" has not been paused prior to the service of the second notice, as the

second notice does not relate to the breaches identified in the initial EN, and expands matters to be considered.

5.11 The first Notice relates to a waste use with ancillary storage. The second Notice relates to a mixed use, where the two uses are clearly identified as being separate, but also expands upon the alleged breach by including the hardstanding as operational development. The operational development was not a matter specified, nor attacked within the first Notice, and represents a new breach included within the Notice subject of this appeal, which expands the scope of the first Notice.

5.12 Taking these two matters in combination, it will be submitted that the action purported to have been taken by the County Planning Authority, and the subsequent delay in any further action by the appropriate authority renders the Notice subject of this appeal to be the "first bite", and that the time to demonstrate a continuous use is 10 years prior to its service.

5.13 Even were the Inspector to conclude contrary, the appellants position does remain that of the previous proceedings, in that the uses undertaken on site are immune from enforcement action. Nonetheless, this is a particularly unique case, and the question which must be answered prior consideration of any grounds is that when action is taken by the County, and subsequently withdrawn or deemed invalid, would action by the District be deemed a valid second bite?

Planning Practice Guidance (PPG)

5.14 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.

5.15 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

5.16 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

5.17 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

5.18 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.

5.19 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.

5.20 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.

5.21 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."**

5.22 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.

Witnesses

5.23 The appellant confirms that they will seek to call the following as witnesses to matters of fact,

- Dane Rawlins, Landowner of Bolney Park Farm,
- Peter Brown, Director of PJ Brown (Civil Engineering) Ltd
- Dave Fleming, General Manager of PJ Brown (Civil Engineering) Ltd
- James Legate, Employee of PJ Brown (Civil Engineering) Ltd
- James Brown, Employee of PJ Brown (Civil Engineering) Ltd,
- Manuel Cardoso, Employee of PJ Brown (Civil Engineering) Ltd,
- Sergio Cardoso, Employee of PJ Brown (Civil Engineering) Ltd,
- Caroline Edgeley, Neighbour and Park Farm Resident/Owner,
- Claire Inglis, Neighbour and Broxmead Lane Resident,
- Graham Upton, Neighbour and Adjoining resident/property owner
- Greg Powell, User of wider Bolney Park Farm site for Stunt Co-ordination activities,

The appellant is also working to secure further witnesses to the matters of fact, and so the above list should not be deemed exhaustive.

5.24 Note that, dependent on the scheduling of the event, not all of these witnesses may be available to be called, and so in the alternative statutory declarations will be provided, should one or more of the witnesses be found to be unavailable. With regard to potential written submissions of evidence, the LPA and the Inspector are reminded that this evidence carries significant weight in the balance of probabilities, in view of the sanctions that could be imposed should these contain false or misleading evidence.

Immunity from Enforcement

5.25 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 Hardstanding

5.26 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. If the second bite is valid, then the hardstanding cannot be treated as being part and parcel, and 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.

5.27 Any determination otherwise would significantly prejudice the appellant as this is not a matter which was sought to be enforced against, and would be wholly unjust to allow for it to be treated as part and parcel to the material change of use of land, and that it would only be immune if it existed 10 years prior to the service of the first Notice (i.e. 27 January 2010).

5.28 Attached at **Appendix 8** is a series of aerial images taken from Google Earth, denoting the date advised within the software, and annotated to denote the extent of the hardstanding.

5.29 The LPA should also note from the records of WSCC, which they will presumably have been supplied in consideration of the enforcement action, in particular that of the Site Inspection Report dated 18/02/2014 that the "Hard Core" (hardstanding as alleged in the notice) area was present. Therefore, the inclusion of the hardstanding within the Notice subject of this appeal is, to some extent, confounding, as if treated as a separate operational development, would no doubt be immune from enforcement action on the basis of the 4-year rule, as it was evidently present in 2014, and has remained present since. Even if the 10-year

rule were to be applied, this hardstanding has been in situ since at least 2012 as is clearly evidenced by the aerial images.

5.30 Whilst the LPA may suggest that this is a simple matter which could be remedied by the deletion of the hardstanding referenced within the Notice, it is quite frankly not a solution that does not prejudice the appellant, and therefore not one which is accepted.

5.31 As set out, the inclusion of the Hardstanding within the Notice renders the question of whether or not the Notice is a valid second bite. If it is treated as a valid second bite, then the hardstanding cannot be treated as part and parcel, such that it would require 10 years prior to the service of the first Notice to demonstrate immunity, as this would wholly prejudice the appellant. This is the reason why the appellant must remain largely silent on their own case, in the absence of understanding the LPA's own case. Despite the request, they have not provided the Enforcement Authorisation Report, so it is unclear if this was their intention from the outset, but this is nonetheless an issue which is not raised as part of the appellants case, but as a question as to why the operational development was included within the Notice given the implications on its validity as a second bite, and the complications it presents were the principles of *Murfitt* to be applied.

5.32 It is submitted that no reasonable argument can be made by the District on the hardstanding not being immune from enforcement action, either by virtue of the 4 year or 10 year rule, and given it was not attacked, or even referenced, with the first Notice served by the County, its presence throughout the aerial imagery dating back to 28 March 2012 is evidence alone to demonstrate its continued presence for the requisite period of time.

5.33 To determine otherwise, and suggest that a second Notice can both expand upon an alleged breach, and lawfully apply the principles of *Murfitt*, would leave any decision open to judicial review, and begs the question that County or District authorities may continually pursue enforcement against development through the service of repeated Notices incorporating more and more into them, and claiming *Murfitt* is validly applied, which is not appropriate, in the public interest, or reasonable to expect appeals to be made against.

5.34 In this regard, the appellants position, is that even were the principles of *Murfitt* applied, the required 10-year period would span back from the service of **this** Notice, served by the District Authority, and not the Notice served by the County Authority.

The Material Change of Use

5.35 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.

5.36 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. As such, it is recognised that the County Authority, in taking action in 2020, were relying on their on-site discussions, and that these formed the basis of their case as to what activities had taken place on Site. Given the action is now taken by the District Authority, it is considered that both parties should approach the appeal with clarity over previous comments 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 9**.

5.37 The appellants evidence will set out that the sites overall usage from 2008 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.

5.38 The appellants have occupied the land since 2001

5.39 As set out within the Grounds of Appeal, the appellant originally undertook work on the wider landholding at Bolney Park Farm from around 2004 as part of their contract with South East Tipping. Their involvement following South East Tippings abandonment of the Land Reclamation project was progressed by the landowner Mr. Rawlins who desired completion of the works.

5.40 In 2006 they assumed the tenancy contract for the Land and have held an established interest in the yard since then. During 2006 the appeal site was being used for the storage of containers, which often have smaller machinery stored within them, and vehicles.

5.41 The Land Reclamation works, which sought the infilling of an old bomb crater, were approved under 01/01232/AGDET. As will be 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.

5.42 In relation to the above, a series of aerial images, annotated, which encompass the wider site are attached at **Appendix 10**. 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.

5.43 It was at this time that the landowner and the appellant discussed the prospect of establishing a separate yard on the land for PJ Brown to use more permanently. The parties came to an agreement in roughly May of 2007 (Invoice attached at **Appendix 11**), and the "Yard" became operational shortly thereafter. The appellant was formally renting of the yard and paid advance rental fees to the landowner indicating their intent to continue operating at the Site for some time. The main use of the yard at that time was storage of materials, and various

paraphernalia related to operations of the business at that time, but shortly after the construction and demolition waste screening activities were enlarged.

5.44 As will be attested to by Mr. Peter J Brown, and a number of operators of the "Yard", the appellants use of the yard for inert physical recycling works, which involve the import and temporary deposit of material which is subsequently physical separated of waste materials through a process of picking, screening and crushing, and was established later that same year (2007).

5.45 The appellant acknowledges that the sites overall usage from 2008 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. However, during this time (2008-Present) the appellant has been involved in a number of projects within the area, and these activities have affected the intensity of the mixed use of the site.

5.46 One of their most prominent projects, was the appellants involvement with the A23 works and the activities of Carillion, and the crushing of road planings in 2013 and 2014. At this time, the storage use was the prevailing use which would be perceived on the site, although the recycling activities remained present on the land as a part of the mixed use undertaken.

5.47 It has been since 2012 that operations on the site have been of a consistent level to date, and this has been the result of the company's business plan. Mr. Brown will attest to this, and Mr. Legate will detail the smaller operations from 2007-12, at which point the quantum of imports peaked, and the recycling activities became were prevailing.

5.48 Other projects that the appellant have worked on within the area will be referenced within a proof of evidence. What is clear from their involvement in these projects, and will be attested to within the evidence, is that the base of operations upon which they relied was the appeal site. This was where material was screened, crushed and recycled, and sold to the development for use.

5.49 Where it may be inferred from the above paragraphs that the recycling activities were at one stage "subordinate" to the storage use, as has been set out time and time again, the appellants consider the use of the site to be a mixed use, and that

the storage and recycling activities are each distinct components of the mixed use itself. This appears to be a point now accepted, given the framing of the Notice, and it is expected that, in order to behave reasonably in these proceedings, the LPA will not seek to assert otherwise.

5.50 As is often the case with business operations, and indeed mixed uses, the level of activity will fluctuate and at any given time one component may prevail over the other, but ultimately this does not render any component of the use ancillary to the other, or even result in a change of use. Mere intensification of one use or the other will not result in a material change of use, and it will be down to a matter of judgement as to whether the character of the mixed use has changed, such as would be the case were a new component use introduced. Each component of the mixed use cannot be claimed be immune on its own account, and this is not sought to be done, as they have always been a part of the current mixed use, and the appellants formal evidence given under oath or through declarations will serve to evidence this matter further.

5.51 The LPA's case remains unclear due to a lack of provision of the Authorisation Report, and so the appellant reserves the right to present further evidence in response to any matters put forward by the LPA, such as a case where the "storage" use is alleged to have been previously established to be immune and rendered unlawful by becoming a part of a mixed use, as may be the case given the County's evidence from previous proceedings accepting the use of the site for waste transfer operations having been present since around 2014.

5.52 In light of this, the appellants submit the following timetable of events,

2001	Appellant begins occupation of land, as evidenced by licence dated 2001 (**Appendix 12**) and letter from PJ Brown to South East Tipping (**Appendix 13**)
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 10 – Aerial dated 01/01/2005)
Mid-2007	Appellant begins renting of yard, as confirmed by invoice (Appendix 11). 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.
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 14**)

April 2015	Works on bund construction continue as evidenced by aerial image dated April 2015. Separate yard for these operations established (Appendix 10 – 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.

5.53 If the District Authority purport to follow the same justification as the County Planning Authority did within prior proceedings, then it would appear to the be 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. 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 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 (WSCC/077/11/BK) are undertaken. With regard to the former, it is nonsensical to consider this to be the reality of matters.

5.54 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 locations of the various compounds associated with these activities, and it is quite clear the purpose of these compounds are separate from the operations of the appeal site.

5.55 The appellants position, as will be fully evidenced, is that they have been involved in the land for some 20+ years. Their involvement may not have always been of the same form or scale, 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.

6.0 THE CASE FOR PLANNING PERMISSION TO BE GRANTED

6.1 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.

6.2 The scope of this deemed application, based on the allegation made, would be:

> **Material Change of Use of Land from agriculture to a mixed use for the importation, temporary deposit, reuse and recycling of waste material and the use of the land for storage purposes.**

The appellant, as set out above in para 6.1, can seek permission for this development in its entirety, or permission in part (i.e. just the storage use/just the recycling and screening activities). The appellants will seek to agree this with the LPA within a Statement of Common Ground once their case is understood following submission of their 6-Week Statement.

6.3 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 is on this basis, in the event that the Ground (d) appeal fails, that a temporary permission for 4 years is sought.

6.4 The appellants have outlined their considerations for the development with the Grounds of Appeal and do not seek to repeat this in its entirety here. However, for completeness, the reasons for issuing the Notice will each be addressed in turn.

6.5 The appellant will be seeking to call an environmental planning expert, and employees of the business, to respond to the 3rd reason for serving the Notice. In short, recent occurrences result in this site being essential, and whilst it is not

disputed that at face value there is no justification for a countryside location, the appellant considers it inevitable that sites will be located such. For completeness, the appellants case in response to the 3rd reason will be considering the following matters,

- 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.

6.6 The LPA cite the location, scale and appearance of the development has being harmful to the visual amenity of the rural area, and the High Weald AONB. An LVIA was prepared, and has been submitted as a part of the Grounds of Appeal, which found that the cumulative impacts of the development were judged as being **not significant**. Therefore, the appellant does not agree with the 4th reason for issuing the Notice, and awaits detail of the LPA's case to consider this matter further. If the LPA do not dispute the LVIA or its conclusions, then the "not significant" landscape impact of the development will be sought to be agreed within a Statement of Common Ground.

6.7 A clarification to the inclusion of the LVIA is required, as it is noted that the document proposes planting which extends onto land under another parties control, and discussion with them (regarding the inclusion of the access road in the Notice) has also raised concern on this planting. In this regard, the strategies put forward should be treated as illustrative, and not as a proposed final feature of the Ground (a) case for which a "compliance with" condition imposed on any grant

of permission. Any grant of permission would be expected to be accompanied by a Site Development Scheme condition.

6.8 The LPA cite the access to the appeal site as being a severe impact upon the safety of the local highway network. Over the years, a number of reports have been prepared. These have demonstrated that the use of the access is safe, and whilst it is acknowledged that the access does not conform to the guidance contained within Design Manual for Roads and Bridges (DMRB), there have been no incidents directly related to the use of the access, or the operations of the appellant. In this regard, the highways issue should be tempered by the request for a Temporary Permission, to allow the appellant to explore other possibilities, including potential improvements to the access by provision of improved acceleration and deceleration lanes within the highway boundary. The appellant will be calling an expert witness to substantiate this position, and welcomes discussion with the LPA as to whether this issue can become a matter not in dispute.

6.9 The LPA cite the operations carried out on the appeal site as representing a risk to land and water contamination. The appellants have a permit issued by the Environment Agency for these operations. Such a permit would not have been issued if there was a genuine risk. Therefore, the appellant does not agree with the 6th reason for issuing the Notice. A copy of this permit is attached at **Appendix 15**. If the LPA do not dispute the Permit or its inferences, then lack of risk to land and water contamination will be sought to be agreed within a Statement of Common Ground.

6.10 The LPA cite the nearby ancient woodland as being affected by the development and continued operations. The appellants disagree with the 7th reason for issuing the Notice on account of the fact that the Ancient Woodland is suitably distanced from the operations. Whilst it is not disputed that the storage use may fall within 15m of the Ancient Woodland, the waste activities and plant operation are distanced approximately 35m from the boundary of the ancient woodland. It is unclear what harm the LPA allege to be occurring, and if it is “dust” and “noise” affecting the habitat of Ancient Woodland, then this must be clarified. The simple

existence of the AW designation nearby is not sufficient to justify the inclusion of this reason, as no physical impact occurs to the habitat, and it is adequately safeguarded. Operations on site can be controlled such that artificial light is directed away from the AW, and dust suppression measures are used (which are already in place). In short, there is insufficient justification at this stage to identify why the LPA consider there is harm to the AW, and this is a position which is unaided by the LPA's failure to supply the Enforcement Authorisation Report when requested. For reference, an annotated ENF Plan is attached at **Appendix 16** denoting the boundary of the AW.

Highway comments

6.11 From a purely planning perspective, without commentary on the expert technical matters, the objection on highway grounds is considered to be aggression by the authority. It is by no means intended as an inflammatory comment, but reliance on the access being rendered substandard means that the LPA have reason to want the development to cease, and can act as such. Nor are the comments below from any expert point of view, merely commentary on the use of the access itself.

6.12 This is stated as the access, as evidenced, has clearly been deemed to be acceptable multiple times before. There have been no accidents that result from the continued operation of the site, nor from its history.

6.13 It is noted that the access was never above par, and that it has been substandard. It is been rendered more substandard by change in guidance, and so presents the case that, had the appellant sought permission 10 years, they may not have found objection raised by the Highway Authority, but doing so now presents issue.

6.14 It is understood that the LHA position will be that the access is a historical priority junction which is "severely" substandard and would no longer be permitted under the current Standards for the SRN as set out in the Design Manual for Roads and Bridges (DMRB). And that it would not be possible to upgrade the junction to meet modern safety requirements as required by DMRB. Accordingly, they cannot safely tolerate an intensification of movements at this A23 priority access junction.

6.15 However, the history of the site evidences this, that under WSCC/077/11/BK, it was agreed at the time that the access could accommodate up to **450 HGV arrivals**. Guidance and legislation has changed since then, yes, but the access itself remains unchanged. What has occurred is the lack of maintenance by the appropriate authority, as it was in 2008 well cut with vegetation set behind post and stock mesh fencing, to present day where no cutting back has occurred, and the light fixtures set some 1m in from the carriageway are now engulfed by the vegetation. It would be a benefit, either under Ground (a), (d), or (g), for the relevant authority to maintain the vegetation, cutting it back, and aiding the safe access and egress of vehicles from this location, be they agricultural, equestrian, residential, or construction.

6.16 The key issue raised here is that the access has become something which would no longer be permitted. However, it cannot be lost, as it is permitted. It exists, and it has been used by the appellants for movements of construction vehicles for a considerable time, without incident.

6.17 Even were the ground (d) appeal to fail, the time for which the appellant has been operating from the site is material, as is the lack of incident. It demonstrates that operators for the appellant are careful in manoeuvres. They are aware of the risks of the access, and give it all the caution necessary. In this regard, when considered in the round, with all the other factors at play, it is considered that whilst on a technical standard the development would conflict with highway safety objectives, this conflict could very well be found to be outweighed by the material considerations, and that, if for a limited period of time the appellants continued to operate from the site, what would the actual harm be.

6.18 It is considered that this is the reality that the upgrading of standards has for developments on the ground. It is not always clear cut to be able to definitively state that there would be more than policy harm, as in this instance, there is a demonstrable absence of actual harm to highway safety, barring not meeting technical standards.

6.19 The long and short of it from our point of view, which is not with any technical expertise, is that the recorded incidents (a serious incident in 2019, and a fatal

incident in 2021) cannot be definitively stated to be as a result of the appeal site and development. It could have anything to do with the nature of the road or simply just driver error. It would be speculative to state otherwise.

6.20 Even though the access is substandard, there are reasonable courses of action to ensure potential risk is reduced. This could take the form of a condition, and legal obligation, for operational activities to not take place at peak times, and to limit, within reason, the vehicular movements to and from the site.

6.21 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 (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.

6.22 These comments are not formal comments in respect of the case made on highway grounds, and only observations. The appellant does of course defer to the submissions made on their behalf in this regard, and defer to their Highway Expert witness. The position from a highway perspective is that the access exceeds the DMRB standards, as the access is a simple junction, therefore, what the requirements for diverge / merge lengths are not applicable.

Case in response to the 3rd Reason for Issue of the Notice

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

6.23 Attached at **Appendix 17** 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.

6.24 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.

6.25 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, incapable of being relied upon as a fallback, or alternative.

6.26 In essence, the loss of these two sites as potential alternatives, even slightly, 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.

6.27 Turning to existing sites, attached at **Appendix 18** is a list of local sites. A number of these are under the control of competitors, 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.

6.28 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.

6.29 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 sustainability.

6.30 The appeal site is not that, and is suitably located for the appellants needs. They can operate from here without needing to travel excessively long distances, or manoeuvre country lanes.

6.31 The CPA, being involved in proceedings may reference the sites allocated within the Waste Plan. These will be considered in the proof of evidence, and at this stage, it should be noted that the appellants position is that these sites set aside in the waste plan aren't actually available sites. This is a fact that has been highlighted in applications (Sweeptech, Henfield) dating back to 2013-14.

6.32 In summary, the appellant will present the case that, in light of recent decisions and increase in constraints, 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.

6.33 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.

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

6.34 The first point to consider under this matter is Water Neutrality, and West Sussex. Attached at **Appendix 19** is a map showing the extent of water neutrality affected areas within the County.

6.35 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.

6.36 The second point is the extent of West Sussex within the AONB. It is significant. Sites will therefore likely be located in the AONB, as they would be unsuitable to be located in urban centres, due to noise and pollution disturbance to the human population.

6.37 In short, the use undertaken and sought permission for through Ground (a) is a use which is not really compatible within many other uses.

6.38 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. The key route for West Sussex, and indeed

for the appellant with their clientele, is the A23. 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.

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

6.39 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.

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

6.41 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.

6.42 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.

6.43 The appellant will seek to demonstrate 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

6.44 The appellant will seek to evidence the end destination for the material which is processed by the appeal site. Whilst this ultimately has limited bearing when taken

on its own, when considered in the broader context, it will be evidenced that the appeal site, and the development, are needed, and are a valuable asset to the County, and to District level developments for Housing.

Policy Context

6.45 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.

6.46 Full consideration of the policy context will be set out in a proof of evidence.

7.0 THE REQUIREMENTS OF THE NOTICE

7.1 The alleged breach of planning control is split into two parts. The first being the use of the land, a mixed use of storage and waste processing activities, and the second being the operational development of hardstanding.

7.2 Operational Development is subject to a time limit of 4 years for immunity. Section 171B(1) of the Town and Country Planning Act 1990 (as amended) gives a time limit of 4 years for notices alleging operational development such as building, mining or engineering works beginning with the date on which the operations were substantially completed. The hardstanding has been in situ for an excess of 10 years prior to the service of the Notice.

7.3 It has been submitted under ground (d) that the use of the site for storage purposes has been continuous for a significant period of time, since the appellant took over interest in the Land. It is the Appellants case that the LPA have over-enforced and are seeking their complete cessation of use of the Land. There will be evidence which will demonstrate that there is an open storage use on the land which has become immune from enforcement due to the passage of time.

7.4 The use of the land for storage purposes has always taken place on the eastern border of the appeal site, with further storage taking place on its western boundary as and when necessary. And this storage use has taken place alongside the importation, deposit, processing, and export of waste on the site. There has been no material change of use of the land, and therefore as its own individual component of a composite mixed, it is immune from enforcement action. Therefore, requirements 5.4, 5.5, and 5.9 are considered excessive. Reference to storage of containers and machinery and equipment should be deleted.

7.5 Requirement 5.10 is considered excessive on account that the hardstanding has been in situ for in excess of 4 years, and is considered as individual operational development to be immune from enforcement action. It is in fact the case that this hardstanding has been present for in excess of 10 years. Whilst it is acknowledged that the CPA served and withdrew a previous Notice, the hardstanding area subject to the new Notice brought by the LPA, did not form a part of the previously

alleged breach by the CPA, nor was its removal a requirement of the notice. Therefore, the 4 year rule applies, and the hardstanding is immune from action. This renders Requirement 5.10 excessive, and unnecessary.

7.6 Having regard to the above, requirement 5.12 is also considered to be excessive.

7.7 The excessive steps require the ceasing of a use of the land, and the removal of operational development, which should be immune from enforcement, and can also continue without the waste recycling operations, as the machinery, plant, and vehicles stored on the site are not solely done so for the purposes of processing waste material.

7.8 It is considered that these excessive steps can be resolved reasonably through a variation of the notice, such that the requirement set out at 5.3, 5.4, 5.9, 5.10, 5.11, and 5.12 are deleted from the notice. As such, the steps to comply with the notice can be varied.

7.9 With regard to the Waste Recycling operations, required to be ceased within 5.1, 5.2 and 5.6 these are considered to be worded reasonably and specifically, however due regard to the Ground (b) appeal needs to be had with respect to requirement 5.2. In the event that Ground (d) and (a) both fail, there is no objection to them being retained in the Notice.

7.10 Requirement 5.7 and 5.8 are considered excessive in their own right, simply because the siting of a portacabin on the hardstanding area, and the alleged connection to services, are not wholly conflicting with national and local planning policies, and if the Ground (d) appeal were to be successful in part, in that the storage use can continue, there is no reason for the LPA to enforce the portacabin and the alleged connection to services. These requirements could be deleted from the Notice in their entirety, as they would continue to serve their ancillary purposes to the use of the land for storage purposes. With reference to Requirement 5.7, it is excessive and unnecessary due to the fact that the Portacabin unit is not connected to any services.

7.11 Lastly, issue is taken with the Plan attached to the Notice. This plan includes within it, the access to the highway boundary. Further issue is raised with the plan under

ground (b), and it appears necessary that this particular matter needs to be considered in tandem.

7.12 It is the case that the notice does not require the closing of this access or the ceasing of its use. However, it has failed to make clear that the access is lawful and can continue to be used as such.

7.13 Given the wording of the alleged breach, and the requirements, the use of the access should be removed from the Notice in its entirety by the substitution of the Plan attached to the Notice. The reason for this being that the access should not have been included within the Plan, with the Notice framed as such, as it is, on the LPA's case, in an authorised mixed use of Agricultural and Residential, and benefits wholly from planning permission without any constraints or conditions which would restrict its use.

7.14 The requirements of the Notice presented in such a vague manner, have the potential to "bite" operations that it should not, in particular the use of the access and the road into Bolney Park for the movement of agricultural vehicles. It is acknowledged that there is no requirement in the Notice to cease the use of the access, but clarity is needed to ensure that the agricultural and residential operations of Bolney Park Farm, and its neighbours, are not jeopardised, or sought to be enforced by the LPA, in the event the Notice is upheld. In this regard, the Notice does not need to include the access road, and is considered excessive in this regard.

7.15 Having regard to the above, in the event that the appeals under Grounds (b), (d) and (a) fail, it is requested that the notice be varied as set out above.

8.0 TIME FOR COMPLIANCE WITH THE NOTICE

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 It will be 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.

8.8 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, 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.

8.9 It will be evidenced that the period for compliance is unreasonably short, and expects an immediately available alternative location to be magicked up. Put simply, the appellant seeks to continue operating from the appeal site out of necessity. In this respect, given that evidence will demonstrate that any long term harm is nominal, 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.

8.10 The appellant will however 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.

9.0 SUMMARY AND CONCLUSION

9.1 In conclusion, it is again requested that the LPA reconsider the Notice itself, and review the evidence submitted under Ground (d) before the appeal progress. There are significant issues that have been raised, and the appellant is keen to securing a mutually beneficial outcome to proceedings.

9.2 As set out, 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.

9.3 The allegation of the Notice is required to be amended to be able to enforce against matters which are not immune from enforcement, and this will likely require the withdrawal of the Notice. The refusal to withdraw the Notice risks the Inspector needing to quash it.

9.4 It will be submitted 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.

9.5 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 should have been considered presents a the case of the use having been continuous for the requisite 10 year period. It is unknown what grounds the LPA pursue on this matter, but if it is as simple as stating that the onus is on the appellant, then it could be considered unreasonable behaviour if the LPA, in tandem with the CPA, are seeking to “re-write” the version of events that has been repeatedly set out by the appellant. It is not unreasonable to wish to test the evidence, but if the LPA follow the case previously presented by the CPA, in that operations on the appeal site were part and parcel to other permitted works (those granted under 01/01232/AGDET and WSC/077/11/BK) then it is considered to be punitive action, given that it is contrary to established facts, for which there has been given no evidence or reason to question.

9.6 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.

9.7 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).

9.8 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.

9.9 Within the previous proceedings, and for a period of some 2 since, the CPA will have been aware of the consequences for the appellant should enforcement action be successful. They had been actively seeking alternatives, and continue to search to date. No suitable alternatives have presented themselves in the interim, quite the contrary, given that a prospective alternative site has been rendered wholly untenable on account of the determination by a Planning Inspector on highway issues, notwithstanding the prevailing water neutrality issues present across much of the County. No discussion has been forthcoming from the CPA, or LPA, on potential relocation of *this* development. This would have been pro-active behaviour by the Authorities, which could have rendered the appeal unnecessary, but the failure to engage results in the action taken being punitive in nature, as it does not remedy the issue without resulting in a greater level of harm, which is the harm which will result to employment, and to the delivery of sustainable recycled material. In this regard, it is noted that the CPA were invited to discuss matters following the previous proceedings, to which no response was received, as was the costs matter. The latter is now necessary to be elevated to the Courts

9.10 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.

10.0 APPENDICES

Appendix 1	**CPA Enforcement Notice**
Appendix 2	**CPA Enforcement - Appeal Forms**
Appendix 3	**CPA Enforcement – Withdrawal Notice**
Appendix 4	**2020/0102/ENF – Enforcement Notice**
Appendix 5	**2020/0102/ENF – Enforcement Appeal Forms**
Appendix 6	**2020/0102/ENF – Grounds of Appeal**
Appendix 7	***ESCC v Robins [2009] EWHC 3841 (Admin)***
Appendix 8	**Aerial Imagery (Focussed on Appeal Site)**
Appendix 9	**2022 PCN & Response**
Appendix 10	**Aerial Imagery (Annotated over Wider Site)**
Appendix 11	**Bolney Park Farm – Invoice May 2007**
Appendix 12	**Licence Agreement dated 2001**
Appendix 13	**Letter from South East Tipping**
Appendix 14	**Carillion Invoices**
Appendix 15	**EA Waste Permit**
Appendix 16	**Annotated ENF Plan – Ancient Woodland**
Appendix 17	**Kilmarnock Farm Appeal Decision**
Appendix 18	**Local Waste Sites List**
Appendix 19	**Water Neutrality in West Sussex Map**