

# APPEAL BY PJ BROWN (CIVIL ENGINEERING) LTD

## STATEMENT OF CASE APPENDICES

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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## **APPENDICES**

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

# APPENDIX 1

**Michael Elkington**  
**Head of Planning Services**

Please respond to: Kirstie May  
Tel: 0330 2226 952

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**County Planning**

The Grange  
Tower Street  
Chichester  
West Sussex  
PO19 1RH  
Contact Centre: 01243 642118



The Company Secretary  
PJ Brown (Construction) Ltd  
Burlands,  
Charlwood Road,  
Ifield Wood,  
Crawley,  
West Sussex, RH11 0JZ

27 January 2020

Our reference: INV/2018/10/WSCC

Dear Sir,

**IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Section 172 Town and Country Planning Act 1990 (as amended);  
Land east of Dan Tree Farm, off A23, Bolney**

Under Section 172 of the Town and Country Planning Act 1990 (as amended) a local planning authority is empowered to serve a notice upon an individual where it appears to the authority that there has been a breach of planning control and it has been deemed expedient to issue a notice.

West Sussex County Council, as the appropriate local planning authority, considers that there has been a breach of planning control as set out in paragraph 3 of the attached Enforcement Notice. As such, West Sussex County Council has issued an enforcement notice relating to the above land shown edged in red on the attached plan and I now serve on you a copy of that notice as you have an interest in the Land. A full list of persons who are being served with a copy of this notice who, it is understood, have an interest in the land is listed below.

The Company Secretary  
PJ Brown (Construction) Ltd,  
Burlands,  
Charlwood Road,  
Ifield Wood,  
Crawley  
West Sussex, RH11 0JZ  
Operator

Dane Rawlins  
Bolney Park Farm,  
Broxmead Lane,  
Bolney,  
West Sussex,  
RH17 5RJ

Landowner

Paragraph 5 of the Notice specifies what is required to be done and the relevant compliance period. The Enforcement Notice takes effect on **26 February 2020** unless an appeal is made against the notice.

Non-compliance with the requirements of the Enforcement Notice can result in prosecution and/or remedial action by the County Council and your attention is drawn to Annex 1 of the Notice. There is a right of appeal to the Secretary of State and information regarding this right is set out in the explanatory notes attached to the Notice and the Information Sheets from the Planning Inspectorate.

If you are in any doubt about what the Enforcement Notice requires you to do you should contact me at the above address or on 01243 756850.

Yours faithfully



Michael Elkington  
Head of Planning Services

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN & COUNTRY PLANNING ACT 1990 (as amended by the Planning Compensation Act 1995)**

**ENFORCEMENT NOTICE – material change of use**

**ISSUED BY: West Sussex County Council**

**To:** The Company Secretary  
PJ Brown (Construction) Ltd,  
Burlands,  
Charlwood Road,  
Ifield Wood,  
Crawley  
West Sussex  
RH11 0JZ

Dane Rawlins  
Bolney Park Farm,  
Broxmead Lane,  
Bolney,  
West Sussex,  
RH17 5RJ

**1. THIS NOTICE** is issued by West Sussex County Council ("the Council") because it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the above Act, at the Land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations. The Annexes at the end of this Notice and the enclosures to which they refer contain important additional information.

**2. THE LAND TO WHICH THE NOTICE RELATES**

Land east of Dan Tree Farm, off A23, Bolney and shown edged red on the attached plan ("the Land")

**3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

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

**4. REASONS FOR ISSUING THIS NOTICE**

The Land is being used for the purposes of **importation, processing and export of waste, and deposit of waste to the land**, as described in paragraph 3 above. The Council considers this new use to be a material change in the use of the Land which

requires express planning permission. The Council is not aware of any planning permission currently in force for use of the Land for **importation, processing export, and deposit of waste, along with ancillary storage.**

The Council first became aware that the Land was being used for the importation, processing and export of waste in October 2018. It appears to the Council that this breach of planning control has occurred within the last ten years.

The Council does not therefore consider that this material change of use is immune from planning enforcement action. This view has been confirmed in the refusal of an application for a Certificate of Lawful Development relating to the use of the site for the importation, deposit, re-use and recycling of waste material and use of land for storage purposes (ref. WSCC/070/19, refused 8 January 2020).

The Council considers that this development is unacceptable for the following reasons:-

The development is unacceptable with regard to its impact upon the High Weald Area of Outstanding Natural Beauty; the adjacent Ancient Woodland and the habitat and species therein; the amenity of residents of the surrounding countryside; the risk to the water environment; the character of the local countryside; and because it is contrary to the policies of the Development Plan, as follows:

Mid Sussex District Plan 2014 - 2031: Policies DP12 (Protection and Enhancement of Countryside); DP14 (Sustainable rural development and the rural economy); DP16 (High Weald Area of Outstanding Natural Beauty); DP26 (Character and Design); DP29 (Noise, Air and Light Pollution); DP37 (Trees, Woodland and Hedgerows); DP39 (Biodiversity); DP39 (Sustainable Design and Construction)

West Sussex Waste Local Plan April 2014: Policies W1 (Need for Waste Management Facilities), W3 (Location of Built Waste Management Facilities), W4 (inert waste recycling); W8 (recovery operations involving the deposit of inert waste to land); W9 (disposal of waste to land); W11 (character); W12 (high quality developments); W13 (protected landscapes); W14 (biodiversity and geodiversity); W16 (Air, soil and Water), W18 Transport, W19 (public health and amenity); and W21 (cumulative impact).

The full text of all relevant policies is attached as **Annex 4** to this Notice.

For the reasons set out in paragraph 4 above the Council considers it expedient to issue this Enforcement Notice.

## **5. WHAT YOU ARE REQUIRED TO DO**

- 1. Remove all plant, equipment, containers and vehicles from the Land**
- 2. Remove all imported waste or other materials from the Land**
- 3. Restore the Land to agricultural use, to a condition and topography in accordance with the surrounding agricultural land**

## **6. TIME FOR COMPLIANCE**

- 1. Remove all plant, equipment, containers and vehicles from the Land**

**TIME FOR COMPLIANCE:** By no later than **08 April 2020** which is 6 weeks from the date this Notice takes effect, 26 February 2020.

- 2. Remove all imported waste or other materials from the Land**

**TIME FOR COMPLIANCE:** By no later than **22 April 2020** which is 8 weeks from the date this Notice takes effect, 26 February 2020.

- 3. Restore the Land to agricultural use, to a condition and topography in accordance with the surrounding agricultural land**

**TIME FOR COMPLIANCE:** By no later than **26 August 2020** which is 26 weeks (6 months) from the date this Notice takes effect, 26 February 2020.

## **7. WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect on 26 February 2020

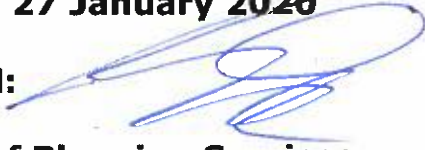
## **8. TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND) REGULATIONS 2017**



The Council considers that the development is not EIA development. If the development subject of this Notice were to be granted planning permission, an Environmental Statement would not be required.

**Dated: 27 January 2020**

**Signed:**



**Head of Planning Services**

**On behalf of:** West Sussex County Council  
County Hall  
Chichester  
West Sussex  
PO19 1RQ

## **ANNEX 1**

### **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be **received**, or posted in time to be received, by the Secretary of State **before** the date specified in paragraph 7 of the notice. The attached guidance sheet, Annex 5, from The Planning Inspectorate advises how to obtain information to appeal against this notice.

Unless an appeal is made, as described below, the notice will take effect on 2 May 2014 and you must then ensure that the required steps, for which you may be held responsible, are taken within the time period(s) for compliance as specified in the notice.

## **ANNEX 2**

### **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

## **ANNEX 3**

### **GUIDANCE NOTES**

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; .

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £6,630 to West Sussex County Council. Joint appellants need only pay one set of fees.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

## **Annex 4 – List of all relevant policies**

### **Mid Sussex District Plan 2014-2031 policies:**

#### **DP12: Protection and Enhancement of Countryside**

The countryside will be protected in recognition of its intrinsic character and beauty. Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and:

- it is necessary for the purposes of agriculture; or
- it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan

Agricultural land of Grade 3a and above will be protected from non-agricultural development proposals. Where significant development of agricultural land is demonstrated to be necessary, detailed field surveys should be undertaken and proposals should seek to use areas of poorer quality land in preference to that of higher quality.

The Mid Sussex Landscape Character Assessment, the West Sussex County Council Strategy for the West Sussex Landscape, the Capacity of Mid Sussex District to Accommodate Development Study and other available landscape evidence (including that gathered to support Neighbourhood Plans) will be used to assess the impact of development proposals on the quality of rural and landscape character.

Built-up area boundaries are subject to review by Neighbourhood Plans or through a Site Allocations Development Plan Document, produced by the District Council.

Economically viable mineral reserves within the district will be safeguarded.

#### **DP14: Sustainable rural development and the rural economy**

Provided it is not in conflict with Policy DP12: Protection and Enhancement of Countryside and DP13: Preventing Coalescence:

- new small-scale economic development, including tourism-related development, within the countryside (defined as the area outside of built up area boundaries as per the Policies Map) will be permitted provided:
- it supports sustainable growth and the vitality of the rural economy; and
- where possible, utilises previously developed sites.
- diversification of activities on existing farm units will be permitted provided:
- they are of a scale which is consistent to the location of the farm holding; and
- they would not prejudice the agricultural use of a unit.
- the re-use and adaptation of rural buildings for business or tourism use in the countryside will be permitted provided:
- the building is of permanent construction and capable of re-use without substantial reconstruction or extensive alteration;
- the appearance and setting is not materially altered; and
- it is not a recently constructed agricultural building which has not been or has been little used for its original purpose.

#### **DP16: High Weald Area of Outstanding Natural Beauty**

Development within the High Weald Area of Outstanding Natural Beauty (AONB), as shown on the Policies Maps, will only be permitted where it conserves or enhances natural beauty and has regard to the High Weald AONB Management Plan, in particular;

- the identified landscape features or components of natural beauty and to their setting;

- the traditional interaction of people with nature, and appropriate land management;
- character and local distinctiveness, settlement pattern, sense of place and setting of the AONB; and
- the conservation of wildlife and cultural heritage.

Small scale proposals which support the economy and social well-being of the AONB that are compatible with the conservation and enhancement of natural beauty will be supported.

Development on land that contributes to the setting of the AONB will only be permitted where it does not detract from the visual qualities and essential characteristics of the AONB, and in particular should not adversely affect the views into and out of the AONB by virtue of its location or design.

### **DP26: Character and Design**

All development and surrounding spaces, including alterations and extensions to existing buildings and replacement dwellings, will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:

- is of high quality design and layout and includes appropriate landscaping and greenspace;
- contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;
- creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;
- protects open spaces, trees and gardens that contribute to the character of the area;
- protects valued townscapes and the separate identity and character of towns and villages;
- does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29);
- creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;
- incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;
- positively addresses sustainability considerations in the layout and the building design;
- take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element;
- optimises the potential of the site to accommodate development.

### **DP29: Noise, Air and Light Pollution**

The environment, including nationally designated environmental sites, nationally protected landscapes, areas of nature conservation or geological interest, wildlife habitats, and the quality of people's life will be protected from unacceptable levels of noise, light and air pollution by only permitting development where:

Noise pollution:

- It is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area;
- If it is likely to generate significant levels of noise it incorporates appropriate noise attenuation measures;

Noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development.

In appropriate circumstances, the applicant will be required to provide:

- an assessment of the impact of noise generated by a proposed development; or
- an assessment of the effect of noise by an existing noise source upon a proposed development;

Light pollution:

- The impact on local amenity, intrinsically dark landscapes and nature conservation areas of artificial lighting proposals (including floodlighting) is minimised, in terms of intensity and number of fittings;
- The applicant can demonstrate good design including fittings to restrict emissions from proposed lighting schemes;

Air Pollution:

- It does not cause unacceptable levels of air pollution;
- Development on land adjacent to an existing use which generates air pollution or odour would not cause any adverse effects on the proposed development or can be mitigated to reduce exposure to poor air quality to recognised and acceptable levels;
- Development proposals (where appropriate) are consistent with Air Quality Management Plans.

The degree of the impact of noise and light pollution from new development or change of use is likely to be greater in rural locations, especially where it is in or close to specially designated areas and sites.

### **DP37: Trees, Woodland and Hedgerows**

The District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting. In particular, ancient woodland and aged or veteran trees will be protected.

Development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have landscape, historic or wildlife importance, will not normally be permitted.

Proposals for new trees, woodland and hedgerows should be of suitable species, usually native, and where required for visual, noise or light screening purposes, trees, woodland and hedgerows should be of a size and species that will achieve this purpose.

Trees, woodland and hedgerows will be protected and enhanced by ensuring development:

- incorporates existing important trees, woodland and hedgerows into the design of new development and its landscape scheme; and
- prevents damage to root systems and takes account of expected future growth; and
- where possible, incorporates retained trees, woodland and hedgerows within public open space rather than private space to safeguard their long-term management; and
- has appropriate protection measures throughout the development process; and
- takes opportunities to plant new trees, woodland and hedgerows within the new development to enhance on-site green infrastructure and increase resilience to the effects of climate change; and
- does not sever ecological corridors created by these assets.

Proposals for works to trees will be considered taking into account:

- the condition and health of the trees; and
- the contribution of the trees to the character and visual amenity of the local area; and
- the amenity and nature conservation value of the trees; and
- the extent and impact of the works; and
- any replanting proposals.

The felling of protected trees will only be permitted if there is no appropriate alternative. Where a protected tree or group of trees is felled, a replacement tree or group of trees, on a minimum of a 1:1 basis and of an appropriate size and type, will normally be required. The replanting should take place as close to the felled tree or trees as possible having regard to the proximity of adjacent properties.

Development should be positioned as far as possible from ancient woodland with a minimum buffer of 15 metres maintained between ancient woodland and the development boundary.

### **DP38: Biodiversity**

Biodiversity will be protected and enhanced by ensuring development:

- Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and
- Protects existing biodiversity, so that there is no net loss of biodiversity. Appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species. Unavoidable damage to biodiversity must be offset through ecological enhancements and mitigation measures (or compensation measures in exceptional circumstances); and
- Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; and
- Promotes the restoration, management and expansion of priority habitats in the District; and
- Avoids damage to, protects and enhances the special characteristics of internationally designated Special Protection Areas, Special Areas of Conservation; nationally designated Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty; and locally designated Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland or to other areas identified as being of nature conservation or geological interest, including wildlife corridors, aged or veteran trees, Biodiversity Opportunity Areas, and Nature Improvement Areas.

Designated sites will be given protection and appropriate weight according to their importance and the contribution they make to wider ecological networks.

Valued soils will be protected and enhanced, including the best and most versatile agricultural land, and development should not contribute to unacceptable levels of soil pollution.

Geodiversity will be protected by ensuring development prevents harm to geological conservation interests, and where possible, enhances such interests. Geological conservation interests include Regionally Important Geological and Geomorphological Sites.

### **DP39: Sustainable Design and Construction**

All development proposals must seek to improve the sustainability of development and should where appropriate and feasible according to the type and size of development and location, incorporate the following measures:

- Minimise energy use through the design and layout of the scheme including through the use of natural lighting and ventilation;
- Explore opportunities for efficient energy supply through the use of communal heating networks where viable and feasible;
- Use renewable sources of energy;
- Maximise efficient use of resources, including minimising waste and maximising recycling/ re-use of materials through both construction and occupation;
- Limit water use to 110 litres/person/day in accordance with Policy DP42: Water Infrastructure and the Water Environment;
- Demonstrate how the risks associated with future climate change have been planned for as part of the layout of the scheme and design of its buildings to ensure its longer term resilience

### **West Sussex Waste Local Plan (adoption version April 2014) Policies:**

#### **W1: Need for Waste Management Facilities**

- (a) Proposals on unallocated sites for the storing, sorting, bulking and onward movement of waste will be permitted provided that they are needed to meet the shortfall in transfer capacity of 140,000 tonnes per annum. Proposals on unallocated sites to deliver capacity over and above this shortfall will be permitted where it can be demonstrated that there is a market need, consistent with the principle of net self-sufficiency.
- (b) Proposals on unallocated sites for facilities for the recycling and composting of non-inert waste will be permitted provided that they are needed to meet the shortfall in capacity of 270,000 tonnes per annum. Proposals on unallocated sites to deliver capacity over and above this shortfall will be permitted where it can be demonstrated that there is a market need, consistent with the principle of net self-sufficiency.
- (c) Proposals on unallocated sites for the recycling of inert waste will be permitted where it can be demonstrated that there is a market need, consistent with the principle of net self-sufficiency.
- (d) Proposals on unallocated sites for built facilities for the recovery of non-inert waste will be permitted provided that they are needed to meet the shortfall in capacity of 270,000 tonnes per annum. Proposals on unallocated sites to deliver capacity over and above this shortfall will be permitted where it can be demonstrated that it would reduce disposal to land of waste arising in West Sussex.
- (e) Proposals for non-inert waste landfilling operations on unallocated sites will not be permitted unless they are needed to meet the shortfall in management capacity of 605,000 tonnes over the plan period. Proposals on unallocated sites to deliver this shortfall, will not be permitted unless there is a demonstrable need to dispose of non-inert waste arising within West Sussex, consistent with the principle of net self-sufficiency and the objective of 'zero waste to landfill'\* in West Sussex by 2031.
- (f) Proposals for inert waste landfilling operations will not be permitted unless it can be demonstrated that the waste cannot be managed through recovery operations and that there is a need to dispose of waste, consistent with the principle of net self-sufficiency and the objective of 'zero waste to landfill'\* in West Sussex by 2031.

\* Defined as the disposal to land (via landfill or landraise) of less than 3% of the waste arising in the County

### **W3: Location of Built Waste Management Facilities**

- (a) Proposals for built waste management facilities, on unallocated sites, to enable to the transfer, recycling and recovery of waste will be permitted providing that:
  - i. It can be demonstrated that they cannot be delivered on permitted sites for built waste management facilities or on the sites allocated for that purpose in Policy W10; and
  - ii. They are located in the Areas of Search along the coast and in the north and east of the County as identified on the Key Diagram; or
  - iii. Outside the Areas of Search identified on the Key Diagram, they are only small-scale facilities to serve a local need.
- (b) Proposals that accord with part (a) must:
  - i. Be located within built-up areas, or on suitable previously developed land outside built-up areas; or
  - ii. Be located on a site in agricultural use where it involves the treatment of waste within that unit; or
  - iii. Only be located on a greenfield site, if it can be demonstrated that no suitable alternative sites are available; and
  - iv. Where transportation by rail or water is not practicable or viable, be well-related to the Lorry Network Route; large-scale facilities must have good access to the Strategic Lorry Route.
- (c) Proposals for new facilities within the boundaries of existing waste management sites to enable the transfer, recycling, and recovery of waste, will be permitted unless:
  - i. The current use is temporary and the site is unsuitable for continued waste use; or
  - ii. Continued use of the site for waste management purposes would be unacceptable in terms of its impact on local communities and/or the environment.

### **W4: Inert Waste Recycling**

Proposals for the processing and recycling of inert waste will be permitted provided that:

- (a) They are located in accordance with Policy W3; or
- (b) They can be accommodated at active landfill sites or mineral workings where:
  - i. The duration of operations is tied to that of the primary operations; and
  - ii. Where transportation by rail or water is not practicable or viable, they are well-related to the Lorry Route Network.

### **W8: Recovery Operations involving the Depositing of Inert Waste to Land**

Proposals for recovery operations involving the depositing of inert waste to land (including for the continuation in duration, or the physical extension of, existing operations) will be permitted provided that:

- (a) the proposal results in clear benefits for the site and, where possible, the wider area;
- (b) the material to be used is only residual waste following recycling and/or recovery or it is a waste that cannot be recycled or treated;
- (c) there is a genuine need to use the waste material as a substitute for a non-waste material that would otherwise have to be used;
- (d) the material to be reused is suitable for its intended use;
- (e) the amount of waste material to be used is no more than is necessary to deliver the benefits identified under (a);
- (f) there would be no unacceptable impact on natural resources and other environmental constraints;
- (g) the proposal accords with Policy W13 (Protected Landscapes);
- (h) any important mineral reserves would not be sterilised; and
- (i) restoration of the site to a high quality standard would take place in accordance with Policy W20.

### **W9: Disposal of Waste to Land**



(a) Proposals for the disposal of non-inert waste at unallocated sites will not be permitted unless it can be demonstrated that the waste cannot be managed at permitted sites or at the extension to the Brookhurst Wood landfill site allocated in Policy W10.

(b) Proposals for the disposal of non-inert and inert waste to land (including the continuation in duration of, or the physical extension of, existing operations) will not be permitted unless it can be demonstrated that:

(i) the waste to be disposed of cannot practicably be reused, recycled or recovered;

(ii) there would be no unacceptable impact on natural resources, particularly on groundwater quality, and other environmental constraints;

(iii) they would accord with Policy W13 (Protected Landscapes);

(iv) any important mineral reserves would not be sterilised;

(v) appropriate measures are included to recover energy from landfill gas; and

(vi) restoration of the site to a high quality standard would take place in accordance with Policy W20.

(c) Any proposals for new landfill sites (including for landraise) must accord with parts (a) and (b) and will not be permitted unless it can be demonstrated that:

(i) they are only required for the disposal of waste following recycling and recovery; and

(ii) there are no opportunities to extend the operation of existing sites within West Sussex.

### **W11: Character**

Proposals for waste development will be permitted provided that they would not have an unacceptable impact on:

(a) the character, distinctiveness, and sense of place of the different areas of the County and that they reflect and, where possible, reinforce the character of the main natural character areas (including the retention of important features or characteristics); and

(b) the separate identity of settlements and distinctive character of towns and villages (including specific areas or neighbourhoods) and development would not lead to their actual or perceived coalescence.

### **W12: High Quality Developments**

Proposals for waste development will be permitted provided that they are of high quality and, where appropriate, the scale, form, and design (including landscaping) take into account the need to:

(a) integrate with and, where possible, enhance adjoining land-uses and minimise potential conflicts between land-uses and activities;

(b) have regard to the local context including:

(i) the varied traditions and character of the different parts of West Sussex;

(ii) the characteristics of the site in terms of topography, and natural and man-made features;

(iii) the topography, landscape, townscape, streetscape and skyline of the surrounding area;

(iv) views into and out of the site; and

(v) the use of materials and building styles;

(c) includes measures to maximise water efficiency;

(d) include measures to minimise greenhouse gas emissions, to minimise the use of non-renewable energy, and to maximise the use of lower-carbon energy generation (including heat recovery and the recovery of energy from gas); and

(e) include measures to ensure resilience and enable adaptation to a changing climate.

### **W13: Protected Landscapes**

(a) Proposals for waste development within protected landscapes (the South Downs National Park; the Chichester Harbour Area of Outstanding Natural Beauty (AONB), and the High Weald AONB) will not be permitted unless:

i. The site is allocated for that purpose in an adopted plan; or

- ii. The proposal is for a small-scale facility to meet local needs that can be accommodated without undermining the objectives of the designation; or
  - iii. The proposal is for major\* waste development that accords with part (c) of this Policy.
- (b) Proposals for waste development located outside protected landscapes will be permitted provided that they do not undermine the objectives of the designation.
- (c) Proposals for major\* waste development within protected landscapes will not be permitted unless:
- i. There is an overriding need for the development within the designated area; and
  - ii. The need cannot be met in some other way or met outside the designated area; and
  - iii. Any adverse impacts on the environment, landscape, and recreational opportunities can be satisfactorily mitigated.

\* In the case of waste proposals, all applications are defined by the Town and Country Planning (Development Management Procedure) Order 2010 as 'major'. However, for the purpose of this policy, major waste development is development that, by reason of its scale, character or nature, has the potential to have a serious adverse impact on the natural beauty, wildlife, cultural heritage and recreational opportunities provided by the South Downs National Park or the natural beauty, distinctive character, and remote and tranquil nature of the Areas of Outstanding Beauty (AONB). The potential for significant impacts on the National Park or the AONB will be dependent on the individual characteristics of each case.

#### **W14: Biodiversity and Geodiversity**

Proposals for waste development will be permitted provided that:

- (a) areas or sites of international biodiversity importance are protected unless there are no appropriate alternative solutions and there are overriding reasons which outweigh the need to safeguard the value of sites or features, and provided that favourable conservation status is maintained;
- (b) there are no adverse impacts on areas or sites of national biodiversity or geological conservation importance unless the benefits of the development clearly outweigh the impact on the objectives of the designation and on the wider network of such designated areas or sites;
- (c) there are no adverse impacts on areas, sites or features of regional or local biodiversity or geological conservation importance unless the benefits of the development clearly outweigh the impact on the objectives of the designation;
- (d) where development would result in the loss of or adversely affect an important area, site or feature, the harm is minimised, mitigated, or compensated for, including, where practicable, the provision of a new resource elsewhere which is of at least equivalent value;
- (e) where appropriate, the creation, enhancement, and management of habitats, ecological networks, and ecosystem services is secured consistent with wider environmental objectives including Biodiversity Opportunity Areas and the South Downs Way Ahead Nature Improvement Area; and
- (f) where necessary, the investigation, evaluation, and recording of important sites and features is undertaken and, where appropriate, representative features are preserved.

#### **W16: Air, Soil, and Water**

Proposals for waste development will be permitted provided that:

- (a) there are no unacceptable impacts on the intrinsic quality of, and where appropriate the quantity of, air, soil, and water resources (including ground, surface, transitional, and coastal waters);
- (b) there are no unacceptable impacts on the management and protection of such resources, including any adverse impacts on Air Quality Management Areas and Source Protection Zones;
- (c) the quality of rivers and other watercourses is protected and, where possible, enhanced (including within built-up areas); and
- (d) they are not located in areas subject to land instability, unless problems can be satisfactorily resolved.

**W18: Transport**

Proposals for waste development will be permitted provided that:

- (a) where practicable and viable, the proposal makes use of rail or water for the transportation of materials to and from the site;
- (b) transport links are adequate to serve the development or can be improved to an appropriate standard without an unacceptable impact on amenity, character, or the environment; and
- (c) where the need for road transport can be demonstrated:
  - (i) materials are capable of being transported using the Lorry Route Network with minimal use of local roads, unless special justification can be shown;
  - (ii) vehicle movements associated with the development will not have an unacceptable impact on the capacity of the highway network;
  - (iii) there is safe and adequate means of access to the highway network and vehicle movements associated with the development will not have an adverse impact on the safety of all road users;
  - (iv) satisfactory provision is made for vehicle turning and parking, manoeuvring, loading, and, where appropriate, wheel cleaning facilities; and
  - (v) vehicle movements are minimised by the optimal use of the vehicle fleet

**W19: Health and Amenity**

Proposals for waste development will be permitted provided that:

- (a) lighting, noise, dust, odours and other emissions, including those arising from traffic, are controlled to the extent that there will not be an unacceptable impact on public health and amenity;
- (b) the routes and amenities of public rights of way are safeguarded, or where temporary or permanent re-routeing can be justified, replacement routes of comparable or enhanced amenity value are provided; and
- (c) where necessary, a site liaison group is established by the operator to address issues arising from the operation of a major waste management site or facility.

**W21: Cumulative Impact**

Proposals for waste development, including the intensification of use, will be permitted providing that an unreasonable level of disturbance to the environment and/or local communities will not result from waste management and other sites operating simultaneously and/or successively. Phasing agreements may be sought to co-ordinate working, thereby reducing the cumulative impact.

**ANNEX 5****GUIDANCE NOTES ON HOW TO MAKE AN APPEAL**



## The Planning Inspectorate

CST Room 3/13  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Direct Line 0303-444 5000

Fax No 0117-372 8782

### THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

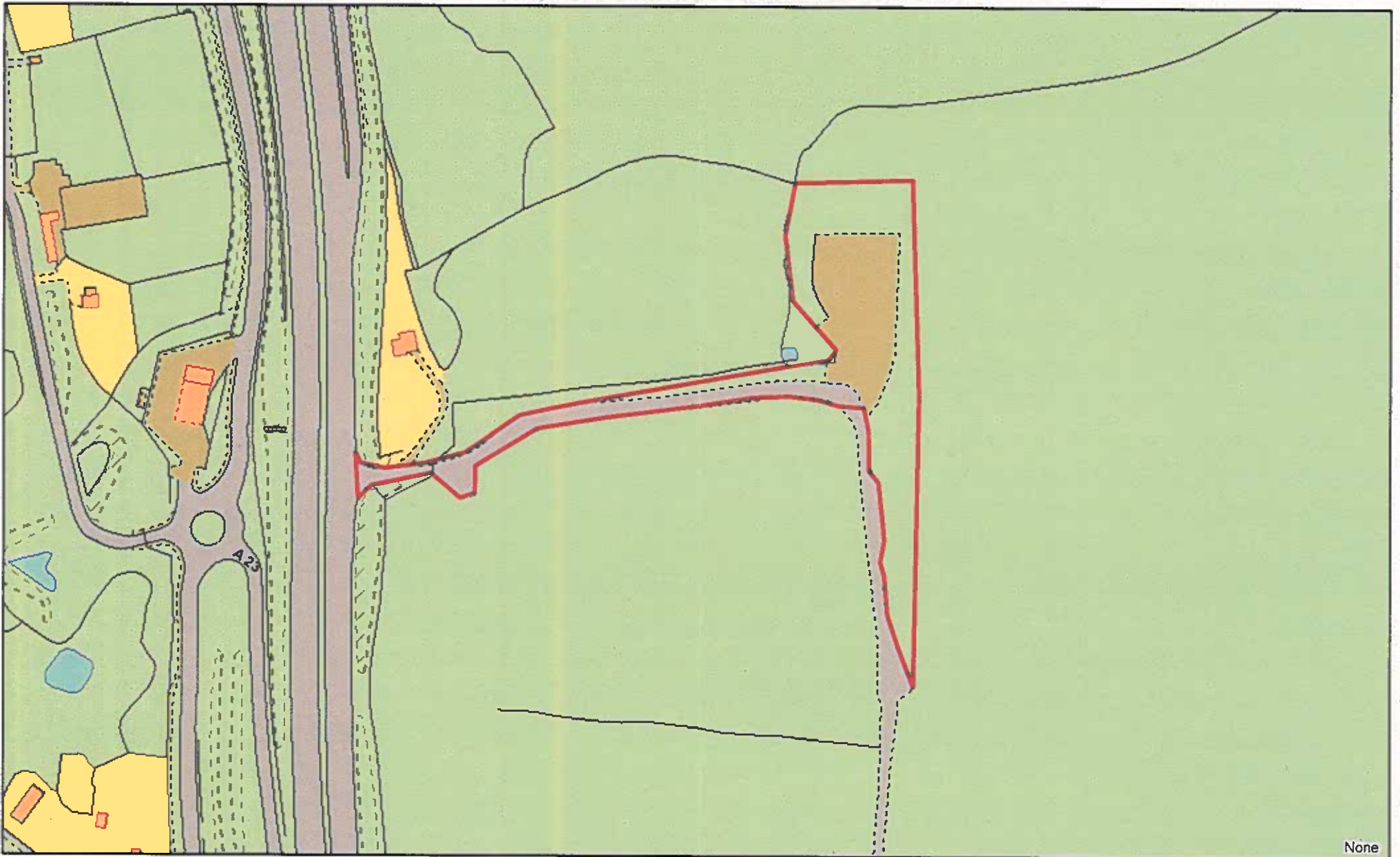
- on-line at the Appeals Casework Portal (<https://acp.planninginspectorate.gov.uk/>); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that we receive your appeal before the effective date on the enforcement notice.**

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.



None

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PJ Brown Yard, land east of Dan Tree Farm,  
off A23, Bolney

1:2,500



# APPENDIX 2

## The Planning Inspectorate

### ENFORCEMENT NOTICE APPEAL FORM (Online Version)

**WARNING:** The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

**Appeal Reference: APP/P3800/C/20/3247574**

#### A. APPELLANT DETAILS

Name	Mr. Peter Brown
Company/Group Name	PJ Brown (Construction) Ltd
Address	C/O WS Planning & Architecture Reigate RH2 7RP
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

#### A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice? Yes  No

#### B. AGENT DETAILS

Do you have an Agent acting on your behalf?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Name	Mr Spencer Copping
Company/Group Name	WS Planning & Architecture
Address	WS Planning & Architecture, Europe House Bancroft Road REIGATE Surrey RH2 7RP
Phone number	01737 225711
Fax number	01737 226311
Email	admin@wspa.co.uk
Your reference	J003220
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

### C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

West Sussex County Council

LPA reference number (if applicable)

INV/2018/10/WSCC

Date of issue of enforcement notice

27/01/2020

Effective date of enforcement notice

26/02/2020

### D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes

No



Does the appeal relate to an existing property?

Yes

No



Address

Land East of Dan Tree Farm  
off A23  
Bolney  
Grid Ref Easting: 526817  
Grid Ref Northing: 124636

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes

No



Please describe the health and safety issues

Site is in active use for storage of materials and soil recycling activities.

What is your/the appellant's interest in the land/building?

Owner



Tenant



Mortgagee



None of the above



### E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes

No



(a) That planning permission should be granted for what is alleged in the notice.



(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.



(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").



(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.



The facts are set out in

the box below

The use of site for storage purposes is considered to be immune from enforcement. This has been acknowledged by the County Planning Authority. In this regard we will be making reference to a report produced by the County Planning Authority.



(e) The notice was not properly served on everyone with an interest in the land.

The facts are set out in

the box below

The enforcement notice was not served on the owner of the access track which is included within the Land edged in red on the enforcement notice.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

The storage uses of the site are considered immune and so the steps for compliance should only refer to the cessation of the soil recycling activities.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

Our client is a small business and securing an alternative site for the activities taking place on the Land has proven extremely difficult. They have actively been seeking an alternative for some time without success. Due to the complexities of finding an alternative site, it is considered reasonable and necessary to allow the continuance of the business commitments (which includes employment) already in hand, and as such it is requested that a compliance period of 12 months be allowed.

## F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

2. Hearing

You must give detailed reasons below or in a separate document why you think a hearing is necessary. The reasons are set out in

the box below

It is considered that a hearing would be appropriate to allow for the parties to present their cases, and for the testing of evidence put forward under Grounds (d), (e), (f), and (g). It is not considered necessary for evidence to be tested under oath, or by an advocate, and it is considered that the alleged breach, and the requirements of the notice, are relatively straightforward.

Is there any further information relevant to the hearing which you need to tell us about? Yes  No

3. Inquiry

## G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes  No

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes  No

the box below

Ground (a) is not being pleaded.

## H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided?

Yes

No



## I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

[see 'Appeal Documents' section](#)

## J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

**Signature**

Mr Spencer Copping

**Date**

24/02/2020 09:51:45

**Name**

Mr Spencer Copping

**On behalf of**

Mr. Peter Brown

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018. Further information about our Data Protection policy can be found on our website under Privacy Statement.

## K. NOW SEND

### Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:  
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

**You may wish to keep a copy of the completed form for your records.**

## L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

**You will not be sent any further reminders.**

Please ensure that anything you do send by post or email is clearly marked with the reference number.

### The documents listed below were uploaded with this form:

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 01. The Enforcement Notice.  
**File name:** INV.2018.10.WSCC - Enforcement Notice.pdf  
**File name:** J003220 - Enforcement Appeal Covering Letter - 24 February 2020.pdf

**Completed by** MR SPENCER COPPING

**Date** 24/02/2020 09:51:45

# APPENDIX 3



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## Costs Decision

Inquiry Held on 10 March 2021

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

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### **Costs application in relation to Appeal Ref: APP/P3800/C/20/3247574 Land east of Dan Tree Farm, off A23 Bolney.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by P J Brown (Construction) Ltd for a full award of costs against West Sussex County Council.
  - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the making of a 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.
- 

### **Decision**

1. The application for a partial award of costs is allowed in the terms set out below.

#### **The submissions for P J Brown (Construction) Ltd**

2. The application was made at the inquiry. An enforcement notice cannot be withdrawn without good reason to avoid a costs award. In this case there are fundamental errors in the enforcement notice, including failure to require the waste use to cease. Therefore, if the enforcement notice were upheld, it would receive planning permission under Section 173(11). It is not correctable without injustice to the appellant.
3. The Council should also have consulted with the District Council. This was pointed out to the Council in a letter on the 4<sup>th</sup> March, about 4 weeks before the inquiry. There was no reply from the Council. If they had responded correctly to the letter it would have avoided attendance at the inquiry today. In any case, the 4<sup>th</sup> March is not directly relevant as the notice has always been defective from the start, so it caused wasted expense from the start.

#### **The response by West Sussex County Council**

4. The only defect accepted in the notice is the requirement to cease the waste use. The notice was served about January 2020 and the appeal was made around March 2020, about a year ago, and there was no mention of the invalidity of the notice. There was a request for more time to prepare proofs and the Council agreed. It was only on the 4<sup>th</sup> March that the invalidity of the notice was mentioned. Costs should be from the 4<sup>th</sup> March.

## Reasons

5. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. I acknowledge that the notice was defective from the start. However, it is up to the appellant to appeal on the appropriate grounds at the appropriate time. In this case there was no appeal relating to this matter at the time. Had there been such an appeal it would have allowed the Council the opportunity to consider that matter and withdraw the notice.
7. As it was this matter was only raised at a fairly late stage in the appeal process, spotted by the appellant's counsel during preparation for the inquiry. It would therefore be unreasonable to expect the Counsel to consider the appellant's arguments in this respect until it was brought to their attention.
8. I accept that from the letter of the 4<sup>th</sup> March, the Council did not withdraw the notice, even when prompted by the planning inspectorate. I therefore agree that the inquiry could have been prevented at that stage. I shall therefore make a partial award for the costs incurred from the 4<sup>th</sup> March 2021.
9. While there were other matters related to the notice that required attention, I consider that these would have been correctable and would have been de minimis in terms of wasted time or expense.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

## Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that West Sussex County Council shall pay to P J Brown the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from 4<sup>th</sup> March 2021. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to West Sussex County Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Graham Dudley*

Planning Inspector

# APPENDIX 4

Contact: Paula Slinn Solicitor 01444 477186  
[paula.slinn@midsussex.gov.uk](mailto:paula.slinn@midsussex.gov.uk)

Your Ref:

Date: 28<sup>th</sup> February  
2023

Our Ref: PS/004407

Peter John Brown  
Burlands  
Charlwood Road  
Ifield  
Crawley  
West Sussex  
RH11 0JZ

**BY FIRST CLASS RECORDED DELIVERY**

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

Dear Sir,

**Enforcement Notice - Land east of Dan Tree Farm, London Road, Bolney, West Sussex  
RH17 5QF ("the Land")  
Town and Country Planning Act 1990 (as amended) – Section 171A  
Notice Ref: EF/18/0446**

The District Council, as the relevant Planning Authority, have authorised enforcement action in respect of the material change of use of the Land from agriculture to a mixed use of the importation, processing, storage and export of waste material upon the Land; the deposition of waste material upon the Land; the storage of building materials upon the Land and the storage of plant, machinery and containers upon the Land and operational development comprising of the laying and construction of hardstanding upon the Land ("the Unauthorised Development") without the grant of the necessary planning approval.

Pursuant to Section 172 of the Town and Country Planning Act 1990, an Enforcement Notice requiring the cessation of, and the removal of the Unauthorised Development has been issued and a copy is enclosed by way of service on you as an occupier and licensee of the Land.

Should you decide to appeal against the Enforcement Notice, the enclosed information sheet from The Planning Inspectorate tells you how to make an Appeal. An additional copy of the Enforcement Notice is enclosed for attaching to any Appeal Forms.

Any appeal to The Planning Inspectorate should reach them before the Notice takes effect on **31<sup>st</sup> March 2023**.

Yours faithfully,



Paula Slinn  
Solicitor

On behalf of Kevin Toogood, Assistant Director, Legal & Democratic Services (Corporate Solicitor)

Enc.

*Working together for a better Mid Sussex*



INVESTOR IN PEOPLE

**Head of Regulatory Services  
and Monitoring Officer**





Customer Support Team  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Direct Line 0303-444 5000  
Email [enquiries@planninginspectorate.gov.uk](mailto:enquiries@planninginspectorate.gov.uk)

## THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Appeals Casework Portal (<https://acp.planninginspectorate.gov.uk/>); or
- sending us enforcement appeal forms, which can be obtained by contacting us on the details above.

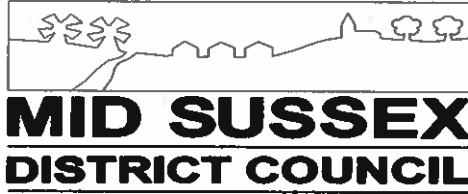
**You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the enforcement notice.**

Please read the appeal guidance documents at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

We MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.



**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)**

**ENFORCEMENT NOTICE**

**OPERATIONAL DEVELOPMENT AND MATERIAL CHANGE OF USE**

Issued by **MID SUSSEX DISTRICT COUNCIL** ("the Council")

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, under section 171A(1)(a) of the above Act, at the Land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the Development Plan and to other material planning considerations. The Explanatory Note at the end of the Notice and the enclosures to which it refers, contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land east of Dan Tree Farm, London Road, Bolney, West Sussex RH17 5QF ("the Land") shown edged red on the attached plan ("the Plan").

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

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 material 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.

("the Unauthorised Development").

#### **4. REASONS WHY IT IS CONSIDERED EXPEDIENT TO ISSUE THIS NOTICE**

- 4.1 It appears to the Council that the above breach of planning control stated in 3.1 above has occurred within the last 10 years and constitutes unauthorised development..
- 4.2 It appears to the Council that the above breach of planning control stated in 3.2 above has occurred within the last 4 years and constitutes unauthorised development.
- 4.3 The Unauthorised Development is located in a rural area and is unrelated to the needs of agriculture and is considered contrary to policies DP12 and DP16 of the Mid Sussex District Plan 2014 – 2031, policies W3, W4, W8 and W9 of the West Sussex Waste Local Plan 2014 – 2031, policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan 2015-2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 177 of the National Planning Policy Framework 2021.
- 4.4 By virtue of its location, scale and appearance the Unauthorised Development causes harm to the visual amenity of the rural area and the High Weald Area of Outstanding Natural Beauty in which it lies contrary to policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan 2014 – 2031, policies W11, W12 and W13 of the West Sussex Waste Local Plan April 2014 - 2031 policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan 2015-2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the National Planning Policy Framework 2021.
- 4.5 By virtue of the location and scale of the Unauthorised Development it represents a severe impact upon the safety of the local highway network contrary to policy DP21 of the Mid Sussex District Plan 2014 – 2031 and policy W18 of the West Sussex Waste Local Plan April 2014 – 2031 and paragraphs 110 and 111 of the National Planning Policy Framework 2021.
- 4.6 By virtue of the use, siting, scale and material construction of the Unauthorised Development it represents a risk to land and water contamination contrary to policies DP41 and DP42 of the Mid Sussex District Plan 2014 – 2031 and paragraph 183 of the National Planning Policy Framework 2021
- 4.7 By virtue of the use, siting and scale of the Unauthorised Development it causes harm to the adjacent ancient woodland and biodiversity of the Land contrary to policies DP27 and DP38 of the Mid Sussex District Plan 2014 – 2031 and policies W14, W16 and W19 of the West Sussex Waste Local Plan April 2014 – 2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 174 of the National Planning Policy Framework 2021.

4.8 The Council does not consider that planning permission for the Unauthorised Development should be given because it is contrary to the policies of the development plans and planning conditions could not overcome these objections to the Unauthorised Development.

## **5. WHAT YOU ARE REQUIRED TO DO**

- 5.1 Cease the use of the Land for the importation, processing and export of waste material.
- 5.2 Cease the use of the Land for the deposition of waste material.
- 5.3 Cease the use of the Land for the storage of waste and building materials.
- 5.4 Cease the use of the Land for the storage of plant, machinery and containers.
- 5.5 Remove from the Land all plant, machinery, equipment, containers and vehicles.
- 5.6 Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the Unauthorised Development
- 5.7 Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked 'A' on the Plan.
- 5.8 Remove from the Land the portacabin sited in the approximate position marked 'A' on the Plan.
- 5.9 Remove from the Land the containers sited in the approximate position marked 'B' on the Plan.
- 5.10 Remove from the Land the hardstanding marked outlined in blue on the Plan.
- 5.11 Remove from the Land to an authorised place of disposal all debris and materials as a result of compliance with step 5.10 above.
- 5.12 Reinstate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land.

## **6. TIME FOR COMPLIANCE:**

- 6.1 The time for compliance with requirement 5.1, 5.2 and 5.3 is 7 days after this Notice takes effect.
- 6.2 The time for compliance with requirements, 5.4, 5.5, 5.7, 5.8 and 5.9 is 14 days after this Notice takes effect.
- 6.3 The time for compliance with requirements 5.6, 5.10 and 5.11 is 28 days after this Notice takes effect.
- 6.4 The time for compliance with requirement 5.12 is 3 months after this Notice takes effect.

## **7. WHEN THIS NOTICE TAKES EFFECT**

**THIS NOTICE TAKES EFFECT ON 31st March 2023** unless an appeal is made against it beforehand.

Dated: 28<sup>th</sup> February 2023



Signed  
Authorised Officer on behalf of  
Mid Sussex District Council

Notice Ref: EF/18/0446  
Address to which all communications should be sent:  
Assistant Director, Planning & Sustainable Economy,  
Mid Sussex District Council,  
Oaklands, Oaklands Road,  
Haywards Heath, West Sussex, RH16 1SS  
[www.midsussex.gov.uk](http://www.midsussex.gov.uk)

## **EXPLANATORY NOTE**

This Enforcement Notice has been served on the following persons whose names and addresses are set out below:

PJ Brown (Civil Engineering) Ltd  
Burlands Farm  
Charlwood Road  
Crawley  
West Sussex  
RH11 0JZ

Peter John Brown  
Burlands  
Charlwood Road  
Ifield  
Crawley  
West Sussex  
RH11 0JZ

Mr Dane Rawlins  
Bolney Park Farm  
Broxmead Lane  
Bolney  
Haywards Heath  
West Sussex  
RH17 5RJ

Mrs Maureen Rawlins  
Bolney Park Farm  
Broxmead Lane  
Bolney  
Haywards Heath  
West Sussex  
RH17 5RJ

BARCLAYS BANK UK PLC (Co. Regn. No.9740322)  
P.O. Box 187  
Leeds  
LS11 1AN

SARAH CATHERINE WRIGHT  
Park Farm Cottage  
Broxmead Lane  
Bolney  
West Sussex  
RH17 5RJ

## **YOUR RIGHT OF APPEAL**

You can appeal against this Notice, but you must ensure that you send your appeal soon enough so that it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before the date specified in paragraph 7 above.

The enclosed information sheet from The Planning Inspectorate tells you how to make an appeal. Read it carefully. Under Section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following Grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the Enforcement Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the Enforcement Notice were not served as required by Section 172;
- (f) that the steps required by the Enforcement Notice to be taken, or the activities required by the Enforcement Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the Enforcement Notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

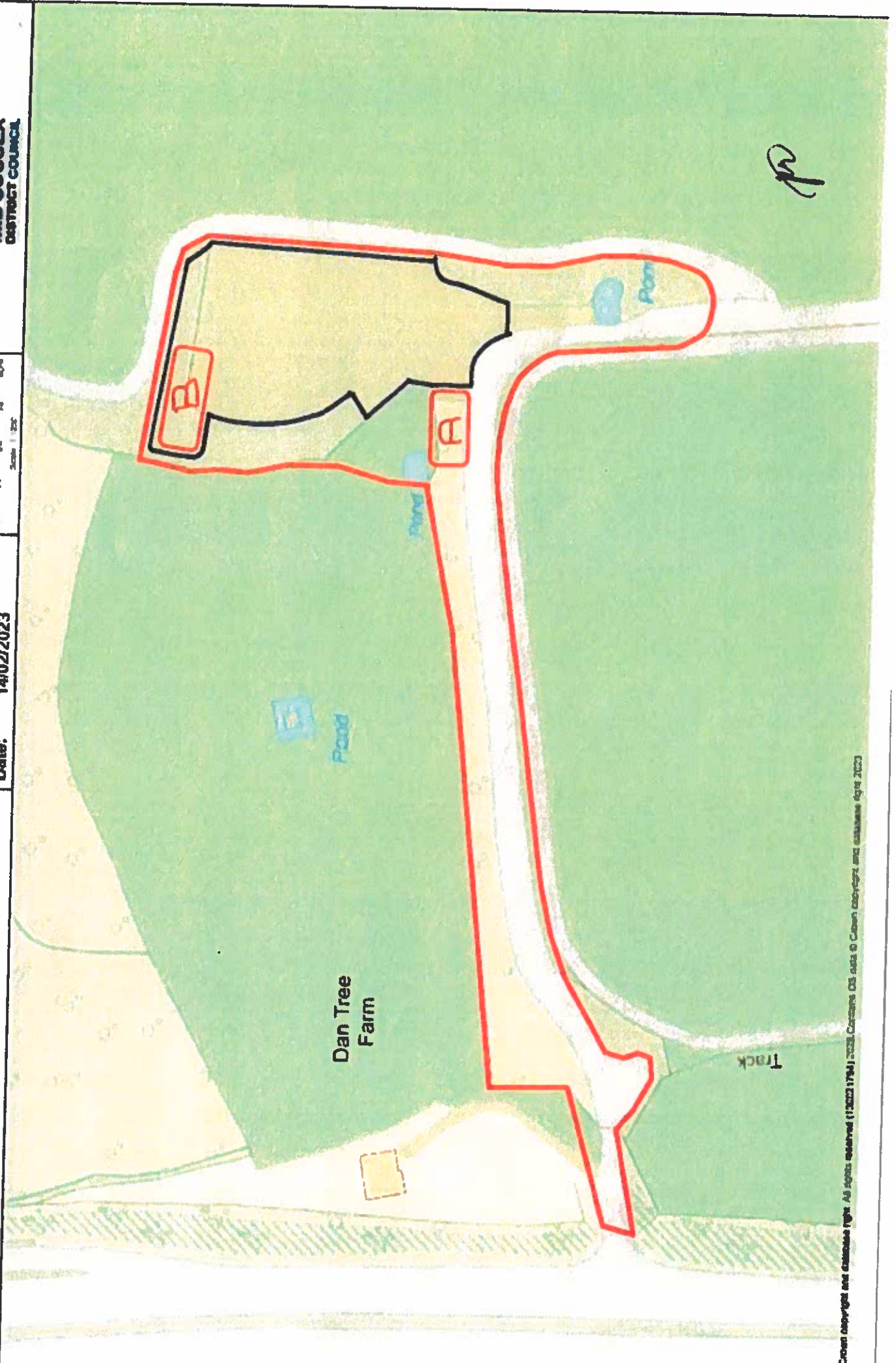
Not all of these Grounds may be relevant to you.

If you appeal under Ground (a) this is equivalent of applying for planning permission for the development alleged in the Enforcement Notice and you will have to pay a fee of £7,020 You should pay this fee to the Council's Assistant Director, Planning & Sustainable Economy, at this address (made payable to Mid Sussex District Council). Joint appellants need only pay one set of fees. Further information with regard to fees can be obtained from the Planning Inspectorate.

You must submit to the Secretary of State either when giving notice of your appeal or within 14 days from the date on which the Secretary of State sends you a notice requiring you to do so, a written statement specifying the Grounds on which you are appealing against the Enforcement Notice and stating briefly the facts on which you propose to rely in support of each of those Grounds.

## **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this Enforcement Notice, it will take effect on the date specified in paragraph 7 above and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the Notice. Failure to comply with an Enforcement Notice, which has taken effect, can result in prosecution and/or remedial action by the Council.



*AC*





# APPENDIX 5

## The Planning Inspectorate

### ENFORCEMENT NOTICE APPEAL FORM (Online Version)

**WARNING:** The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

**Appeal Reference: APP/D3830/C/23/3319435**

#### A. APPELLANT DETAILS

Name	Mr P Brown
Company/Group Name	PJ Brown (Civil Engineering) Ltd
Address	Burlands Charlwood Road Ifield West Sussex RH11 0JZ
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

#### A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice? Yes  No

#### B. AGENT DETAILS

Do you have an Agent acting on your behalf?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Name	Mr Spencer Copping
Company/Group Name	WS Planning & Architecture
Address	WS Planning & Architecture, 5 Pool House Bancroft Road REIGATE Surrey RH2 7RP
Phone number	01737 225711
Email	admin@wspa.co.uk
Your reference	J004451
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

### C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

Mid Sussex District Council

LPA reference number (if applicable)

EF/18/0446

Date of issue of enforcement notice

28/02/2023

Effective date of enforcement notice

31/03/2023

### D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes  No

Does the appeal relate to an existing property?

Yes  No

Address

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

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes  No

Please describe the health and safety issues

The site is an active construction and demolition waste recycling site

What is your/the appellant's interest in the land/building?

Owner

Tenant

Mortgagee

None of the above

### E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes  No

(a) That planning permission should be granted for what is alleged in the notice.

The facts are set out in

see 'Appeal Documents' section

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

The facts are set out in

the box below

Refer to document titled "00 - J004451 - Grounds of Appeal letter" attached under Ground (a)

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action

against the matters stated in the notice.

The facts are set out in

the box below

Refer to document titled "00 - J004451 - Grounds of Appeal letter" attached under Ground (a)

(e) The notice was not properly served on everyone with an interest in the land.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

Refer to document titled "00 - J004451 - Grounds of Appeal letter" attached under Ground (a)

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

Refer to document titled "00 - J004451 - Grounds of Appeal letter" attached under Ground (a)

## F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

2. Hearing

3. Inquiry

You must give detailed reasons below or in a separate document why you think an inquiry is necessary.

The reasons are set out in

the box below

It is requested that the appeal 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.

(a) How long do you estimate the inquiry will last?

4 day(s)

(b) How many witnesses do you intend to call?

14

(c) Is there any further information relevant to the inquiry which you need to tell us about?

Yes

No

If so, please explain the relevant information below

Ground (a) if all issues remain disputed - Planning Witness, Landscape Witness, Highway Witness, and Appellant to describe Business' economic needs for site

Ground (d) - 11 witnesses (Including Appellant) on factual matters as indicated in "00 - J004451 - Grounds of Appeal letter", if not submitted in written format (Affdavits / Statutory Declarations) during proceedings

## G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes  No
2. Are there any planning reasons why a fee should not be paid for this appeal? Yes  No

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

## H. OTHER APPEALS

- Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes  No

## I. SUPPORTING DOCUMENTS

01. Enforcement Notice:  
 see 'Appeal Documents' section

## J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

**Signature**

Mr Spencer Copping

**Date**

29/03/2023 09:19:11

**Name**

Mr Spencer Copping

**On behalf of**

Mr P Brown

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

## K. NOW SEND

### Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:

<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>

- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

**You may wish to keep a copy of the completed form for your records.**

## L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

**You will not be sent any further reminders.**

Please ensure that anything you do send by post or email is clearly marked with the reference number.

### The documents listed below were uploaded with this form:

**Relates to Section:** GROUNDS AND FACTS  
**Document Description:** Facts to support that planning permission should be granted for what is alleged in the notice.  
**File name:** 04H - hla 394 PS01 Bolney Park Farm Planting Schedule September 20.pdf  
**File name:** 04B - hla 394 01 Location and Block Plan September 20.pdf  
**File name:** 04F - hla 394 04 Planting Plan September 20.pdf  
**File name:** 04D - hla 394 03 sections A A and B B September 20.pdf  
**File name:** 04C - hla 394 02 Existing and proposed contours plan September 20.pdf  
**File name:** 00 - J004451 - Grounds of Appeal - 28 March 2023.pdf  
**File name:** 04A - hla 394 R01 Bolney Park Farm LVIA September 20.pdf  
**File name:** 05 - Application Highway Documents WSCC.077.11.BK.pdf

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 01. The Enforcement Notice.  
**File name:** 02 - EF.18.00446 - Enforcement Notice & Plan.pdf

**Completed by** MR SPENCER COPPING

**Date** 29/03/2023 09:19:11



# APPENDIX 6

The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

28 March 2023

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

Dear Sir or Madam,

**Appeal by PJ Brown (Civil Engineering) Ltd against the service of an enforcement notice on Land East of Dan Tree Farm, London Road, Bolney, West Sussex, RH17 5QF**

I refer to the above. WS Planning & Architecture have been instructed by PJ Brown (Civil Engineering) Ltd to prepare and submit an appeal against an enforcement notice served 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”*

**WS Planning & Architecture**

[enquiries@wspa.co.uk](mailto:enquiries@wspa.co.uk) | [wspa.co.uk](http://wspa.co.uk)

Reg Office: 5 Pool House, Bancroft Road, Reigate Surrey, RH2 7RP  
Company No. GB3763487 | WS Planning & Architecture is a trading name of Woods, Sanders & Co Ltd

Managing Director: Mr B Woods BA TP MRTPI

Planning Director: Mr S Copping BA (Hons) DipTP MRTPI

Architectural Director: Mr L Barker BA (Hons) BArch (Hons) RIBA

**Surrey Office**

5 Pool House  
Bancroft Road  
Reigate  
Surrey RH2 7RP

+44 (0)1737 225 711

**London Office**

No. 1 Croydon  
11th Floor  
12-16 Addiscombe Rd  
Croydon CR0 0XT

+44 (0)20 3828 1180

**Kent Office**

Brouard Architects  
83 High Street  
Farnborough Village  
Kent BR6 7BB

+44 (0)1689 857 253



## **Preliminary Matters**

The appellant proposes to appeal under grounds (a), (b), (d), (f), and (g) of section 174(2) of the Town and Country Planning Act 1990. It is requested that the appeal 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.

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.

Simply put, the service of the enforcement notice must be responded to by way of an appeal on account of the best interests of real people, whose livelihoods would be at genuine risk by virtue of the loss of this site, and comes at a time of economic instability.

The site is in a sustainable location, well related to the trunk road and motorway network in West and East Sussex and Kent. It has no significant impact on residential or public amenity; its impact on landscape is largely localised and there are no impacts on sensitive receptors. Whilst its presence in the current location may not be compliant with rural development policies, this kind of use is difficult to accommodate within urban areas without multiple impacts.

## **Executive Summary**

The appeal is made under grounds (a), (b), (d), (f) and (g) of section 174(2) of the Town and Country Planning Act 1990 against an Enforcement Notice served by the District Planning Authority.

It will be demonstrated that Planning Permission ought to be granted for the development (“the ground (a) appeal”).

It will be demonstrated that at the time of serving the notice, it was too late to take enforcement action against the matters alleged in the notice (“the ground (d) appeal”), i.e. the development was in situ as of 28 February 2013, and has been in continuous operation since before this date and is now immune from enforcement. Evidence will be given by both employees and clients of the appellant. It is assumed that the evidence would be given on oath and subject to cross examination by an advocate.

It will be submitted that the steps to comply with the notice are excessive and that lesser steps would overcome the objections (“the ground (f) appeal”).

Without prejudice to the ground (d) appeal, if the appeals under grounds (a), (d), and (f) fail, then it will be requested that a longer period for compliance with the notice be allowed due to the small business nature of the appellant and their activities on the site, the economic vulnerability of its workforce if the development cannot be relocated and accommodated locally and the lack of alternative operating sites (“the ground (g) appeal”). The time scale for compliance with the requirements of the Notice is unrealistically short, especially having regard to the length of time that the site has been in operation for the current use.

The Ground (a) appeal and the deemed application is progressed without prejudice to the appeals being progressed under any of the other grounds.

### **The Enforcement Notice**

This letter sets out the appellant’s “Grounds of Appeal”, and it is submitted that the appeal proceeds on Grounds (a), (d), (f) and (g). In support of the appeal, we attach,

- 01 Completed appeal forms,
- 02 Enforcement Notice and Plan,
- 03 Deemed Application Fee,
- 04 HLA.394.R01 - LVIA September 2020,
- 05 Application Highway Documents WSCC/077/11/BK

The Enforcement Notice requires that the appellants,

- 5.1 Cease the use of the Land for the importation, processing and export of waste material,
- 5.2 Cease the use of the Land for the deposition of waste material,
- 5.3 Cease the use of the Land for the storage of waste and building materials.
- 5.4 Cease the use of the Land for the storage of plant, machinery, and containers.
- 5.5 Remove from the Land all plant, machinery, equipment, containers and vehicles.
- 5.6 Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the Unauthorised Development.
- 5.7 Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked “A” on the Plan.
- 5.8 Remove from the Land the portacabin sited in the approximate position marked “A” on the Plan.
- 5.9 Remove from the Land the containers sited in the approximate position marked “B” on the Plan.
- 5.10 Remove from the Land the hardstanding marked outlined in blue on the Plan.
- 5.11 Remove from the Land to an authorised place of disposal all debris material as a result of compliance with steps 5.10 above.
- 5.12 Reinstate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land.

The Notice requires the above steps be complied with,

5.1, 5.2, and 5.3 **within 7 Days**,

5.4, 5.5, 5.7, 5.8, and 5.9 **within 14 Days**,

5.6, 5.10, and 5.11 **within 28 Days**,

And 5.12 **within 3 months** of the Notice taking effect.

The Notice was served by the Local Planning Authority on 28 February 2023, and it is considered that the baseline for any immunity claims is the date 28 February 2013 for any material change of use, and 28 February 2019 for operational development.

### **Grounds of Appeal**

The appellant submits that the Ground (d) case ought to be considered first and foremost. Consideration needs to be given to the baseline of the development, which if Ground (d) were to fail in its entirety, would be as a greenfield agricultural site.

The ground (a) appeal is progressed without prejudice to the appeals progressed under any of the other grounds.

#### **Ground (b) - That the breach of control alleged in the enforcement notice has not occurred as a matter of fact**

The Ground (b) case concerns the reference within the alleged breach of planning control to the deposition of waste material upon the land. These activities, in simple terms, do not actually occur. There is no **permanent deposit** of waste on the land, and the operations that actually take place are the transfer and treatment of construction and demolition waste, which is considered to be adequately covered by 3.1.1.

The appellant will demonstrate that there is no permanent deposition of waste material that occurs on the Land, and that therefore, by virtue of the ambiguous wording and the technical meaning of “deposition of waste” suggesting that a permanent deposit has occurred, that this wording will need to be deleted from the Not in its entirety, if this can be done without causing prejudice to the parties.

#### **Ground (d) - That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice**

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**

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.

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, or uses, of the land is, on the balance of probabilities, immune from enforcement action 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. The appellant will seek to provide this unambiguous evidence, such that on the balance of probabilities, the uses and operational works are found to be immune from enforcement action.

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. The appellant's position is that the use has been continuous for a substantial period of time, in excess of the requisite 10 year period.

In *Bansall v SSHCLG* [2021] EWHC 1604 (Admin) it was established that more than de minimis breaks in the use, such that the Council could not have taken enforcement action, breaks the chain of continuity and the 10-year period starts afresh. It is the appellants position that there has not been a material change of use in the land, nor a break in the use itself, and that the alleged breach has been continuous throughout the period.



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. The appellants request that the LPA provide a copy of the Enforcement Officer’s authorisation report such that it can be understood what the LPA base their action upon, and to discern whether they are alleging that there has been a material change of use by virtue of the intensification of the land.

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.”*

As has already been stated, the appellants request that the LPA provide a copy of the Enforcement Officer’s authorisation report such that it can be understood what the LPA base their action upon, and to discern whether they are alleging that there has been a material change of use by virtue of the intensification of the land. The appellants position is that the character of land has not altered by virtue of any intensification.

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 will also be evidence from independent third parties not associated with the continued activities of the appellant, which corroborates the appellants evidence, and will be fully explored within the appellants statement of case.

The operations of the appellant at the appeal site have some storied history. This will be fully detailed within a Statement of Case, and supplemented by individual proofs of

evidence provided by witnesses. It is considered that there will be a need for the testing of this factual evidence under oath.

The appellant originally undertook work for South East Tipping at Bolney Park Farm, Brxomead Lane, West Sussex, RH17 5RJ from around 2004. In 2006 they assumed the tenancy contract for the Land and have held an established interest in the yard since then. Since 2006 the appeal site has been in use for the storage of containers, which often have smaller machinery stored within them, vehicles, and both soil screening and concrete crushing activities.

In 2007 the appellant began their formal renting of the yard, and paid advance rental fees to the landowner, indicating their intent to continue operating at the site for some time. At this time the appellant began using the yard for inert physical recycling works (Crushing, screening etc) and, whilst both their own records and Finning UK Ltd's were not well kept at the time, it will be confirmed that the repair and maintenance works to the plant which will be referred to within those invoices and servicing documents does indeed relate to the appeal site, and not to the appellants involvement with any works on the rest of the land at Bolney Park Farm, or its surrounds.

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.

The appellants will rely upon a series of annotated aerial images detailing particulars of the various "items" therein, which will be supplemented by evidence under oath from a number of witnesses with regard to matters of fact.

The operations of the appellant have been continuous, in their current form, since at least 26 January 2010.

The appellant will seek to call a number of factual witnesses to give evidence under oath or to provided sworn affidavits, these persons are listed below,

- Dane Rawlins, Landowner of Bolney Park Farm,

- Peter Brown, Managing Director of PJ Brown (Civil Engineering) Ltd
- Dave Fleming, Director 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,

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.

In summary, it is considered that the use of the land for **‘the importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes’** is immune from enforcement action by virtue of the passage of time. That time being, 10 years for the material change of use of the land for the importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes, and 4 years for the operational development of the hardstanding formation.

On the matter of the hardstanding referenced within the alleged breach, it is important to note that even if the case were to be presented that the hardstanding, as operational development, has facilitated the change of use also alleged within the breach, it has been in existence without the benefit of planning permission for a period of in excess of 10 years prior to the service of **this Notice** which is subject of this appeal, and is not a development that has previously been identified as continuing to be in breach of planning control. As operational development it is subject to the four year rule in section 171B(1) It has therefore become immune from action after 4 years prior to the service of the Notice, see *Ocado Retail Ltd, R (On the Application Of) v London Borough Of Islington [2021] EWHC 1509 (Admin)*. Indeed, the aerial imagery that will be relied upon will evidence the hardstanding having been present for an excess of 10 years.

It will therefore be requested that the Inspector quash the notice on legal grounds, such that the prepared Certificate of Lawfulness application can be submitted, and considered by the LPA, and that the matter of this site and its use can finally be brought to a close.

Ground (a) - That planning permission should be granted for what is alleged in the notice

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.

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

The LPA cite the general location of the site, being rural and unrelated to the needs of agriculture as their 3<sup>rd</sup> reason for issuing the Notice (Reason 4.3). The appellants case is that they disagree with this position, and the position presented by the LPA as there being no overriding justification for the location of the development here, at the appeal site. This position is firmed up by the fact that there are no available alternative sites for the use undertaken, that there is shortage nationally and locally for such sites, which will be required for the future, and that these developments simply cannot be situated next door to residential uses or within urban areas for a variety of reasons, and require a rural location by their very nature. The recycling of inert construction & demolition waste material, and its re-use in new development, is a key component of achieving the Environmental Sustainability objective of the National Planning Policy Framework. The site is recognised and permitted by the Environment Agency, having been the subject of a permit since October 2020 Put simply, construction & demolition waste being sent to landfill is not sustainable, and significantly harmful to the environment. 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. Chapter 4 of the 25 Year Environment Plan sets out how England will work towards achieving these goals. 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.

The second aspect of the appellants case is the economic need for this site, which is tempered by the lack of available alternative sites. The appellant will detail the lack of success that they have had in securing an alternative site, and welcome the LPA and CPA to sit down around a table and discuss the matter, as if an alternative site could be secured, then this appeal may not be necessary.

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. A Landscape Visual Impact Assessment was undertaken by the appellants in September 2020, and concluded that *“at national, regional, county and district scales it was judged that the Operation has had **Minor Significance (Adverse)** since 2006 and after planting would be established. At a local scale it is judged that the Operation has had **Minor to Moderate Significance (Adverse)** since 2005 and **Minor Significance (Adverse)** after planting would have established. The sensitively designed new landform and the new native planting proposals would incrementally enhance the existing local High Weald character, further obscure and screen the operations and enhance biodiversity.”* The cumulative impacts of the development were judged as being **not significant**. Therefore, the appellant does not agree with the 4<sup>th</sup> reason for issuing the Notice (Reason 4.4).

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. Within the permission granted under WSCC/077/11/BK, a report was submitted, and the conclusions of the report agreed by Highways England. This document is submitted alongside these grounds of appeal. The appellants base their dispute against the 5<sup>th</sup> reason for issuing the Notice (Reason 4.5) in that the continued use of the site, for a limited period of time, with certain restrictions on movement hours, would not result in a severe impact upon the safety of the local highway network. The

appellant will seek to produce evidence to substantiate this position, and welcomes discussion with the LPA as to whether this issue can become a matter not in dispute.

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 6<sup>th</sup> reason for issuing the Notice (Reason 4.6). The appellant will seek to produce evidence to substantiate this position, and welcomes discussion with the LPA as to whether this issue can become a matter not in dispute.

The LPA cite the nearby ancient woodland as being affected by the development and continued operations. The appellants disagree with the 7<sup>th</sup> reason for issuing the Notice (Reason 4.7) 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. The appellant will seek to produce evidence to substantiate this position, and welcomes discussion with the LPA as to whether this issue can become a matter not in dispute.

A Noise Impact Assessment was also undertaken by the appellants which demonstrated no harm to nearby residences. A copy of this can be provided on request.

In summary, the development has material considerations that outweigh the identified policy conflict, and is wholly justified to be within this rural location. It will therefore be requested that planning permission, on a temporary basis of 4 years be allowed, without prejudice to the Ground (d) appeal, in the event that the Ground (d) appeal fail.

Ground (f) - The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

Lastly, issue is taken with the Plan attached to the Notice. This plan includes within it, the access to the highway boundary. 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. 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 as it is, 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. 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 track 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 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 track.

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

Ground (g) - The time given to comply with the notice is too short

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.

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.

PJ Brown (Civil Engineering) Ltd is a medium 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.

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.

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.

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.

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.

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.

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.

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.

## **Conclusion**

In conclusion, it is requested that the LPA reconsider the Notice itself, and review the evidence submitted under Ground (d) before any further work is undertaken on the appeal by the appellant. 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.

It will be submitted that two separate operational developments have been undertaken, and one of the earlier of these developments is immune from enforcement, and thus the notice should be quashed if it is not amended.

In the event that the Ground (a) appeal is considered, it will be submitted that planning permission ought to be granted for the development.

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).

In the event the Notice is upheld, it will be requested that a period of 24 months be allowed for compliance with the Notice.

The appellant reserves the right to prepare further evidence in support of the appeals through the preparation and submission of a detailed statement of case.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Brownjohn', written in a cursive style.

**Peter Brownjohn**  
**Senior Planner**

# APPENDIX 7

Neutral Citation Number: [2009] EWHC 3841 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Friday, 18 December 2009

**Before :**

**David Elvin QC**

**(sitting as a Deputy High Court Judge)**

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**Between :**

**THE QUEEN**

**ON THE APPLICATION OF  
EAST SUSSEX COUNTY COUNCIL**

**Claimant**

**and**

**(1) SECRETARY OF STATE FOR COMMUNITIES  
AND LOCAL GOVERNMENT**

**(2) MICHAEL ROBINS**

**(3) GARY ROBINS**

**Defendants**

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WordWave International Limited  
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165 Fleet Street London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7831 8838  
(Official Shorthand Writers to the Court)

**Miss L Busch** (instructed by Sharpe Pritchard) appeared on behalf of the Claimant

**Mr J Clay** (instructed by Heringtons) appeared on behalf of the Second and Third  
Defendants

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**APPPROVED JUDGMENT**

## The Deputy Judge (David Elvin QC):

1. This is an application under section 289 of the Town and Country Planning Act 1990 (“the 1990 Act”) for permission to challenge an enforcement appeal decision of the Secretary of State's inspector given by letter dated 7th August 2009 (“the decision letter”), allowing an appeal against an enforcement notice served by the applicant, East Sussex County Council (“the County Council”), which notice was dated 19th November 2008 (“the Notice”). At the hearing Miss Busch represented the applicant County Council and Mr Clay represented the second and third defendants, Mr Michael and Mr Gary Robins, who were the successful appellants against the enforcement notice before the inspector. The Secretary of State was not represented.
2. While this is a permission hearing, this concerns an appeal following an enforcement inquiry which turned substantially on a point of law and evidence was not called. Although the issue before me may be considered susceptible of argument up to a point, I have formed a clear view on the legal issue which lies at the heart of this application. Since I have concluded that the inspector was plainly correct as a matter of law, the challenge must fail. I therefore will refuse permission but, given the circumstances, it seems appropriate that I should explain in a little more detail than usual for a permission hearing why I have reached this decision.
3. The enforcement notice relates to a site at Robins of Herstmonceux, Sandbanks, Chilsham Lane, Herstmonceux in East Sussex, shown on a plan attached to the enforcement notice comprising two parcels lettered A and B. Although it is not material to this application the site lies in the countryside forming part of the High Weald Area of Outstanding Natural Beauty which is subject to highly restrictive planning policies protective of its visual amenity and nationally important landscape qualities.
4. The Notice was issued under section 171A(1) (a) of the 1990 Act and, having described the land, it recited that:

“**This notice** is issued by the Council because it appears to them that there has been a breach of planning control within paragraph (a) of Section 171A(1) of the above Act, at the land. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations.”

5. The Notice alleged the following breach of planning control:

“Without planning permission there has been an unauthorised change of use of the land to a mixed use of land including for the importation, deposit, processing and storage of waste materials.”

6. It then stated the reasons its issue, which related to adverse effect on the AONB and through traffic in narrow country lanes, and then set out the steps to be taken in order to restore matters and remedy the breaches of planning control:

"What are you required to do:

1. Cease the use of the land (Areas A and B) for the importation, deposit, storage and processing of waste material. The term 'waste

materials' includes, but is not exclusively, concrete, bricks, paving slabs, hardcore, road planings, tyres, plastics, metals and cable.

The time for compliance: one day after this Notice takes effect."

7. Two further steps were specified, both with their own times for compliance, three in all, but like reason 1, which I have quoted, all related to removing the effects of waste activities -- if I can put it that crudely -- on the site and restoring the land.
8. The notice was said to take effect on 20th December 2008, unless it was appealed. The attached plan shows two areas of land, but it is common ground before me, as it was before the inspector, that the areas of land comprised a single planning unit over which it was alleged there had been a single breach of planning control, namely a material change of use to a mixed use relating to waste as set out above.
9. The Robinses appealed the Notice, thus suspending its effect, on grounds (b), (d), (f) and (g) set out in section 174(2) of the 1990 Act. It is important to note the following matters which were common ground between the parties. Firstly, as I have already mentioned, although two areas were shown on the plan attached to the Notice it was common ground that they formed a single planning unit. Secondly, the breach of planning control was a breach caused by the material change to a single though mixed use comprising waste and related uses. Thirdly, the mixed use comprised matters which were both "county matters", i.e. matters within the scope of the powers and duties of the county council as planning authority and also matters within the scope of the powers of the district council as local planning authority within section 1 of the 1990 Act (which I will refer to as "district matters" for convenience). The definition of what is a "county matter" is found in s. 1(5)(c) and Schedule 1 to the 1990 Act. It is at the heart of the issue before me that the mixed use was a single composite use although it comprised what might be termed both county and district elements. Section 1(5)(c) excepts from the general allocation in section 1 of planning functions between local and county planning authorities those functions which are specified in Schedule 1.
10. The County Council maintains that at no time (save in respect of a minor issue recorded at paragraph 19 of the decision letter) has it sought to under-enforce in respect of the breach of planning control specified in the Notice. On that basis, certain elements of the mixed use which were not the subject of the required remedial action by the Notice would receive deemed planning permission under section 173(11) of the 1990 Act. The County Council's case was that the county and district elements of the mixed use should both be enforced against but, since the County Council only had power to enforce against county matters, it was possible to "decouple", or separate, the county and district elements of the breach of planning control and enforce only against the county matters, that is to say those relating to waste activities.
11. Miss Busch confirmed that it had been made it clear to the inspector that the intention of the County Council was simply to decouple the district matters from the enforcement notice so as to avoid the deeming effect of section 173(11) in respect of them in reliance on what was perceived to be the effect of the Court of Appeal's judgment in **Fidler v The First Secretary of State** (2005) 1 P & CR 12.
12. Mr Michael Robins and Mr Gary Robins appealed to the Secretary of State and alleged that the notice was fatally flawed having regard to the requirements of section



173 of the 1990 Act and the guidance in Section 2 of the Annex to Circular 10/97 "Enforcing Planning Control". The Robinses' planning witness, Mr Noel (who also provided a witness statement in the proceedings), made it clear in his proof of evidence (section 6 in particular), exchanged in advance of the inquiry, that the Notice failed to specify the various elements of the alleged change of use to a mixed use and set out in some detail and discussed what the elements might be and why they were objectionable.

13. As the inspector stated in paragraph 3 of the parallel costs decision letter, which was issued with the decision letter on the enforcement appeal on 7th August 2009:

"The appellants' evidence gave clear notice of the issues that would be advanced with regard to the contents of the notice and the letter from the Planning Inspectorate dated 24 July 2009 also drew attention to the eventual outcome of the appeal as one of the options likely to be available. The County Council accepts that the points put in relation to its interpretation at paragraphs 2.10 and 2.11 of *Circular 10 of 97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements*, which would require an explicit departure from established national policy, are uncertain."

14. As that passage notes, PINS had written a letter at the inspector's request on 24th July, although I accept, as Miss Busch stated, that the letter was received only one working day prior to the commencement of the inquiry. Nonetheless the position had been made clear, as the inspector found, from the appellant's planning evidence.

15. At the appeal the inspector heard submissions regarding the form of the Notice and the allegations of the breach and the consequences of correction of the Notice and submissions which appear to be substantially along the lines of those that were advanced to me by Miss Busch today – in other words, that it was possible to decouple county and district matters so that the County Council could enforce against county matters only and avoid engaging section 173(11) and deeming planning permission for the district elements of the breach.

16. The inspector allowed the appeal and directed that the Notice be quashed and made an award of costs against the County Council. He did so, rejecting Miss Busch's submissions, because of what he identified as defects in the Notice which he considered could not be cured by amendment without causing prejudice to the appellants.

17. In paragraph 2 of the decision letter the inspector noted that the inquiry had proceeded solely on the basis of submissions and that evidence had not been called. Exceptionally, the inspector had announced his decision at the inquiry and at paragraph 3 noted that it was not necessary to carry out a site visit because of his decision. At paragraphs 5 and 6 he set out the background to his decision, including the following:

"6. Having reviewed the submitted evidence, a letter to the parties from the Planning Inspectorate dated 24 July 2009 expressed my view that, having regard to the advice in *Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements*, the allegation was uncertain and that it would have to be corrected to

enable a proper consideration of the grounds (d) appeal."

18. At paragraphs 7 to 12 he recorded the evidence and the submissions of both sides. In particular, he recorded the submissions of Miss Busch at paragraphs 10 and 11 that **Fidler v The First Secretary of State** permitted a planning authority to distinguish between breaches of planning control and to avoid taking enforcement action which amounted to under-enforcement with the effect of deeming the grant of planning permission as a result of section 173(11). He also noted the submission that paragraph 2.10 of the Annex Circular 10/97 had to be read in the light of that analysis and the fact that under-enforcement was permitted as Carnwath LJ had noted in the **Fidler** case. He referred to the fact that there had been some to-ing and fro-ing over the course of the inquiry, considering various forms of amendment to the notice which had been proposed. At paragraphs 13 to 22 the inspector set out his decision and conclusions:

"13. The form of words used in any notice is a matter for the local planning authority. However, the principle established in *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196 is that the person to whom the notice is issued must be told fairly what he had done wrong and what he must do to remedy it from within the four corners of the document. In my opinion, the notice that is the subject of this appeal does not meet that test. In particular, the use of the word 'including' in the allegation confirms that not all the components of the mixed use alleged have been identified. Furthermore, requirement (ii) as set out above seeks to protect activities which are not specified in the allegation. Therefore, the issue for me to consider is whether the notice may be corrected and/or varied using the power available under S176(1) of the Act without causing injustice to either party.

14. The effect of S173(11) is also material to my consideration. This provides that where an enforcement notice could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement, (under-enforcement), which has been complied with, then planning permission shall be deemed to be granted under S73A for that operation or use once the notice has been fully complied with.

15. Whether a particular notice 'could have required' something is contingent upon the terms of the allegation. Where there are allegedly unlawful activities or works on the land but they are not referred to in the allegation, the notice could not have required them to cease or be removed and S173(11) does not impact upon them except where they are integral to and/or facilitate the material change of use. My understanding of the section of the EPL referred to me by Miss Busch is that it does no more than confirm this principle.

16. Where it emerges during an appeal that they have inadvertently omitted any component of the mixed use from the allegation local planning authorities are advised in paragraph 2.11 of Circular 10/97 how they might avoid planning permission being granted under S173(11) in mixed use cases, such as that before me. In short, that

advice is to withdraw the notice and issue another.

17. In my opinion, this paragraph and the passages in the EPL read together highlight the potential consequences of an incomplete description of an alleged mixed use and reinforce the importance of an accurate specification in the notice as set out in paragraph 2.10 of Circular 10/97. For this reason I do not accept the construction that Miss Busch placed upon these passages in her submission and disagree with her that the provisions of paragraph 2.10 of Circular 10/97 do not apply in this case.

18. Moreover, I appreciate that the County Council has focussed on those matters within its remit in drafting the notice and, in that respect, believe that the omission of other components of the mixed use to be intentional rather than inadvertent. Nevertheless, in the County Council's written evidence there is also the suggestion that the District Council is investigating the appropriateness of enforcement action being taken in respect of another aspect of the use of the site. This illustrates the difficulty faced by the appellants in responding to the notice. As Mr Clay stated, a full description of the alleged mixed use could have given rise to an appeal on other grounds, including (c) and/or (a)

19. Although I do not consider that the County Council's final suggested allegation would materially alter the position for the appellants, I believe that the revised allegation suggested by Mr Clay and initially accepted in general terms by Miss Busch in her opening submissions may have allowed the defects identified to be addressed. However, in Document 1, the County Council confirms that it is only willing to under-enforce to the extent of allowing the agricultural contracting and supply activities (including the provision of agricultural lime and topsoil supplies) in Area A to continue. This would still leave some components of the appellants' revised allegation untouched by the requirements as drafted and set out above.

20. The potential consequences of S173(11) for the County Council could therefore only be avoided by widening the scope of the requirements to include the cessation and/or removal of other elements of the alleged mixed use. Paragraph 2.11 of Circular 10/97 confirms that this is not normally possible without causing injustice to an appellant. My understanding of the written evidence is that other grounds of appeal and/or arguments in respect of the uses that should be protected as being lawful would be likely to arise and I therefore agree with Mr Clay that injustice would be caused to the appellants in this case. However, not to widen their scope would cause injustice to the County council were the allegation to be corrected, the notice to be upheld and the more limited requirements suggested then be compiled with since it had not intention to grant planning permission by default for development that was not within its remit.

21. To summarise, I believe that not to correct the allegation would

cause injustice to the appellants and that there would also be injustice to them if a corrected allegation in the terms suggested on their behalf were to be accompanied by requirements consequently varied to widen their scope. However, I consider that there would be injustice to the County council if the allegation were corrected to include all the components of the mixed use alleged but the scope of the requirements were then not to be widened so as to avoid the possibility of any under-enforcement.

### **Conclusions**

22. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.”

19. The costs decision letter (which followed Mr Clay's application on behalf of the Robinses) recorded a number of matters which were relevant to the consideration of this application, particularly those at paragraphs 4, 5, 7 and 8:

“4. The County Council does not accept that it has behaved unreasonably in seeking to defend the notice at the Inquiry. A number of changes to the wording of various parts of the notice were considered and discussed during the course of the Inquiry. However, these were largely inconsequential and more a matter of tidying-up the drafting to improve the clarity of the allegation and the requirements. The County Council's purpose was not to enforce against the whole of the mixed use, only against the waste transfer element. This has always been the clear intention.

5. It is accepted that the interpretation of paragraphs 2.10 and 2.11 of Circular 10/97 as they apply in this case is open to argument. However, it is a reasonable point of law to advance and one that is more generally applicable. In such cases the consequences of a county council following the advice in paragraph 2.10 of Circular 10/97 and detailing all the components in a mixed use but then enforcing only against the waste element that is its concern, could be to grant planning permission under S173(11) by default for matters within the purview of the relevant district council. That this is not the intended outcome in this case is not an unreasonable argument to make and in defending the appeal on this basis the County Council has not behaved unreasonably.

6. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

7. Having regard to the totality of the County Council's written evidence, I consider that it was possible to infer that its concern was only with the alleged waste uses at the site. I also appreciate the practical difficulties that can arise where a county council, as the waste planning authority, take the lead on an enforcement action where there may also be doubts about the lawfulness of other activities at the site which fall within the remit of the district planning authority. However, I believe that this can be resolved by a co-ordinated approach rather than, as in this case, seeking to direct the notice against only those elements of the mixed use that fall within the County Council's purview by limiting the description of the alleged breach of planning control.

8. I therefore believe that the County Council's drafting of the notice has left both the allegation and the requirements unclear and I have set out in my decision why I considered it necessary to quash the notice. In summary, paragraph 2.10 of Circular 10/97 states that, where a material change of use to a mixed use is alleged, all the component elements of the mixed use should be specified in the allegation (my emphasis). Paragraph 2.11 of Circular 10/97 sets out advice where the omission of any component of a mixed use from the allegation comes to light. It suggests that, in circumstances where the provisions of S173(11) might apply if the notice is corrected to include the missing component(s) and that this would, in effect be an unforeseen and/or unintended outcome, the notice might be withdrawn and another issued.”

20. It was plain from both the appeal and costs decision letters that the inspector considered the County Council's position to be misconceived, First, it was agreed that the mix of uses forming the alleged breach of planning control was not properly described in Notice. The use of the word "including" was particularly unfortunate, because it made it clear that what followed it was not a complete description and did not make clear what the allegations were. This is important, as a matter of public policy, because those who are affected by such notices should know what is being alleged and what steps have to be taken with respect to them. It is also important, because in due course if the enforcement notice takes effect and the steps are not complied with they may be followed by prosecution. The breaches should be specified because it is also important to know what action has been taken to enforce against a particular property which will appear from the planning register which is open to the public.
21. Secondly, the notice should have reflected and described the mix of uses alleged to constitute the breach of planning control if, as appeared to be the case here, the planning authority was not seeking to under-enforce but to catch all the matters comprising the breach, hence the omnibus word "including" - although it attempted to decouple the district issues from the Notice. Indeed, section 173(1) (a) of the 1990 Act requires the an enforcement notice to state “the matters which appear to the local planning authority to constitute the breach of planning control” and this cannot in my judgment be taken to allow a description of only part, or aspects, of a single breach.
22. The County Council sought to remove the non-county matters from the scope of the

Notice but this left the allegation of the single mixed use unclear (and inaccurate) and it fell to be corrected following the advice in the Annex to 10/97 paragraph 2.10. It is helpful to quote both paragraphs 2.9 and 2.10 of the guidance since they make it clear at least what must be contained in the notice with regard to the specification of the breach of planning control:

“An enforcement notice must enable every person who receives a copy to know-

- exactly what, in the LPA's view, constitutes the breach of control; and.
- what steps the LPA require to be taken, or what activities are required to cease, to remedy the breach.

It must also specify whether the breach is regarded as carrying out development without planning permission, or a failure to comply with any condition or limitation. Enforcement notices are not improved by over-elaborate wording or legalistic terms: plain English is always preferable. An eventual prosecution under section 179 of the 1990 Act may fail if the Court finds the terms of the notice incomprehensible to the lay person.

### **'Under-enforcement' and deemed planning permission**

2.10 Section 173(11), as amended, corresponds substantially to the previous section 173(8) of the 1990 Act, except that, after full compliance with the requirements of an enforcement notice, the provisions apply to any remaining uses or activities on the land and to any remaining buildings or works. It deals with the situation where 'under-enforcement' has occurred, by providing that planning permission shall be treated as having been granted for the development or the activity, as it is in the state resulting from the owner or occupier having complied with the enforcement notice's requirements. As the section applies to all the remaining uses or activities on land once the enforcement notice has been complied with, LPAs should ensure that they identify all the relevant breaches of planning control involving the use of land before they issue an enforcement notice. Where the land is in mixed use, it is important that the notice should allege a change of use to that mixed use, specifying all the component elements in the notice's allegation. The deemed application for planning permission under section 177(5), arising from any appeal against the notice, which the Secretary of State or a Planning Inspector will need to consider, should properly relate to the mixed use in its entirety, not just to those elements of the use which the LPA may have identified as being in breach of planning control and which are covered by the notice's requirements. This is because the planning merits of a particular use of land will not necessarily be the same, where that use is only one of a number of uses taking place, as the planning merits of that use where it is the land's sole use ...”

23. Thirdly, looking at the mixed use enforced against, the inspector considered that the Notice was too vague and did not properly specify all the elements of the breach so

that it was clear to the recipient what effect it was intended to have. Those who have an interest in the land enforced against need to know what is alleged against them, what they may appeal against and, ultimately if the Notice is upheld, what they must do in order to avoid prosecution.

24. Fourthly, as the inspector stated in paragraph 7 of the cost decision letter, the question of the mix of county and district matters could be resolved by co-operation between the relevant planning authorities.
25. Fifthly, whilst the notice could be amended to specify the alleged uses forming the mix, and thus accurately describe the material change of use alleged, this could not be done without causing prejudice to the appellants who had not appealed on all grounds - and they might well have wished to maintain ground A or C appeals in respect of all of some of the uses, once the planning authority had formulated more precisely the allegation of breach. Indeed it is clear from the papers that the appeal was based on the allegations relating to waste and that no steps had been taken, absent any appropriate wording in the Notice, in relation to any of the district elements of the mixed use. It was plainly prejudicial to the Robinses for them not to have an opportunity to appeal against such matters if the notice were amended so that the single breach of planning control was properly described. The inspector therefore concluded that whilst the Notice might be amended to specify accurately the elements forming the mixed use, he could not do so without causing prejudice to the appellants and therefore quashed the notice.
26. At inquiry and before me Miss Busch mounted a forceful argument that:
  - i) The judgment of the Court of Appeal in **Fidler** did not require planning authorities to enforce against all breaches of planning control and that, as against those breaches not specified in an enforcement notice and not enforced against, the deeming effect of section 173(11) did not apply.
  - ii) It was a matter for the planning authority to determine to what degree it wished to taken enforcement action and it had a discretion whether or not the under-enforce, although as I have mentioned there was no intention to under-enforce in this case except to the limited extent indicated.
  - iii) The district elements of the breach could be removed from the description of the breach in the Notice comprising the mixed use and then only minor corrections should have been necessary in order to specify the uses in a satisfactory fashion removing the word "including" and perhaps describing the waste uses in a little more detail. This could be done, it was said, without causing prejudice to the appellants. The district planning authority would then be free to deal with the other breaches in its own time.
  - iv) The inspector had erred in applying paragraph 2.10 of the annex to Circular 10/97 in requiring the whole mixed use to be specified to avoid the effects of section 173(11). **Fidler** made plain that a planning authority could choose not to enforce at the time by limiting what was enforced against them, therefore avoiding the deeming under section 173(11). The inspector fell into error, it was submitted, by requiring all these elements of the mixed uses to be stated and therefore contrary to **Fidler**, preventing the deliberate choice of the county not to enforce against all those breaches. Thus the prejudice that the inspector

identified only arose, she said, due to his unlawful insistence upon the inclusion of all the elements of the mixed use, both county and district, in the Notice. This was a misreading of paragraph 2.10 and a misunderstanding of **Fidler**.

27. I do not consider that these propositions are correct and do not consider that they are arguable. I turn first to consider the statutory framework. The enforcement provisions in the Town & Country Planning Act are found in part VII of the Act. They support the provisions in Part II of the Act which require the grant of planning permission either expressly or by development order for anything amounting to “development” within the meaning of section 55 of the 1990 Act (which includes a material change of use).
28. If development takes place without planning permission then a panoply of enforcement powers are available to the planning authority. These are set out primarily in Part VII of the 1990 Act.
29. Section 171A contains the fundamental provision:
  - “1. For the purposes of this Act-
    - (a) carrying out development without the required planning permission....  
  
constitutes a breach of planning control.
    - (2) For the purposes of this Act-
      - (a) the issue of enforcement notice (defined in section 172)...  
  
constitutes taking enforcement action.”
30. Section 171B of the 1990 Act sets various time limits for enforcement action which are not relevant to my consideration here. The provisions also allow an additional extension to the period for a "second bite" of enforcement action in circumstances which I need not detail here. They were relevant to the **Fidler** case but they are not relevant to the present case.
31. The main provisions with regard to the service of enforcement notices and appeals against them are set out in sections 172 to 174. Under section 172 it is for the judgment of the planning authority whether it is "expedient" to take enforcement action where it appears to them that there has been a breach of planning control. There are then provisions as to the service of copies of the enforcement notice and when the notice should be served.
32. Section 173(1) is important to the issue here and states (so far as is material):
  - "(1) An enforcement notice shall state:
    - (a) the matters which appear to the local planning authority to constitute the breach of planning control; and.
    - (b) the paragraph of section 171A(1) within which, in the opinion of



the authority, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities with the authority require to cease, in order to achieve, wholly or partly, any of the following purposes..."

33. Subsection (4) goes onto consider the purposes of remedying the breach, or any injury to amenity and gives examples in subsection (5) as to what may be comprised in the notice so far as the remedial actions are concerned.

34. Subsection (11) provides a deeming provision in the case of what is termed "under-enforcement". Subsection (11):

"Where-

(a) an on enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with

then, so far as the notice did so require, planning permission should be treated as having been granted by virtue of 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities."

35. Section 174 contains provisions regarding an appeal against the enforcement notice and it allows appeals on various grounds which I need not detail in their entirety though I note that: under ground (a) in section 174(2), an appeal may be made on the basis that planning permission should be granted for the development which comprises the breach of planning control; under ground (b) an appeal may be launched on the basis the breaches alleged had not occurred; under ground (c) it may be alleged that the matters alleged do not constitute a breach of planning control; or under (d) that no enforcement action could be taken because of the expiry of the particular periods applicable to the breaches under section 171B. Appeals are also available in respect of allegations that the steps required by the notice are excessive, under ground (f) or that the time for compliance is insufficient, under ground (g). Enforcement appeals are made to the Secretary of State are usually delegated to inspectors. Importantly, what is appealed against is the enforcement notice and the matters said by that notice to constitute a breach of planning control.

36. With regard to the determination of the appeals, there is power in section 176 to "correct any defect, error or misdescription in the enforcement notice" or "vary the terms of the enforcement notice" (section 176(1)). However, these powers to correct or vary can only be exercised only if the Secretary of State's inspector

"is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority".

37. In respect of the division of functions between county planning authorities and local planning authorities, Schedule 1 of the 1990 Act (as applied by section 1(5)(c)) sets out detailed provisions as to the allocation of jurisdiction. Under paragraph 1 of Schedule 1 "county matters" are defined in extensive terms comprising in detail various activities relating to the mineral and extractive industries. The final category of county matters is in paragraph 1(1)(j):

“the carrying out of any operation which is, as respects the area in question the prescribed operation or an operation of the prescribed class or any use, which is, as respects that area, a prescribed use or use of a prescribed class.”

38. The power to prescribe uses or classes has been exercised by the Secretary of State in the Town & Country Planning Act (Description and County Matters) England) Regulations 2003 SI No 1033, to specify, amongst other things, the use of land -

“wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste.”

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.
43. I mention in passing that although paragraph 11 specifies the allocation of powers between district and county authorities in respect of enforcement action, the validity provisions of the Town & Country Planning Act 1990 do not allow enforcement notices generally to be invalidated on the basis that the wrong planning authority issued the enforcement notice: see section 286(2) of the 1990 Act and the notes to the Planning Encyclopaedia at P285.06. I need not spend time considering the relationship of the validity provisions with paragraph 11 since, in this case, the issue is not the validity of the Notice having been issued by the wrong authority but the inspector's decision in relation to the substance of the notice and whether or not to correct it.
44. The genesis of the modern enforcement regime is the report of Robert Carnwath QC (as he then was) "Enforcing Planning Control" (1990), which recommended a series of reforms to remove many of the technicalities of pre-1991 law which had bedevilled the law of planning enforcement and had led to numerous judicial criticisms of the state of the law. These are summarised in the case of **R v Jarmain** [2000] 2 PLR 126 which is quoted in the **Fidler** case. The recommendations of the Carnwath Report were implemented by the Planning and Compensation Act 1991. That Act removed much of the undesirable technicality of the earlier law and requires, as Carnwath LJ himself held in the **Fidler** case, a much less technical approach to enforcement action. Nonetheless, that does not mean that under the current law care is not required in ensuring compliance with the statutory requirements.
45. Indeed, the passages in the judgment of Brooke LJ in **Jarmain** quoted in **Fidler** at first instance by Richards J (as he then was), at paragraph 29, made clear that the new provision should be looked at without undue technicality and with the intention to introduce a more flexible and sensible system as the Carnwath Report had intended. This suggests, to my mind, the need to focus on the actual breaches of planning control and, subject to questions of immunity from enforcement action or any deliberate decision to under-enforce, the provisions ought to be approached on the basis that Parliament intended breaches of planning control should be dealt with as clearly and simply as possible.
46. Here, in my judgment, the inspector was rightly concerned that the Notice failed to reflect the breach which was said to have occurred and thus did not specify what it was so that it was clear what was alleged and what action was required to end the breach of planning control. It therefore failed to set out "the matters which appear to the local planning authority to constitute the breach of planning control" (section

173(1)(a)) and did not comply with the requirement in section 173(2) that it “enables any person on whom a copy of it is served to know what those matters are”.

47. While there will no doubt be scope for judgment as to how the breach or breaches are described, and the level of detail thought necessary (subject to compliance with section 173(2)), that does not extend to conferring on the planning authority the ability to specify only part or aspects of the breach of planning control, particularly where the breach comprises a single material change of use. Such a partial description could not be regarded as reasonable compliance with section 173(1)(a) and (2).
48. In my judgment the inspector was correct to distinguish this case from **Fidler** which was a case in which section 173(11) was sought to be applied to a notice covering a site with multiple planning units and multiple breaches of planning control. The point in **Fidler** was that where there were a series of breaches of planning control, section 173(11) would only apply to those breaches which were specified in the notice and it was open to the planning authority to avoid the deeming effects of section 173(11) by not including other breaches in the enforcement notice. This can be seen by reference to the detailed facts set out at first instance by Richards J [2003] EWHC (Admin) 2003 at paragraphs 1 to 11, 31 to 36 and 101. In contradistinction, the present case concerns an allegation of a single breach of planning control on a single planning unit.
49. The function of the concept of the planning unit, as Bridge J explained in **Burdle v Secretary of State** [1972] 3 All ER 240 is to provide a reference point for determining whether a material change of use has occurred, since the use is determined by reference to the unit of occupation of land. There is no issue here but that there was one unit of occupation, so the inspector had to determine that question in that context.
50. As I have already noted, this is not a case where the County Council had decided on public interest grounds to under-enforce (even if it could have done so in respect of district matters) but to proceed against all perceived breaches subject to the minor exception recorded by the inspector. In my judgment, it failed in that aim since the Notice which was poorly drafted, as the inspector found, and did not properly describe the nature of the breach of planning control said to have occurred. This was not merely an intensification case such as referred to in **Fidler**, where the description of the uses may be less important. On the contrary, the evidence put in by the appellants to the inquiry made it quite clear to the County Council their concerns as to what uses were potentially in issue and what the consequences might be if they were properly described.
51. This sort of issue is likely to occur whenever county and district planning jurisdictions overlap. It is for that purpose that the planning code in paragraph 11 of Schedule 1 to the 1990 Act deals with that point and provides, in the case displaying mixed county and district matters, co-operation between authorities and the issuing of enforcement notice by the district planning authority rather than the county.
52. Once that position is reached, in my judgment the following conclusions flow from it and what I have said with regard to section 173. First, the various elements of the mixed use comprising the breach must be described (within the bounds of reasonableness and not to a degree of technical perfection), so it is sufficiently clear what breach of planning control is enforced against and what steps are to be taken in order to remedy it. Secondly, it is not open to a planning authority to leave out

material elements comprising an alleged single breach of planning control, since that would fail to comply with section 173(1)(a) of the 1990 Act. It should be described having regard to section 173(2) and the guidance at paragraph 2.10 of the Annex to Circular 10/97 which is, in my judgment, entirely apposite.

53. Thirdly, it follows that in such a case attempting to leave out “district elements”, quite unlike the situation in **Fidler**, does not involve selecting between different breaches of planning control on different planning units across a larger site but wrongly, in my judgment, leaves out material elements of the single composite breach of planning control contrary to s. 173(1) and (2). **Fidler** is not authority for such an approach. What the County Council sought to do here was not to enforce only against some out of multiple breaches (as in **Fidler**) but in, essence, to require the inspector to misdescribe a single breach of planning control in a mistaken attempt to enforce without triggering section 173(11) in a case where it should have sought the assistance of the district planning authority.
54. In my judgment, therefore, where a single mixed use comprises the sole breach alleged by a county planning authority it is not open to it to decouple elements of it which are considered to fall within the jurisdiction of another planning authority. If that county planning authority finds that it cannot reasonably consider the breach of planning control as a whole to be a county matter under paragraph 11(3) of Schedule 1, then the correct approach is to ask the district planning authority to take action in co-operation with the county authority.
55. Since there was no intention to under-enforce, and section 173 had not been complied with, in my view the inspector had no option but to require the breach to be properly described to meet the requirements of section 173, following the guidance in the Circular and then to conclude that since the proposals to amend would be so extensive, this would cause prejudice to the appellants.
56. It follows that, in my judgment, although the issue is one which requires some analysis of the statutory provisions and the nature of the mixed use enforced against, once that point is reached it is clear that the inspector was correct and had no reasonable option to do other than he did. That in any event what he did was plainly open to him as a matter of law.
57. I have reached a clear view that the application for permission must fail although it was made for the perhaps understandable reason that the county planning authority wished to pursue enforcement against what was regarded as a harmful breach of planning control. However, for the reasons I have indicated, it was not open to them to decouple district matters and enforce only against what was perceived to be the county elements of the breach. In my judgment, the County Council’s case is not arguable and I refuse permission.
58. MISS BUSCH: Thank you very much.
59. THE DEPUTY JUDGE: Mr Clay?
60. MR CLAY: My Lord there is an application for costs on behalf of the second and third defendants. I appreciate this is a permission hearing.
61. THE DEPUTY JUDGE: Yes.

62. MR CLAY: It is however at the end of the line in that there is no appeal from here to the Court of Appeal. This is effectively the Court of Appeal. So if I could invite your Lordship just to quickly turn to P289.22 which confirms that.
63. THE DEPUTY JUDGE: 289.22.
64. MR CLAY: Point 22. So in that respect your Lordship's judgment is particularly welcoming that it clearly sets out the basis on which the end of the line is reached. If your Lordship could then turn back, there is some helpful commentary on costs, which distinguishes this kind of case from judicial review.
65. THE DEPUTY JUDGE: If it assists Mr Clay, essentially you have had the hearing you would have had if permission had been granted and it had proceeded to a full hearing. Because it is a pure point of law and the inspector dealt with this as a matter of law and judgment, this is why I decided to give fuller reasons than normal because it is the sort of case where you do would not get any out of the full hearing than you do out of a permission hearing. Once you get to the point of law, you have got to the point whether you do it at a permission hearing or at a substantive hearing. So effectively you have had a full hearing on the merits. Miss Busch's points were very clearly put, and yours were put in your skeleton, although I did not allow you to develop them orally, so effectively we have had the equivalent of a full hearing.
66. MR CLAY: My Lord, yes, on that basis the general rule that applies here is that costs would follow the event save where we are following on from the Secretary of State and would be the costs of the Secretary of State.
67. THE DEPUTY JUDGE: It is not a Bolton case where you are a second defendant following the Secretary of State.
68. MR CLAY: My Lord, no. Therefore in those circumstances, I apply for the costs of the second and third defendant. There is a summary assessment of costs which has been provided to the--
69. THE DEPUTY JUDGE: Have you received that?
70. MR CLAY: -- to the claimants and I can hand up a copy of that to your Lordships if it assists. My Lord I turn to the bottom line, so your Lordship has seen the figure. It does include the cost of Mr Mill who instead of the solicitor preparing the witness statement, it was felt that it was useful if he prepared it because he had prepared the evidence and he also set out the full history of the various to-ings and fro-ing and the adjournments and the measures taken by the appellants to make clear their position in advance of the hearing. I understand that your Lordship did have the opportunity to see that witness statement and the enclosures within it which has not been included in the claimant's bundle. I understand that (inaudible) is resisted but I will allow my learned friend to respond.
71. THE DEPUTY JUDGE: Miss Busch on the point of principle and the detail?
72. MISS BUSCH: So far as the point of principle is concerned, it is I acknowledge a permission hearing.
73. THE DEPUTY JUDGE: But it is a permission hearing that effectively determines the

issue.

74. MISS BUSCH: There is either way of two options. Either permission is refused, in which case the interested parties have nothing to worry about. Or, if it were to be granted, there would be a formal hearing and then they have the opportunity to attend. That is the first point. The second point is that they are interested parties, the second defendants, however you refer to them. But the person who has charge of defending the decision now of the inspector is the Secretary of State. Again it is really a matter for the second and third defendants as to whether or not they wish to appear.
75. THE DEPUTY JUDGE: It is right that I appreciate Bolton is judicial review as opposed to -- it is actually challenged, is it not? The Bolton principle is not a principle that only the Secretary of State gets his costs but that there should only be one set of costs.
76. MISS BUSCH: (Inaudible) Yes. But my point is, as a general matter, when the Secretary of State (inaudible) it is for the Secretary of State to take a view as to whether or not permission to act in defence and what stage the decision of the inspector, so far as the interested parties are concerned it is a matter of choice. That applies equally, in my submission, irrespective of whether or not the Secretary of State actually attends. Those are two key points. In the sense it is said the interested parties have nothing to lose by not attending since they could have got a refusal of permission free as it were, or, as I say, if permission had been granted, it is anticipated there would be a further hearing which they had to attend at that stage.
77. THE DEPUTY JUDGE: There is an entitlement to appear, is there not, under section 289?
78. MISS BUSCH: Sorry my Lord?
79. THE DEPUTY JUDGE: I said there is an entitlement for prospective defendants to appear on a 289 application as they are heard in open court. It is not made without notice.
80. MISS BUSCH: No.
81. THE DEPUTY JUDGE: It is not like a paper application for permission or an oral renewal where only one party turns up.
82. MISS BUSCH: No my Lord, but an entitlement for example in Huang is entirely consistent is what I say. Of course they are entitled to turn up, it is a simply matter of choice. It is their choice whether or not they do so.
83. THE DEPUTY JUDGE: What do you say about the quantum?
84. MISS BUSCH: Quantum I respectfully submit is excessive. Just dealing with a problem which may or may not have explanations either understand the present. Paragraph 3 on the first page, documentation, with reference to documents such as counsel proofs of evidence, worry the proofs of evidence been drafted I do not know. That is plainly not a statement where there is a witness statement. But that is dealt with elsewhere, in paragraph 4, partner's fee. So why 6 hours was spent creating documentation, again seems rather excessive. The particular proofs of evidence

should go out of there. Strutt and Parker I think we really dispute that we should pay any of these costs because it was purely on a point of law. There is no need for planning evidence to go in at all in particular. So really we challenge all of that. On their own schedule fees, paragraph 4 "review of draft skeleton argument prepared by counsel", I say it is a pure point of law, I do not see why a planning expert should be involved. Similarly preparation of draft witness statement. Since it put in evidence procedures being (inaudible). Again it is not relevant to the question of whether the inspector's decision was lawful. Similarly attendance at conference of counsel, why a planning witness had to attend with counsel, when there is a pure point of law. I do not think that is necessary. There is a further 1.25 hours of finalising the signing of the witness statement. Reviewing a further skeleton. We have not seen a further skeleton. Similarly why a planning expert needs to attend a hearing on a point of law plainly to call up to give evidence and cross-examine. So most, if not all, of those costs we should not be held liable for. It is completely unnecessary. They appear to be double counting as regards costs of the proof of evidence in the main schedule.

85. There is one more point before I forget it, which is I am asked by my instructing solicitor to obtain a special certificate, which is a certificate referred to in Part 43 of the CPR. The respondents are unable to recover that set out. This is an important point to us because if this element has to be paid, that authority do not allow counsel to set off or seek repayment of VAT. No service having been rendered by the respondent's advisors to the counsel.
86. THE DEPUTY JUDGE: But this is a summary assessment.
87. MISS BUSCH: Yes.
88. THE DEPUTY JUDGE: Is not a special certificate only needed if there is a detailed assessment of costs? This being a hearing of under a day, assuming I am with Mr Clay, he should have more than the acknowledgement of service equivalent fees. All I am going to do is to assess the figures in the round, so they will be what they are. I mean a certificate is needed if a matter is disallowed and it goes to a detailed assessment, is it not? Do not take it as gospel but check with your instructing solicitor that my understanding is correct. Would you like to take instructions?
89. MISS BUSCH: Yes (Pause). Yes my Lord, that is fine. So yes. One other thing I mention. I acknowledge that this has not been in substance to be taken to be the full hearing, but it is our view that counsel's fees of £4,000 for what was appended to be an half-an-hour permission hearing--
90. THE DEPUTY JUDGE: You came armed with a lengthy speaking note Miss Busch?
91. MISS BUSCH: Yes.
92. THE DEPUTY JUDGE: On that basis you were anticipating having to deal, as you did, with the meat of the matter. You cannot be surprised that Mr Clay turns up -- albeit that because I was against you I did not ask him to elucidate very much -- but you cannot be surprised that he was instructed to turn up to do the same for his clients, can you?
93. MISS BUSCH: It was listed for half-an-hour. The speaking note was longer. I hope it enabled one to rattle through things. I am asked to raise the point.



94. THE DEPUTY JUDGE: Of course you are.
95. MISS BUSCH: So, yes, those are my points.
96. THE DEPUTY JUDGE: Mr Clay you only need to address me on the quantum.
97. MR CLAY: My Lord, first of all, just dealing with the one by one attendance on the client.
98. THE DEPUTY JUDGE: Can I tell you the point that is concerning me most and I think Miss Busch has some force, which is the Strutt and Parker element. I am not entirely sure, though I read the witness statement, that it did not really enlighten me as to the legal grounds. This has always been a challenge on a point of law. I am not sure really why it was necessary to involve your planning witness in producing a witness statement.
99. MR CLAY: My Lord the reasons for doing so were that, first of all, that it was thought that it would assist the court if they saw the other documents which had been in front of the inspector where submissions had been made and indeed where he provided his own handwritten initial decision on this. So for completeness you would have seen I think included within Mr--
100. THE DEPUTY JUDGE: The documents could have been produced and put in the bundle without the need for a witness statement or a planning witness.
101. MR CLAY: They could have been but of course the great benefit of it being put in this context in a witness statement, rather than me putting it into a skeleton argument, is that we could set out the sequence of events, if you like, where they were submitted and the circumstances where they were submitted and Mr Noel's evidence deals with all of the process: how we responded to the inspector's initial letter that was issued before the inquiry and how we dealt with matters during the enquiry, the submissions that were made and so on, showing this was a process. We were keen that the court should have a clear picture and my Lord your judgment actually records the events that occurred I think when they were put to Miss Busch right at the beginning.
102. THE DEPUTY JUDGE: It would be fair to say in response, Mr Clay, that I derived that from reading the main bundles. I did, after I read the main bundle and read your planning consultant's witness statement but I did get everything that I needed out of the main bundle.
103. MISS BUSCH: It is recorded in the inspector's decision.
104. THE DEPUTY JUDGE: I know it is.
105. MR CLAY: My Lord this could have been dealt with of course by the solicitor making the witness statement.
106. THE DEPUTY JUDGE: Mr Clay to be brutal, you could simply have sent the additional documents to Miss Busch's solicitor and said: "Will you please include these in the bundle."
107. MR CLAY: The bundles were issued before we were in any position to contribute.

Either way we felt it was helpful that you had the proper record of what occurred on the day and all of the documents that might be relevant to your decision. In the event if those were not as helpful as we hoped they would be, that perhaps does not mean that they were not put forward for that purpose and might not have been of assistance even if the case would have turned on them. So, for that reason, you will see that the solicitor's involvement in this is very little. Indeed we have had the benefit of Mr Noel being here during the whole of this hearing today in case there was some point.

108. THE DEPUTY JUDGE: The reality is in a case like this that the planning consultant is fulfilling the role of the solicitor. The solicitor is required because we are now into litigation not at inquiry.
109. MR CLAY: My Lord, yes. The position here is that of course the planning consultant who has attended had been responsible for the evidence and so on, was probably the person best placed to assist if there were any questions of fact that were required to be dealt with at the hearing on the day. He has been here and you will note that he has been here for free as far as this is concerned.
110. THE DEPUTY JUDGE: Thank you.
111. MISS BUSCH: The costs of attending are charged at paragraph 9 of the skeleton.
112. MR CLAY: Three hours. We have had a good deal out of him today to put it that way. My Lord unless I can assist you further. You have seen the reasons. It was well intentioned and there to assist you and I hope it is helpful.
113. THE DEPUTY JUDGE: I am satisfied on the question of costs that because of the particular nature of section 289 applications, albeit that it is a permission hearing, it is a permission hearing which has ended the application because there is no appeal from my decision. It is also a case where because to get to the point of law, it was necessary to go through the issues, and because I have reached a clear view on the issues, the parties have had a full albeit relatively short hearing as might have occurred at the substantive stage, it seems to me this is right where I should exercise my discretion and award costs almost as if this had been a full hearing. However, it was not entirely a full hearing or anticipated to be one - albeit that it became one. But I am prepared to award costs on a more general basis than a permission hearing would be dealt with on an ordinary judicial review. That said, issue is taken with the statement of costs which are put forward on behalf of the second and third defendants. This is only an application for one set of costs, so I do not see that the Bolton principles are infringed simply because they are awarded to the Robinses rather than to the Secretary of State since the Secretary of State has not attended.
114. It does seem to me that it was unnecessary to put in the detailed witness statement from Mr Noel, that whilst it was well intentioned and I understand why, the reality is that this being a challenge on a point of law, the details could be taken more than adequately from the two decision letters of the inspector and from the trial bundle and, had extra documents needed to be included, then I would have expected them simply to have been given to the Claimant to be added to the back of the bundle.
115. Doing the best I can, factoring in that this is a permission hearing and not a full hearing, and that I consider that there has been some unnecessary expenditure on costs, I take a broad view and assess the costs to be paid by the Claimant to the

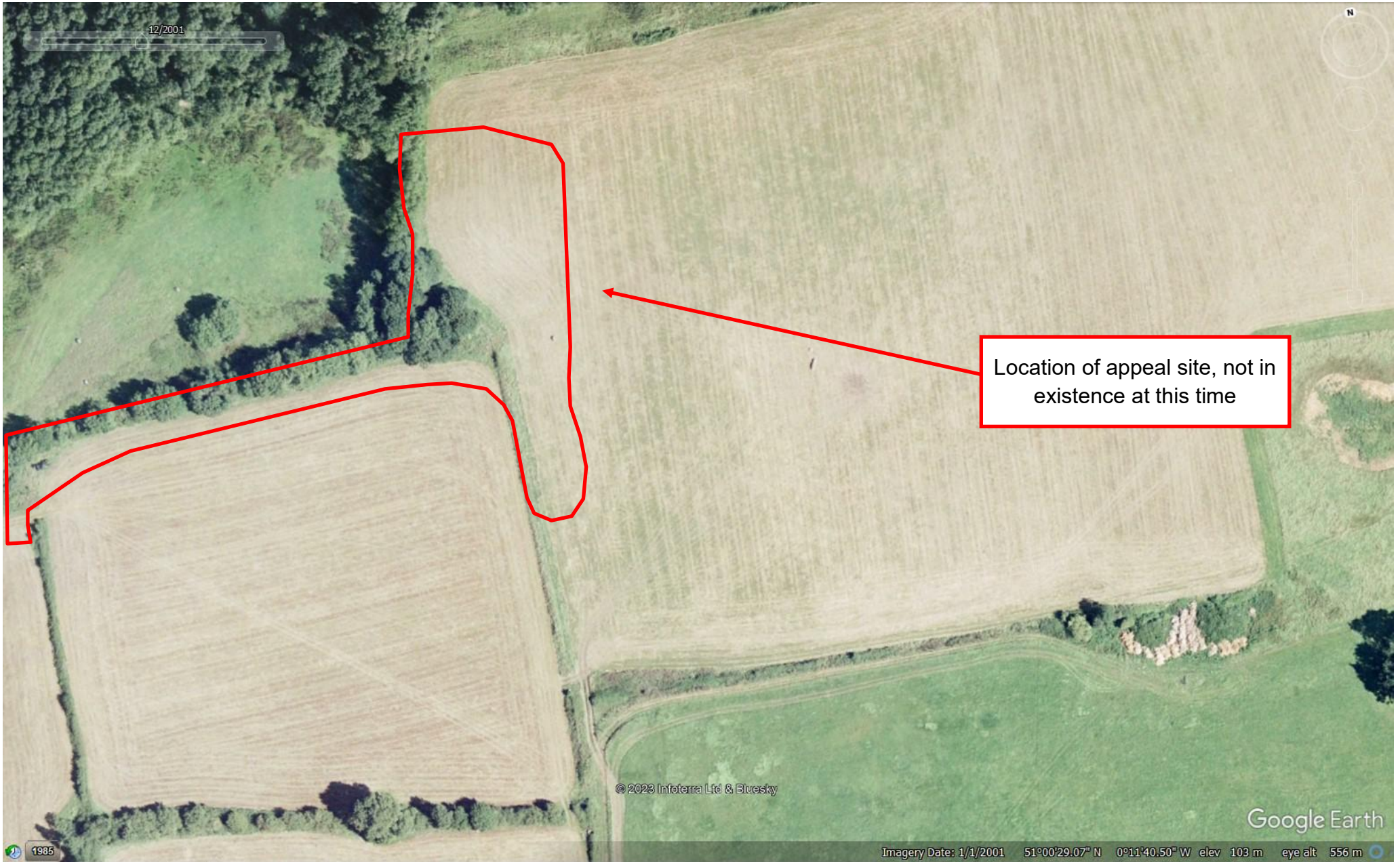
Defendants in the sum of £7,000.

116. MR CLAY: I am much obliged my Lord.

117. THE DEPUTY JUDGE: Is there anything else? Can I thank you both, particularly Miss Busch for being prepared to deal with the points so quickly. Thank you both for your assistance.

# APPENDIX 8

Google Earth © Aerial Image dated 01/01/2001—Annotated

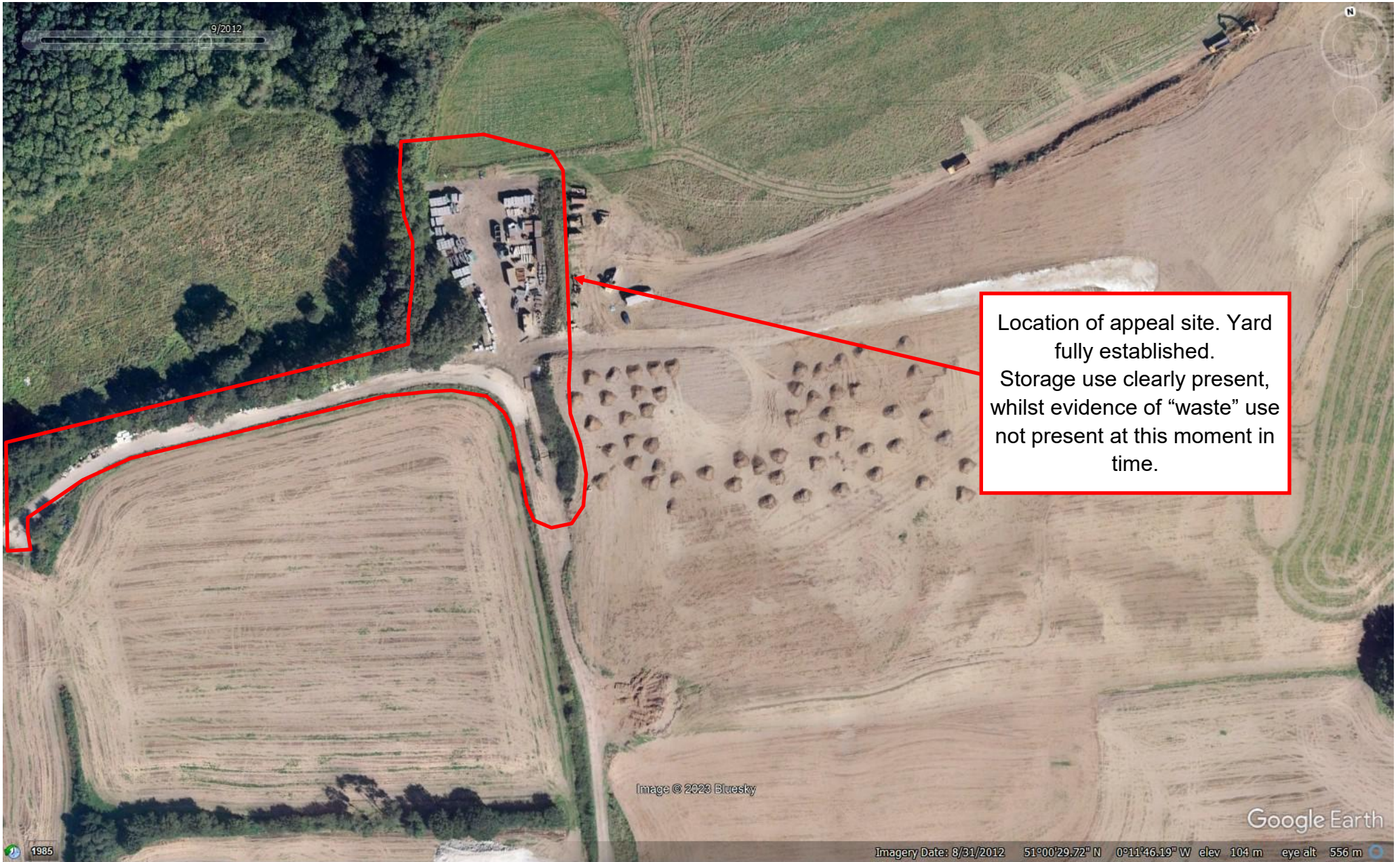


Google Earth © Aerial Image dated 01/01/2005—Annotated





Location of appeal site. Yard fully established. Storage use clearly present, whilst evidence of "waste" use not present at this moment in time.



Location of appeal site. Yard fully established. Storage use clearly present, whilst evidence of "waste" use not present at this moment in time.

Image © 2023 Bluesky

Google Earth





Location of appeal site. Yard fully established.  
Storage use clearly present, whilst some evidence of "waste" use (western periphery) present at this moment in time.

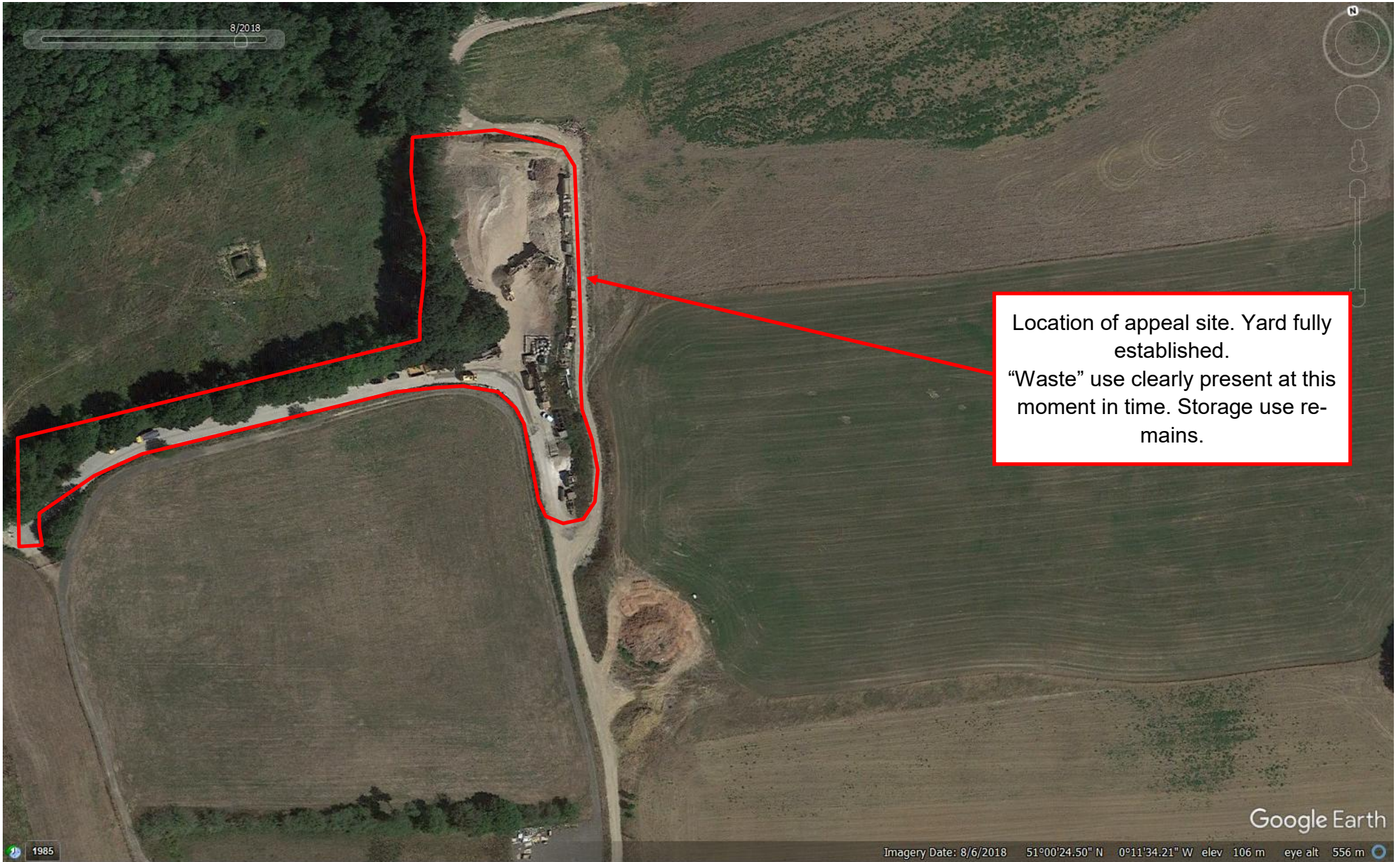


Location of appeal site. Yard fully established.  
Storage use clearly present, whilst some evidence of “waste” use (western periphery) present at this moment in time.

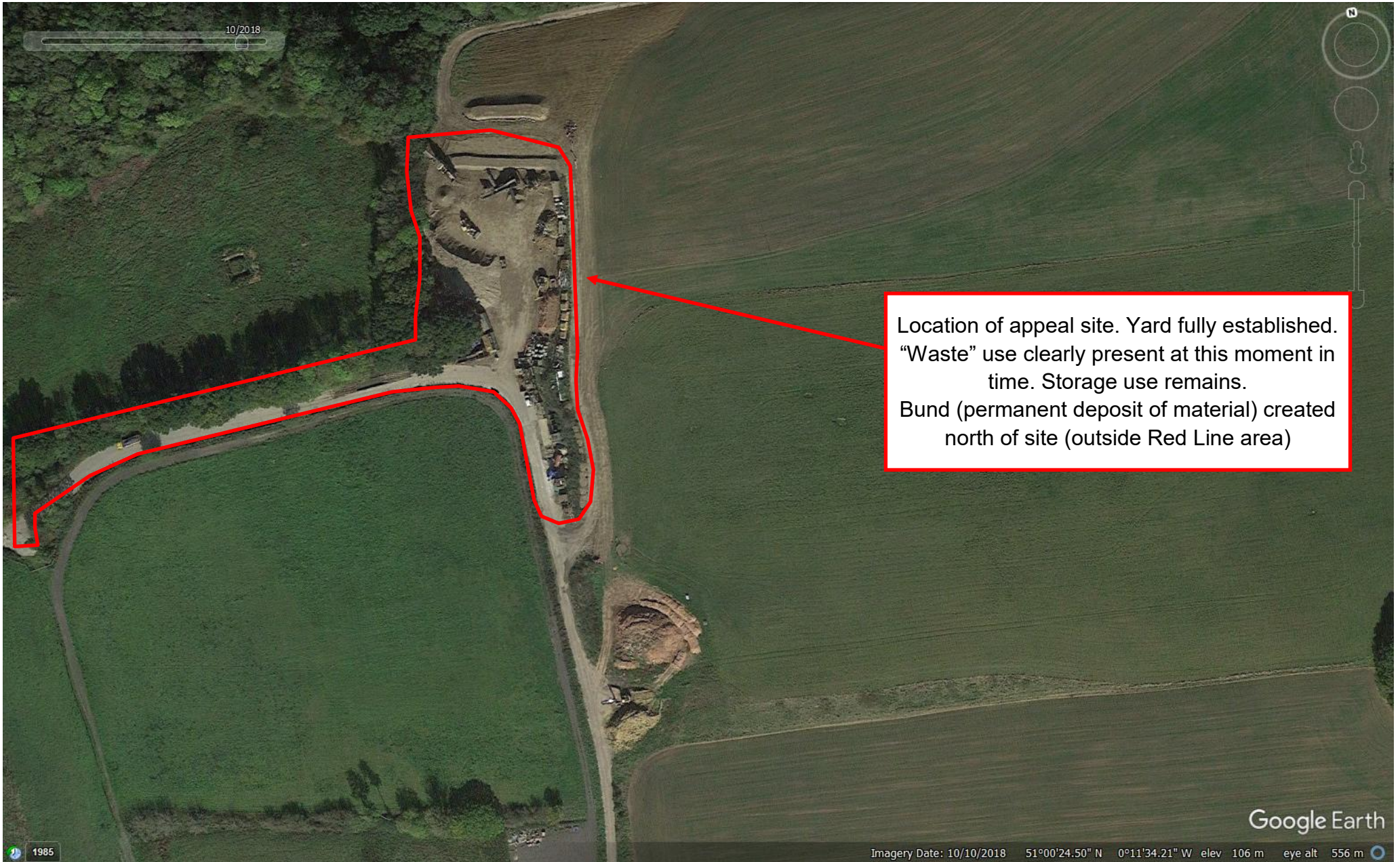
Google Earth © Aerial Image dated 10/09/2015—Annotated



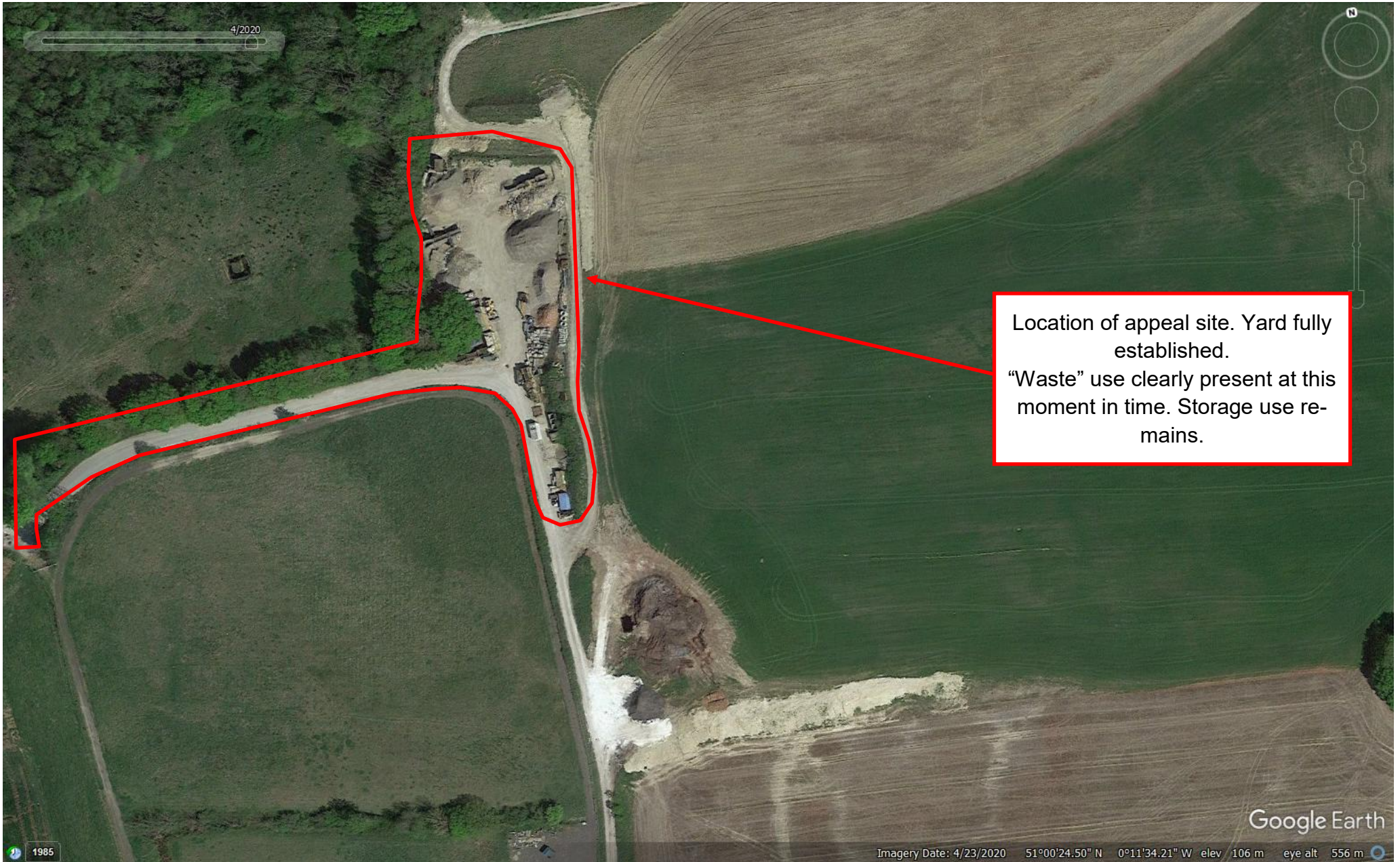
Location of appeal site. Yard fully established.  
Storage use clearly present, whilst some evidence of "waste" use clearly present at this moment in time.



Location of appeal site. Yard fully established.  
“Waste” use clearly present at this moment in time. Storage use remains.



Location of appeal site. Yard fully established. "Waste" use clearly present at this moment in time. Storage use remains. Bund (permanent deposit of material) created north of site (outside Red Line area)



Location of appeal site. Yard fully established.  
“Waste” use clearly present at this moment in time. Storage use remains.



Location of appeal site. Yard fully established. "Waste" use clearly present at this moment in time. Storage use remains present along northern boundary



Location of appeal site. Yard fully established. "Waste" use clearly present at this moment in time. Storage use remains present along northern boundary



# APPENDIX 9

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED)**

---

**PLANNING CONTRAVENTION NOTICE**

**REFERENCE NUMBER: EF/18/0446**

To: PJ Brown (Civil Engineering) Ltd

1. It appears to the Mid Sussex District Council ("the Council") being the Local Planning Authority for the purposes of Section 171C of the Town and Country Planning Act 1990 ("the Act"), that there may have been a breach of planning control in respect of the land described in Schedule 1 below ("the land")
2. The breach of planning control which may have occurred is specified in Schedule 2 below.
3. This notice is served on you as a person who;
  - (a) is the owner or occupier of the land or has any other interest in it;OR
  - (b) is carrying out operations in, on over or under the land or is using it for any purpose.
4. In exercise of their powers under Section 171C (2) and (3) of the Act the Council require you, so far as you are able, to give to them the following information in writing **WITHIN TWENTY ONE DAYS**, beginning on the day on which this notice was served on you:
  - (a) Please confirm your full name, job title and address, including post code, telephone number and email address.
  - (b) Please confirm the nature and description of the operation being carried out on the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice.
  - (c) Please confirm the date upon which the operation being carried out on the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.
  - (d) Please confirm your (PJ Brown (Civil Engineering) Ltd) interest in the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.

- (e) Please confirm how long and from what date you (PJ Brown (Civil Engineering) Ltd) have had interest in the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.
- (f) When did PJ Brown (Civil Engineering) Ltd begin to import material onto the land?
- (g) When did PJ Brown (Civil Engineering) Ltd begin to process material onto the land?
- (h) When did PJ Brown (Civil Engineering) Ltd begin to deposit material onto the land?
- (i) What tonnage of material is imported onto the land PJ Brown (Civil Engineering) Ltd per annum?
- (j) Please confirm the number of HGV deliveries to the land over the past a) 4 week period and b) 12 month period prior to the date of this Notice.
- (k) Please provide any tenancy or lease agreement, including details of any payments made or received, relating to the use of the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice
- (l) Please provide the following information in relation to the blue ducting shown in photo 1 on the Appendix 1 attached to this Notice:
  - i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (m) Please provide the following information in relation to the metallised fencing shown in photo 1 on the Appendix 1 attached to this Notice:
  - i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (n) Please provide the following information in relation to the concrete drainage sections shown in photo 2 on the Appendix 1 attached to this Notice:
  - i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (o) Please provide the following information in relation to the black ducting shown in photo 2 on the Appendix 1 attached to this Notice:
  - i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site

- (p) Please provide the following information in relation to the black plastic drainage sections shown in photo 3 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (q) Please provide the following information in relation to the yellow skip shown in photo 4 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (r) Please provide the following information in relation to the gate / barrier and associated mechanism shown in photo 5 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (s) Please provide the following information in relation to the metallised gates / tracks shown in photo 6 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (t) Please provide the following information in relation to the plastic pipes shown in photo 7 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (u) Please provide the following information in relation to the metallised wheelwash shown in photo 8 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site

- (v) Please provide the following information in relation to the black plastic drainage sections shown in photo 9 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (w) Please provide the following information in relation to the metalled tracks shown in photo 10 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (x) Do you consider that planning permission (deemed or express) would be necessary for any of development, including that referred in questions b -w above, on the land? If no, please clarify why.
- (y) Do you intend to make a planning application for any of development, including that referred in questions b -w above, on the land? If no, please clarify why.
- (z) Please provide any other information you believe the LPA should consider in its assessment of the breach of planning control as stated in Schedule 2.

5. If you wish to make:

(a) an offer to apply for planning permission to vary the wording of the condition, or to refrain from carrying out operations or activities which represent a breach of planning control OR

(b) any representations about this notice

the Council, or representatives of the Council, will consider them at a time, day and date, mutually agreed, at the Planning Department, Mid Sussex District Council, Oakland's, Oaklands Road, Haywards Heath, when you will be able to make such offer or representation in person at that time and place.

Dated this 28<sup>th</sup> April 2022

Signed 

Andy Clarke

Senior Planning Officer – Planning Investigation and Enforcement

## SCHEDULE 1

Land to which this notice relates:

Land at Bolney Park Broxmead Lane, Bolney, West Sussex, RH17 5RU ("the Land") and as shown edged in red on the attached plan.

## SCHEDULE 2

Without planning permission, the change of use of land for the importation, processing, deposit and transfer of waste and storage of associated items

## WARNING

1. It is an offence to fail without reasonable excuse, to comply with the requirements of the notice within twenty one days, beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1000. Continuing failure to comply following conviction will constitute a further offence.
2. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in any particular. The maximum penalty on conviction of this offence is a fine of £5000.

## ADDITIONAL INFORMATION

3. If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular they may issue an Enforcement Notice under s.172 of the 1990 Act, requiring the breach, or the injury to amenity caused by it, to be ceased.
4. If the Council serve a Stop Notice under Section 183 of the 1990 Act, Section 186 (5) (b) of the Act provide that should you otherwise become entitled (under Section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice or had you otherwise co-operated with the Council when responding to it.

PLEASE RETURN TO;

Divisional Leader for Planning and Economy  
Mid Sussex District Council  
Oakland's  
Oakland's Road  
Haywards Heath  
West Sussex  
RH16 1SS

MID SUSSEX DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING  
COMPENSATION ACT 1991)

PLANNING CONTRAVENTION NOTICE

Served On: PJ Brown (Civil Engineering) Ltd

Reference No: EF/18/0446

Further to the notice served on me the answers to the questions listed in Paragraph  
4 are as follows:

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Please continue on separate sheet if required

Signed..... Dated.....

# Land at Bolney Park Farm, East of the A23 in Bolney Mid Sussex, RH17 5RJ



(In response to the questionnaire dated the 28<sup>th</sup> April 2022)



**Statement prepared on behalf of:**  
**PJ Brown (Civil Engineering) Ltd**  
Burlands Farm  
Charlwood Road  
Crawley  
West Sussex  
RH11 0JZ

**Local Planning Authority:**  
**Mid Sussex District Council**  
Oakland's  
Oakland's Road  
Haywards Heath  
West Sussex  
RH16 1SS

**Report Dated: MAY 2022**

# Index

- 1 Introduction**
- 2 Site Location and Characteristics**
- 3 The Development**
- 4 Planning History**
- 5 History of the Site**
- 6 Conclusions**
- 7 Appendix**
  - I Licence for Tipping Soil at Bolney Park**
  - II Farm Contravention Notice and Response**
  - III Photographs**
  - IV Contracted Legal Plan of Site**  
*(please refer to boundary plan which is at odds with the plan forwarded with the questionnaire)*
  - V Communication re Notice Distribution**
  - VI Evidence of Use**

## **1 INTRODUCTION**

- 1.1 This material attached is submitted in response to the “Planning Contravention Notice” (Ref No EF/18/0446) dated the 28<sup>th</sup> April 2022 in relation to ‘**land at Bolney Park Farm, east of the A23 in Bolney, Mid Sussex, RH17 5RJ**’.
- 1.2 The existing land use as referenced in the questionnaire is ***‘the importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes’***

## **2 SITE LOCATION and CHARACTERISTICS**

- 2.1 The compound the subject of this response is circa 0.7 hectares and a parcel of land located on former farmland to the rear (east) of a permitted dwelling at Dan Tree Farm where the area of leased land is at odds with the plan provided by Mid Sussex Council under cover of their questionnaire Ref EF/18/0446
- 2.2 The Site shares an access directly to/from the A23 where PJ Brown (Civil Engineering) Ltd have a right of way over to the adopted highway.

## **3 THE DEVELOPMENT**

- 3.1 The Site that is the subject of this questionnaire response relates to the importation, processing, and export of waste when it then removed from the site as waste either destined for further processing or permanent deposit elsewhere unconnected to this site, this activity has been undertaken at the Application Site in excess of 10 years (of relevance should a Cert of Lawfulness be submitted ) whereas advised that the land has been in my client’s leasehold interest in Circa 2007.
- 3.2 The purpose of a CLEUD under Section 191 of the TCPA 1990 should it be necessary to submit is to establish whether the use or development described in it, on the land it describes, is lawful in planning terms and thereby immune from enforcement action. Development is lawful if, or to the extent that, any of the following apply:
- (a) the activity does not constitute ‘development’ subject to planning control;  
or
- (b) the development has been granted express planning permission; or

(c) the development is lawful through the passage of time, and it is not subject to an extant enforcement notice.

#### **4 PLANNING HISTORY**

4.1 Historical planning records show that a Certificate of Lawfulness Application Ref. WSCC/070/19 (DTF034) was submitted to Council with planning permission refused (10 January 2020). The application was refused by the Council 'on the basis of the evidence submitted with the application, the Council is not satisfied, on the balance of probabilities, that the use has taken place for ten (10) years prior to the County Council receiving application reference WSCC/070/19.

4.2 An enforcement notice was then issued by the Council on the 27 January 2020 which was appealed by the Applicant (PJ Brown Civil Engineering Ltd) and eventually withdrawn by the Council. No enforcement action has therefore been undertaken at the site.

#### **5 HISTORY OF THE SITE**

5.1 The Application Site at Bolney Park Farm has been in continuous use for both a mix of general open air storage purposes comprising of storage of inert material in addition to the storage and use of crushing and screening equipment (B8/sui generis uses) for a period in excess of 10 years.

5.2 In order to establish context for this landholding and establish its operational timeline, a historical summary of commencement operations is provided. The Applicant originally undertook work for Southeast Tipping at Bolney Park Farm, Broxmead Lane, West Sussex, RH17 5RJ from around 2004. In 2006 they assumed the tenancy contract for the Land and have held an established interest in the yard since then. In 2007 the Applicant began their formal renting of the yard and paid advance rental fees to the landowners indicating their intent to continue operating at the Site for some time.

5.3 Evidence included in support of this questionnaire response that clearly shows a material change of use took place at the Application Site towards the end of 2007/beginning of 2008.



At this point in time the use of the Site was primarily a mixed or composite use for storage and waste recycling (i.e.: principally for the crushing and recycling of concrete for use in construction works).

5.4 By May 2010 it is clear that the proposed uses would have been well established and it is clear from aerial photographs dating from March 2012 (and prior to) that this use has been gradually developed and ongoing at the Application Site.

5.5 A timeline series of aerial photographs to support the historical operational use of the Site and includes photos dated 2007, 2012, 2014, 2015 and 2018.

Date	Aerial Photograph Description
2007	This image shows storage activities taking place immediately to the east of the vegetation that separates Dan Tree Farm and the Bolney Park Farm compound.
March 2012	This is the earliest photographic evidence showing well established activities on the Application Site.
September 2012	This photo shows the continued use of the site for storage purposes.
June 2013	This photo shows that the storage use on the site has altered in what is being stored on site. Whilst previously containers were being stored there are now a number of skips and road plantings on the site. This image also shows that activities to the east of the Application Site have ceased and have moved to the southwest of the appeal site where operational works were being undertaken.
April 2015	This image once again shows the use of the Application Site for storage purposes, and operational works being undertaken on land to the southwest of the Site. It is also evident from this aerial photo that waste material is being stored on the Application Site.

September 2015	This aerial photo confirms that the activities on the Application Site continued, whilst also showing the use of the site for storage purposes.
May 2018	This photo shows the Application Site being used quite extensively for both the importation, deposit, and processing of waste, alongside the storage use.
August 2018	This photo shows the Application Site being used quite extensively for both the importation, deposit, and processing of waste, as well as storage.
October 2018	This photo shows that the storage use has moved further south due to waste recycling activities taking place in the northern most area of the Application Site.

5.6 An aerial photograph from April 2020 also shows a similar character of use with plant and machinery storage containers and skips, piles of material (including processed and crushed concrete and road plannings). In all of the aerial photographs witnesses have been able to identify the large machines used for screening and crushing concrete to create aggregates.

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

- Documents from Finning UK & Ireland Ltd - Six 'daily service reports' relating to field repairs at Bolney dated from 2004 in addition to an email dated 11 December 2018 which confirms that they undertook warranty work and general repairs to concrete crushing, screening equipment, and repairs to excavators including shovels and dozers at the site since 2006
- A letter from Pirtek confirming that they *'have been continuously carrying out onsite repairs for plant and auxiliary equipment for the past 10 years'*, with works orders confirming plant repairs, albeit with records only dating from 2014. A letter from Stallion Testing is also enclosed.

- 5.8 On land immediately south of the Application Site, planning permission was granted in 2012 which permitted the importation of some 76,500 cubic metres of inert waste to create a bund along the A23 (ref. WSC/077/11/BK). The access used for that development was also the access road to the Application Site. The construction of these bunds has since been completed. Evidence from these operations can also be provided supporting that the Application Site was used for the storage and transfer of waste and earth whilst the bunds were completed. Stated in the Council's Committee Report (Ref WSCC/070/19) at paragraph 7.3 *'at the far point of the site there is a considerable pile of construction and demolition waste which appear to be part bladed into the ground extending the area out into the field. I asked NP [Nick Page, PJ Brown Ltd.] the reason for the waste pile, which he said was for constructing tracks within the planning permission area" [i.e., the Park Farm bund site].*
- 5.9 The Council has evidenced a statement was made by Mr Stephen Kinchington of the EPA who made a number of visits to the Application Site from 2013 to 2018 (over 5 year period). He states that *'over the 5 years or so that I visited the site the items stored in this area consisted of various pieces of equipment apparently owned by PJ Brown including old portacabins, a broken soil screening machine, around 40 to 50 second hand skips, storage tanks, pallets of brick and general construction equipment'.*
- 5.10 for a period of 10 years for the importation, deposit, re-use and recycling of waste material and the use of the land for storage purposes

## **6 CONCLUSIONS**

- 6.1 On consideration of the evidence presented in this questionnaire response, it is concluded that the Site has been in composite use for storage and waste use, involving the re-use and recycling of waste/construction material, and storage of plant and equipment for an uninterrupted min period of 10 years (for the period May 2012 to May 2022).

Dated

2001

**DANE RAWLINGS (1)**

and

**P J BROWN trading as P J BROWN CIVIL ENGINEERING AND HAULAGE  
CONTRACTORS (2)**

**LICENCE  
for tipping soil at Bolney Park Farm**

**asb law**  
8 Ifield Road  
Crawley  
West Sussex RH11 7YY  
Tel: 01293 603 603  
Fax: 01293 603 666  
E-mail: [corporate.commercial@asb-law.com](mailto:corporate.commercial@asb-law.com)

**THIS LICENCE** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2001

**BETWEEN:**

- (1) **DANE RAWLINGS** of \_\_\_\_\_ (the “Licensor”)
- (2) **PETER JOHN BROWN trading as P J BROWN CIVIL ENGINEERING AND HAULAGE CONTRACTORS** of Burlands Charlwood Road Ifield Wood Crawley West Sussex RH11 0JZ (the “Licensee”).

**1 DEFINITIONS**

1.1 In this Licence the following expressions shall have the meanings respectively assigned to them:

- “Agent” James Phillips trading as South East Tipping of \_\_\_\_\_
- “Commencement Date” \_\_\_\_\_
- “Payment Date” the due date for monthly payment of the Royalty as set out in clause 3.2.
- “Royalty” the amount payable by the Licensee in accordance with clauses 3.2 and 3.3.
- “Site” Bolney Park Farm \_\_\_\_\_
- “Soil” inert soil.
- “VAT” value added tax or any other tax of a similar nature which may be substituted therefor or levied in addition thereto.

**2 GRANT OF LICENCE**

2.1 In consideration of the payments below and of the covenants on the part of the Licensee contained in this Licence the Licensor grants to the Licensee from the Commencement Date and during the period of this Licence the following exclusive rights and liberties:

- 2.1.1 the exclusive Licence and authority for the Licensee to deposit Soil at the Site; and
- 2.1.2 the right to gain access to and from the Site with or without motor vehicles and plant for the purpose of exercising the right granted above

by the use of all access roads or ways now constructed or which may during the period of this Licence be constructed by or on behalf of the Licensor within the Site.

### **3 PAYMENTS**

- 3.1 On Completion of this Licence, the Licensee shall pay to the Licensor the sum of £40,000 (FORTY THOUSAND POUNDS) on account of the Royalties to be paid under clause 3.2 (the "Advance Payment").
- 3.2 The Licensee shall during the period of this Licence pay to the Licensor a Royalty of £35 per eight wheel lorry load of Soil deposited at the Site, such Royalty to be paid in arrears on the \_\_\_\_\_ day of each month and which shall be deducted from the Advance Payment.
- 3.3 Any Royalty to be paid in relation to other sizes of vehicles shall be agreed in writing between the parties prior to and subject to such vehicles being granted access under clause 2 of this Licence.
- 3.4 The Licensor shall be responsible for counting the number of loads of Soil deposited by the Licensee at the Site and shall within 2 working days from the end of each Payment Date provide the Licensee with a statement setting out the number of loads of Soil deposited by the Licensee for the relevant month.
- 3.5 An assessment of the volume deposited at the Site by the Licensee shall be jointly undertaken by the Licensor and Licensee 8 weeks from the Commencement Date with such volume being agreed in writing and further assessments shall take place as agreed between the parties.
- 3.6 In the event of a dispute relating to any Royalty payment, any assessment under clause 3.5 or Refund (as defined in clause 3.9) the parties shall settle such dispute in writing and shall attempt to reach such settlement:
- 3.6.1 in relation to any Royalty payment within 14 days of the relevant statement being issued (pursuant to clause 3.4);
  - 3.6.2 in the case of any assessment pursuant to clause 3.5 within 14 days of the assessment; and
  - 3.6.3 in the case of a Refund within 14 days of the written notice being given by the Licensee (pursuant to clause 3.9);

failing which an independent member of the Royal Institute of Chartered Surveyors (the "Institute") will be appointed on application by either party by the President of the Institute for the purposes of determining the quantity of Soil deposited acting as expert and not arbitrator and whose decision shall (save in the case of manifest error) be final and binding on the parties and the cost of appointing such expert shall be borne by the parties equally.

- 3.7 The Royalty payable for any given month shall be adjusted (if applicable) to take into account any overpayment or underpayment by the Licensee for the previous month.
- 3.8 The Royalty shall be deemed to be exclusive of VAT.
- 3.9 In the event that the Licensee decides to cease depositing Soil at the Site for any reason whatsoever (including any event under clause 7), the Licensee shall give to the Licensor written notice of the same and the Licensor shall upon receipt of such notice immediately pay to the Licensee the balance of the Advance Payment (the "Refund")(if any).
- 3.10 If the Licensor fails to immediately pay the Refund to the Licensee then the amount of the Refund due shall bear interest from the date on which the Licensor receives the written notice of the Licensor (given pursuant to clause 3.9) until payment is made in full, both before and after any judgement, at \_\_\_\_\_ per cent per annum over \_\_\_\_\_ Bank Plc base rate from time to time.

#### **4 LICENSOR'S AGENT**

- 4.1 The Licensor hereby confirms and warrants that:
- 4.1.1 he has appointed the Agent as his authorised agent for the performance of his obligations under this Agreement;
- 4.1.2 the Agent is fully authorised on behalf of the Licensor to accept and acknowledge receipt of all monies due to the Licensor under this Agreement and such acknowledgement of any sum shall be deemed sufficient to discharge the Licensee's obligation to pay the same;
- 4.1.3 the Agent is fully authorised on behalf of the Licensor to accept and acknowledge receipt of all notices given to the Licensor by the Licensee under this Agreement; and
- 4.1.4 he agrees to ratify the acts of the Agent.
- 4.2 In the event that the Agent does not perform the obligations of the Licensor as set out in this Agreement the Licensor hereby undertakes to perform the same.

#### **5 LICENSEE'S COVENANTS**

- 5.1 The Licensee agrees to provide to the Licensor (at no expense to the Licensor) the following:
- 5.1.1 A wheelspinner with a portable water dip and concrete base;
- 5.1.2 A roadsweeper as and when required;
- 5.1.3 A D6H machine or similar machine; and
- 5.1.4 Road making materials as agreed between the parties.
- 5.2 The Licensee further agrees to perform (at no expense to the Licensor) the following:

- 5.2.1 Push over and spread out evenly loads of Soil deposited by South East Tipping; and
- 5.2.2 Maintain the internal road at the Site.

## **6 LICENSOR'S COVENANTS**

- 6.1 The Licensor hereby covenants with the Licensee that it will in connection with its use of the Site for whatever purpose cause as little interference or interruption possible to the operations of the Licensee in or upon the Site.
- 6.2 For the avoidance of doubt the Licensor hereby covenants that the use of the Site for the depositing of Soil or otherwise shall only be granted to the Licensor and the Agent and the Licensor further covenants that he will not during the period of this Agreement enter into any other agreements with third parties relating to the same.

## **7 FORCE MAJEURE**

- 7.1 Notwithstanding any other provisions of this Licence neither party shall be under any liability to the other to the extent that it may be hindered or prevented from performing any of its obligations by reason of any circumstances whatever beyond the control of the party affected including but not limited to the following circumstances namely acts of God war labour disputes fire riot explosion act of national or local authority (other than where the imposition thereof is due to the act neglect or default of the party affected).

## **8 NOTICES**

- 8.1 Any notice or other information required to be given by any of the parties under this Licence may be given by hand or sent by first class post, facsimile transmission or comparable means of communications, to the address of the addressee as set out in this Licence (and in the case of notices addressed to the Licensor, this includes the address of the Agent) or to such other address as the addressee may from time to time have notified for the purpose of this Clause. Communications sent by post shall be deemed to have been received forty-eight hours after posting. Communications sent by facsimile may be made between 9.00 am and 4.00 pm on any business day and shall be deemed to be received 1 hour after despatch provided that any notice received outside such hours shall be deemed to be served on the next succeeding business day. In proving service by post it shall only be necessary to prove that a communication sent was contained in an envelope which was duly and correctly addressed, stamped and posted in accordance with this Clause.



IN WITNESS whereof this Deed has been executed by the Licensor and the Licensee the day and year first above written.

SIGNED AS A DEED by the said )  
**DANE RAWLINGS** )  
in the presence of: )

.....

.....  
Signature of Witness

Name:

Address:

Occupation:

SIGNED AS A DEED by the said )  
**PETER JOHN BROWN** )  
in the presence of: )

.....

.....  
Signature of Witness

Name:

Address:

Occupation:

14<sup>th</sup> December 2001

J Phillips  
South Eastern Tipping Ltd  
Pedham Place Farm  
Old London Road  
Farningham  
Kent  
DA4 0WA

Dear Mr Philips

**Re: Tipping Bolney Court Farm**

We write to confirm that any material tipped at Bolney Court Farm will be inert only originating from various sites in our area.

Any contaminated material will be notified by the developer and taken to an appropriate site.

Yours sincerely,

P J Brown.

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED)**

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**PLANNING CONTRAVENTION NOTICE**

**REFERENCE NUMBER: EF/18/0446**

To: PJ Brown (Civil Engineering) Ltd

1. It appears to the Mid Sussex District Council ("the Council") being the Local Planning Authority for the purposes of Section 171C of the Town and Country Planning Act 1990 ("the Act"), that there may have been a breach of planning control in respect of the land described in Schedule 1 below ("the land")
2. The breach of planning control which may have occurred is specified in Schedule 2 below.
3. This notice is served on you as a person who;
  - (a) is the owner or occupier of the land or has any other interest in it;OR
  - (b) is carrying out operations in, on over or under the land or is using it for any purpose.
4. In exercise of their powers under Section 171C (2) and (3) of the Act the Council require you, so far as you are able, to give to them the following information in writing **WITHIN TWENTY ONE DAYS**, beginning on the day on which this notice was served on you:
  - (a) Please confirm your full name, job title and address, including post code, telephone number and email address.
  - (b) Please confirm the nature and description of the operation being carried out on the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice.
  - (c) Please confirm the date upon which the operation being carried out on the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.
  - (d) Please confirm your (PJ Brown (Civil Engineering) Ltd) interest in the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.

- (e) Please confirm how long and from what date you (Industrial Waste Recycling Ltd) have had interest in the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice began.
- (f) When did Industrial Waste Recycling Ltd begin to import material onto the land?
- (g) When did Industrial Waste Recycling Ltd begin to process material onto the land?
- (h) When did Industrial Waste Recycling Ltd begin to deposit material onto the land?
- (i) What tonnage of material is imported onto the land by Industrial Waste Recycling Ltd per annum?
- (j) Please confirm the number of HGV deliveries to the land over the past a) 4 week period and b) 12 month period prior to the date of this Notice.
- (k) Please provide any tenancy or lease agreement, including details of any payments made or received, relating to the use of the land stated in Schedule 1 and shown outlined in red on the plan attached to this Notice
- (l) Please provide the following information in relation to the blue ducting shown in photo 1 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (m) Please provide the following information in relation to the metalled fencing shown in photo 1 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (n) Please provide the following information in relation to the concrete drainage sections shown in photo 2 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (o) Please provide the following information in relation to the black ducting shown in photo 2 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site

- 
- (p) Please provide the following information in relation to the black plastic drainage sections shown in photo 3 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (q) Please provide the following information in relation to the yellow skip shown in photo 4 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (r) Please provide the following information in relation to the gate / barrier and associated mechanism shown in photo 5 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (s) Please provide the following information in relation to the metallised gates / tracks shown in photo 6 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (t) Please provide the following information in relation to the plastic pipes shown in photo 7 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site
- (u) Please provide the following information in relation to the metallised wheelwash shown in photo 8 on the Appendix 1 attached to this Notice:
- i) a description of the item;
  - ii) for what purpose it is on the site;
  - iii) any intended use of the item;
  - iv) how long it has been present upon the site

(v) Please provide the following information in relation to the black plastic drainage sections shown in photo 9 on the Appendix 1 attached to this Notice:

- i) a description of the item;
- ii) for what purpose it is on the site;
- iii) any intended use of the item;
- iv) how long it has been present upon the site

(w) Please provide the following information in relation to the metalled tracks shown in photo 10 on the Appendix 1 attached to this Notice:

- i) a description of the item;
- ii) for what purpose it is on the site;
- iii) any intended use of the item;
- iv) how long it has been present upon the site

(x) Do you consider that planning permission (deemed or express) would be necessary for any of development, including that referred in questions b -w above, on the land? If no, please clarify why.

(y) Do you intend to make a planning application for any of development, including that referred in questions b -w above, on the land? If no, please clarify why.

(z) Please provide any other information you believe the LPA should consider in its assessment of the breach of planning control as stated in Schedule 2.

5. If you wish to make:

(a) an offer to apply for planning permission to vary the wording of the condition, or to refrain from carrying out operations or activities which represent a breach of planning control OR

(b) any representations about this notice

the Council, or representatives of the Council, will consider them at a time, day and date, mutually agreed, at the Planning Department, Mid Sussex District Council, Oakland's, Oaklands Road, Haywards Heath, when you will be able to make such offer or representation in person at that time and place.

Dated this 28<sup>th</sup> April 2022

Signed



Andy Clarke

Senior Planning Officer – Planning Investigation and Enforcement

## SCHEDULE 1

Land to which this notice relates:

Land at Bolney Park Broxmead Lane, Bolney, West Sussex, RH17 5RU ("the Land") and as shown edged in red on the attached plan.

## SCHEDULE 2

Without planning permission, the change of use of land for the importation, processing, deposit and transfer of waste and storage of associated items

## WARNING

1. It is an offence to fail without reasonable excuse, to comply with the requirements of the notice within twenty one days, beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1000. Continuing failure to comply following conviction will constitute a further offence.
2. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in any particular. The maximum penalty on conviction of this offence is a fine of £5000.

## ADDITIONAL INFORMATION

3. If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular they may issue an Enforcement Notice under s.172 of the 1990 Act, requiring the breach, or the injury to amenity caused by it, to be ceased.
4. If the Council serve a Stop Notice under Section 183 of the 1990 Act, Section 186 (5) (b) of the Act provide that should you otherwise become entitled (under Section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice or had you otherwise co-operated with the Council when responding to it.

PLEASE RETURN TO;

Divisional Leader for Planning and Economy  
Mid Sussex District Council  
Oakland's  
Oakland's Road  
Haywards Heath  
West Sussex  
RH16 1SS

MID SUSSEX DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING  
COMPENSATION ACT 1991)

PLANNING CONTRAVENTION NOTICE

Served On: Industrial Waste Recycling Ltd

Reference No: EF/18/0446

Further to the notice served on me the answers to the questions listed in Paragraph  
4 are as follows:

(a).....

.....

.....

.....

(b).....

.....

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.....

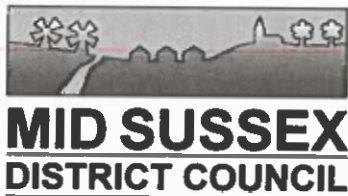
(c).....

.....

.....

.....





Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

Switchboard: 01444 458166  
Fax: 01444 477461

DX 300320 Haywards Heath 1  
www.midsussex.gov.uk

The Company Secretary  
Industrial Waste Recycling Ltd  
Burlands  
Charlwood Road  
Ifield Wood  
Crawley  
West Sussex  
RH11 0JZ

CONTACT: Andy Clarke  
PHONE: 01444 477332  
E-MAIL: Andrew.Clarke@midsussex.gov.uk  
OUR REF: EF/18/0446  
DATE: 29<sup>th</sup> April 2022

**Re: Alleged breach of planning control relating to the change of use of land for the importation, processing, deposit and transfer of waste and storage of associated items to the at Bolney Park Broxmead Lane, Bolney, West Sussex, RH17 5RU**

Dear Sirs

I refer to the above site and an alleged breach of planning control relating to the change of use of the land.

In order that the Council can consider and assess any breach of planning control we are serving upon you a Planning Contravention Notice under s.171C of the Town and Country Planning Act. This must be returned completed within 21 days of the date of this letter. The Planning Contravention Notice is enclosed. Please note the implications should the Notice not be returned or incorrect information is provided.

I look forward to your co-operation in this matter and should you wish to discuss the matter please contact me on the details at the top of this letter.

Yours sincerely

Andy Clarke  
Senior Planning Officer  
Planning Investigation and Enforcement

PLANNING SERVICES DIVISION

Sally Blomfield  
Divisional Leader for Planning and Economy

## APPENDIX II - CONTRAVENTION RESPONSE

### **Answers to Planning Contravention Notice, Reference No: EF/18/0446**

- A. Richard Sonny Brown – Manager  
Phoenix Lodge, Collendean Lane, Norwood Hill, Surrey RH6 0HP  
[Sonny.Brown@pjbrown.co.uk](mailto:Sonny.Brown@pjbrown.co.uk)  
01293 544856
- B. Inert Waste Recycling Facility (Permit number JB3502UD only 2 years old) Crushing and Screening of C, D & E waste.  
Storage of materials to be treated and Recycled materials post treatment  
E.g Recycled Aggregates (Crushed concrete, 2C aggregate, Brick hardcore) Please note the attached the attached plan reflecting the land ownership occupied by the company which is at odds with the plan the subject of your required questionnaire. Kindly note the Company has an open unincumbered *right of way* linking the site to the adopted highway.
- C. Occupied the land since 2001/2 (Dated agreement with landowner)\* (details provided).  
2007 activity increased to include treatment of Waste/Materials i.e., Crushing and Screening in addition to which on site storage of materials and plant pursuant to the operation of the business in general.  
2012– present = Current level of activity and use.  
Affidavits can be provided (as part of any future planning application (subject to discussion) Dated google images covering the time period referenced.
- D. Operator of the Facility/ Site (*as referenced in item B*), as a paying Tenant direct to the Freeholder.
- E. Since 2001 in certain capacity (*as previously referenced*) ranging through until present day, where activity has intensified in accordance with the company’s business plan.
- F. From 2001 to a limited extent, albeit through a smaller operation increasing roughly to 2007 through to 2012 since when the quantum of imports peaked in 2012 and continues at the same level as at today.
- G. As above where Affidavits can be made available if required.
- H. As above, important distinction to make is that any material is deposited for storage and processing to be reused and recycled or sold.
- I. Up to 75,000tonnes throughput of Waste, will have significantly grown between 2007 -2012 (PJ Brown had alternative facility in place at that time)

J. INBOUND MOVEMENTS

1 week – 240 (Mon – Sat)

4 week – 960

12 months (480 x 52) – 12,480

K. Tenancy agreement attached and where associated invoices can be provided.

L. L (through to W): These are all generally similar responses for each. Simply they are Ad Hoc casual storage of materials pertinent to the general running of our business that have been picked up over the years. Some are stored to be used again for other sites, others were simply stored awaiting a further need. All can be removed from site if required. No skip business (in the case of question Q) is in operation the skip pictured is simply used as an incidental storage container and is permanently in situ.

X) Given the longevity of the business operations as described it is our opinion that the uses as referenced are “established “

Y) To evidence this a planning “Certificate of Lawful use “could be prepare to cover the 2 prime uses referenced under Point B

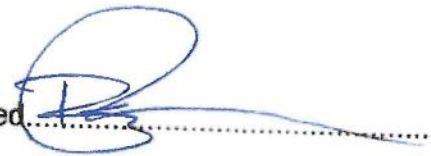
The “Ad Hoc“ referenced storage items could be removed and would not be included in any future planning application save perhaps the 2 permanent storage skips.

(x).....  
.....  
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(y).....  
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(z).....  
.....  
.....  
.....

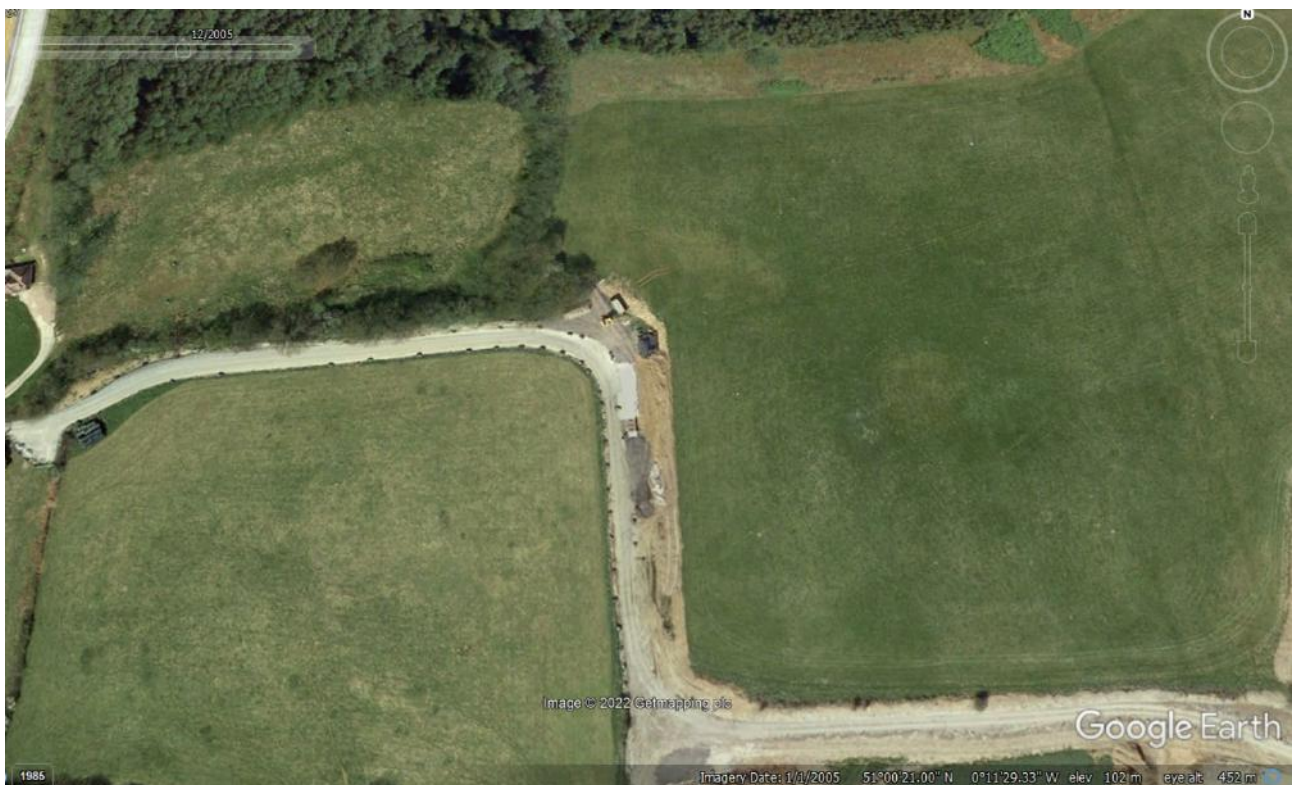
Please continue on separate sheet if required

Signed  Dated 11 / 5 / 2022

APPENDIX III - PHOTOGRAPHS



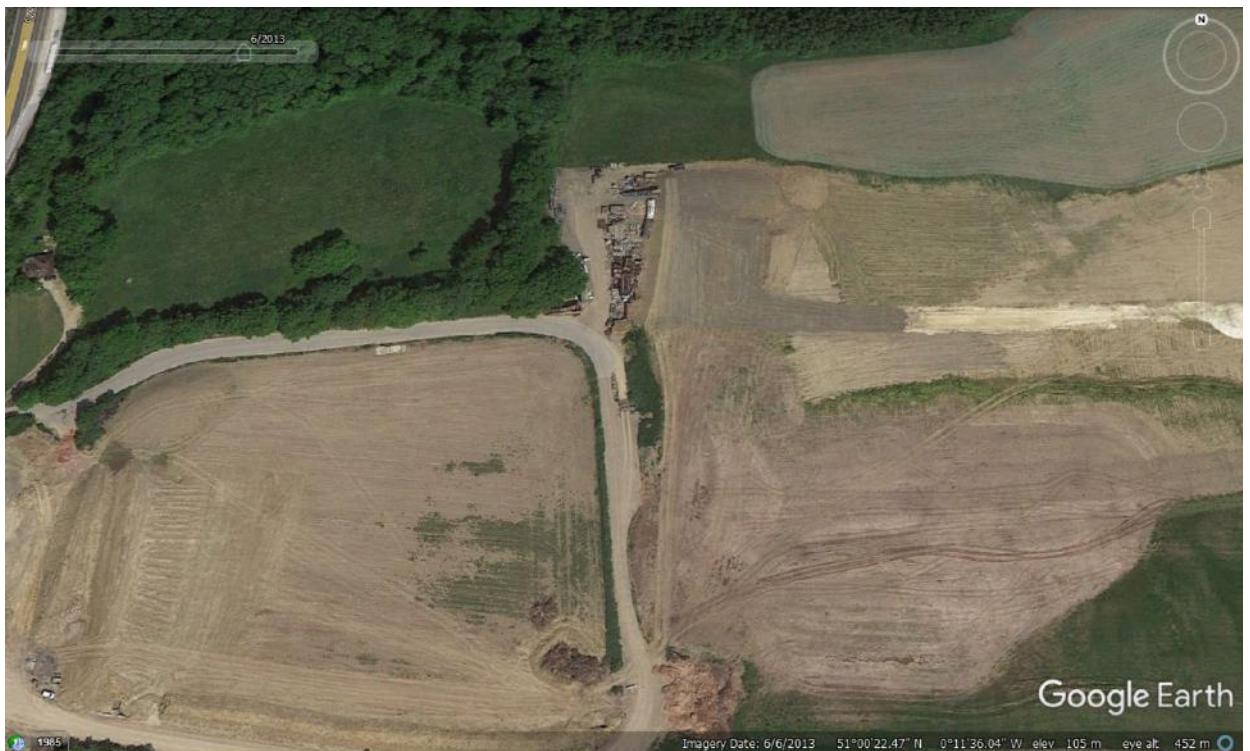
01.01.2001



01.01.2005



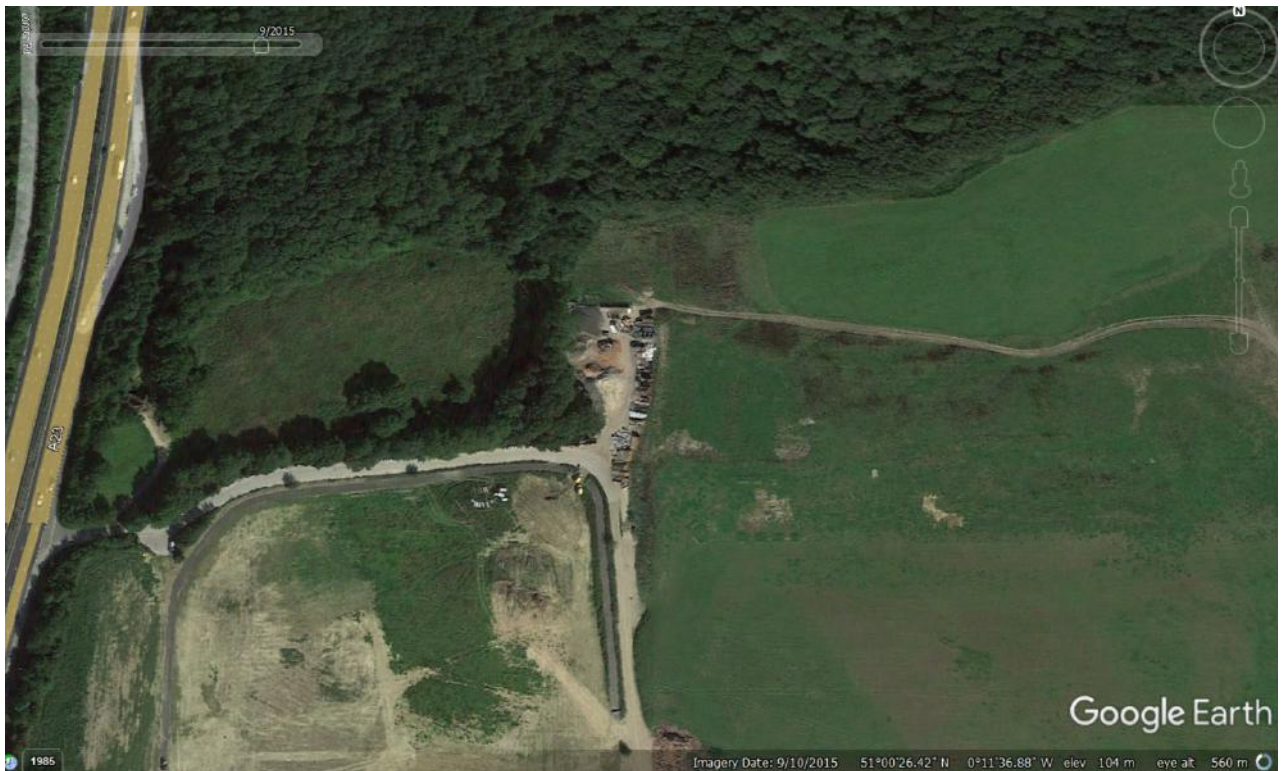
3.28.2012



6.6.2013



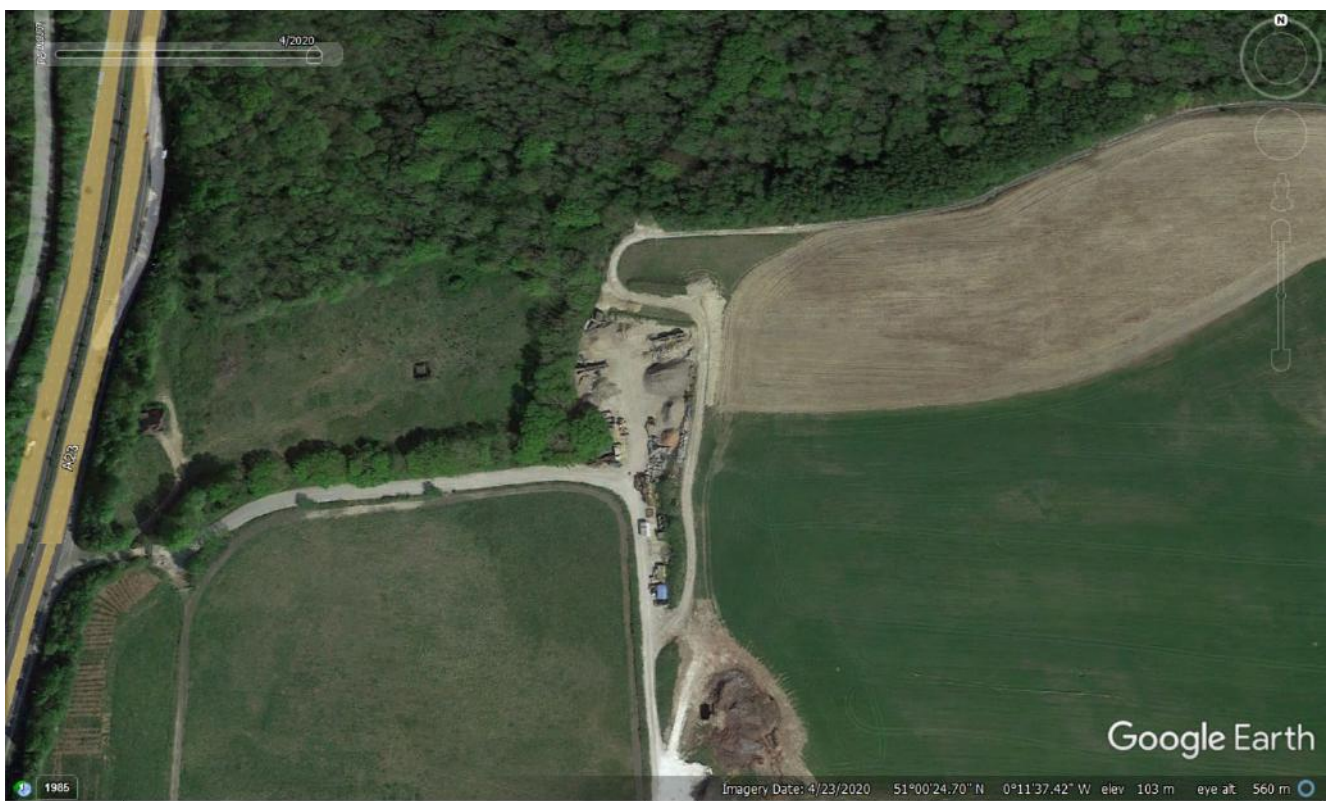
4.12.2015



9.10.2015

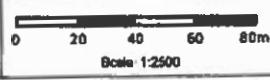


8.6.2018

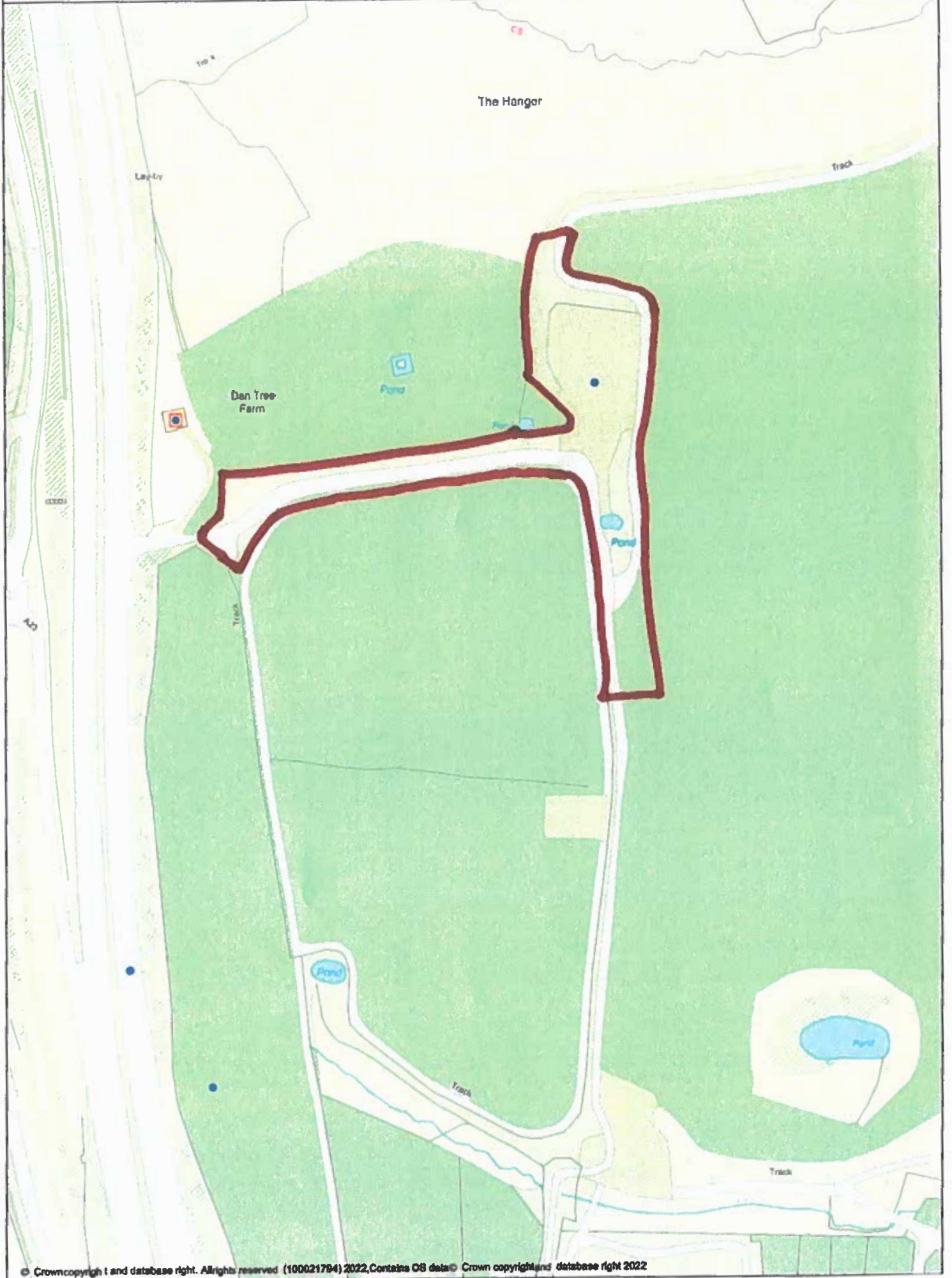


4.23.2020





Author: A. Clarke  
Date: 26/04/2022



APPENDIX IV - CONTRACTED LEGAL PLAN OF SITE





Divisional Leader for Planning and Economy  
Mid Sussex District Council  
Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

17<sup>th</sup> May 2022

Dear Sirs

**Re: PCN Contravention Notice EF/18/0446 (Land at Bolney)**

The PCN (Planning Contravention Notice) Served on the Recycling facility at Land east of Bolney Park Farm (Addressed a Bolney Park Broxmead lane, Bolney, West Sussex, RH17 5RU) has been served on several companies with no relation to the site aside from a singular Director in common.

The Site is solely operated by P J Brown (Civil Engineering) Ltd

The list of companies therefore with no relevance to site the subject of your enquiry are listed below:

- P J Brown Skips Ltd
- Construction Waste Recycling Ltd
- Industrial Waste Recycling
- P J Brown Holdings Ltd
- P J Brown Construction Ltd (brought into administration in 2020).

(Given the number of documents sent over if more have been sent to relevant addresses but not received, please again circulate any future correspondence to P J Brown (Civil Engineering) Ltd as Burlands, Charlwood Road, Ifield wood, Crawley, West Sussex, RH11 0JZ.

Kind Regards and with many thanks.

Barry Kitcherside



# STALLION PLANT SERVICES LTD

Incorporating Stallion Testing

The Test House  
Ditchling Common Ind Ltd  
Ditchling  
West Sussex  
BN6 8SG  
TEL: 01444 246662  
E-MAIL: [info@stallionplant.co.uk](mailto:info@stallionplant.co.uk)  
[www.stallionplant.co.uk](http://www.stallionplant.co.uk)

Bolney Park Farm  
Broxmead Lane  
Bolney  
W17 5RA

25<sup>th</sup> March 2019

To whom it may concern,

I can confirm that Stallion Plant Services have carried out equipment and plant examinations for PJ Brown at the above address during 2008 to the present day.

If any more information is required please let me know.

David C Jones

Managing Director.



# FINNING

# DAILY SERVICE REPORT

Sheet No.  
1

Date	20-Feb-2006	Dealer Code	M610	Engineer Name	IAN BARNES	Clock No	2736
------	-------------	-------------	------	---------------	------------	----------	------

Customer	P J Brown Ltd	Site Address	Bolney, West Sussex
----------	---------------	--------------	---------------------

Field Repair			Mileage		Travel Time	
Time on Site	Time Off Site	Hours Worked	Out	Return	Out	Return
09.30	13.15	3hr 15min	74		2hrs	

Shop Repair		
Time on	Time Off	Hours Worked
08.00	08	15min

*The following Sims Details are Required for Each Separate Incident*

Work Order No.	Seg	Model	Serial Number	Hrs/Miles/Km	h/m/k
6905305	02	D6R II	BNC00236	785	H

Part Caus.	Failure	PD Code	Group No.	Inop. Y/N	Comments
PI-305	5	56	7751	N	Bottom coolant hoses

**Details of Failure Including Consequential Damage**

Carry out Product Improvement Program to replace the engine cooling hoses.

**Details of Your Method of Repair**

Collected the machine, drove to site. Drain engine coolant, remove the front guard and the bottom guard. Remove the two coolant hoses and fit new 185-0844 & 185-1724 hoses. Refill the coolant and run the engine, check for leaks and find okay. Re-fit the engine front guards.

The right side of the raffle fitted to the front guard had broken it's rivets and was loose. I refitted the bottom guard using nuts and bolts as I had no rivets of the correct length.

Customer Signature		Print Name
--------------------	--	------------

Job Complete (Y/N)	Y	Parts to be returned (Y/N)	N
--------------------	---	----------------------------	---

**What in Your Opinion Caused the Failure?**

Day start Time	Lunch Time Start	Lunch Time Stop	Day Finish Time	Total Hours Worked (excluding lunch)
07 15	12 30	13 00		

Date	20-Feb-2004	Dealer Code	M610	Engineer Name	IAN BARNES	Clock No	2736
------	-------------	-------------	------	---------------	------------	----------	------

Customer	P J Brown Ltd	Site Address	Bolney, West Sussex
----------	---------------	--------------	---------------------

Field Repair			Mileage		Travel Time	
Time on Site	Time Off Site	Hours Worked	Out	Return	Out	Return
13.15	17.15	4				

Inop Repair		
Time on	Time Off	Hours Worked
X	X	X

The following Sims Details are Required for Each Separate Incident

Work Order No.	Seg	Model	Serial Number	Hrs/Miles/Km	h/m/k
6905305		D6R II	BNC00236	785	H

Part Catalog Failure	PD Code	Group No.	Inop. Y/N	Comments

**Details of Failure Including Consequential Damage**  
 Reported low power problem with the C9 engine. Serial No. 4ZF04750

**Brief Details of Method of Repair**  
 Carry out performance checks to the Engine, Power Train, and Hydraulics as requested by Service Technical dept.  
 Engine software was upgraded to the latest Flash File # 244-6531.  
 Data to be sent Service Tech at Cannock.

Customer Signature		Print Name	
--------------------	--	------------	--

Job Complete (Y/N)	Y	Parts to be returned (Y/N)	N
--------------------	---	----------------------------	---

What in Your Opinion Caused the Failure?

Day start Time	Lunch Time Start	Lunch Time Stop	Day Finish Time	Total Hours Worked (excluding lunch)
07.15	12.30	13.00		

# FINNING

# DAILY SERVICE REPORT

Sheet No.  
2

Date: 09-Feb-2004 Dealer Code: M610 Engineer Name: IAN BARNES Clock No: 2736

Customer: P J Brown Ltd Site Address: Bolney, West Sussex

Field Repair				Mileage		Travel Time	
Time @ Site	Time Off Site	Hours Worked	Out	Return	Out	Return	
13:00	16:00	3	56	76	1hr	1hr 45min	

Shop	Time Off	Hours Worked
X	X	X

The following Sims Details are Required for Each Separate Incident

Work Order No.	Seg	Model	Serial Number	Hrs/Miles/Km	h/m/k
6906189	01	D6R II	BNC00236	734	H

Failure	PD Code	Group No.	Inop. Y/N	Comments
19	10	4050	Y	broke through roof

**Details of Failure including Consequential Damage**

The following details are required for each separate incident. This should be a brief description of the failure and the consequential damage. It should include the date and time of the failure, the location of the failure, the nature of the failure, the consequential damage, and the date and time of the repair.

**Details of Method of Repair**

Drain the drive oil and remove the drive shaft, planetary housing, ring-gear, and lock. Clean the track and dirt from the track and track frame before separating the track and rolling it off the f/drive sprocket. Load planetary assembly into van to take back to Slough for repair. Inform the office of parts required for assembly.

Customer Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Job Complete (Y/N): N Parts to be returned (Y/N): \_\_\_\_\_

What in Your Opinion Caused the Failure?

\_\_\_\_\_

Day Start Time	Lunch Time Start	Lunch Time Stop	Day Finish Time	Total Hours Worked (excluding lunch)
07:30	12:30	13:00	17:45	9h 45min

# FINNING

# DAILY SERVICE REPORT

Sheet No.  
1

Date: 10-Feb-2011 Dealer Code: M610 Engineer Name: IAN BARNES Clock No: 2736

Customer: P J Brown Ltd Site Address: Bolney, West Sussex

Field Repair		Mileage		Travel Time	
Time on Site	Hours Worked	Out	Return	Out	Return
X	X	16	16	45min	30min

Shop Repair		Hours Worked
Time on Site	Time on Site	
05:15	17:00	8hr 15min

The following Sims Details are Required for Each Separate Incident

Work Order No.	Seg	Model	Serial Number	Hrs/Miles/Km	h/m/k
6905189	01	D6R II	BNC00236	734	H

Part Causing Failure	PD Code	Group No.	Inop. Y/N	Comments
9G-8639	10	4050	Y	cracked through root

**Details of Failure Including Consequential Damage**

The ring gear of left hand planetary gear set had cracked through root. It was necessary to strip up and remove the planetary gear set and replace with a new one. The new gear set was fitted and the machine was tested and found to be in good order.

Disassemble the planetary gears from the carrier housing using press tooling. Wash all the parts and examine for damage. The carrier housing, roller bearings, pins, and half-shaft were all undamaged and reusable. The planet gears each had a few damaged teeth so required replacement. Had no means of salvaging the bearing cups in the gears so these were replaced. Reassemble the planetary with 6 new bearing cups and 3 new gears. Press fit the pins to correct depth for bearing preload. Store old parts for warranty return.

Customer Signature:  Print Name:

Job Complete (Y/N)  Parts to be returned (Y/N)

What, if any, other work was carried out on this machine?

Day Start Time	Leave Time (am)	Lunch Time (hrs)	Day Finish Time	Hours Worked (including lunch)
07:30	12:30	1:00	17:30	9hr 30min

FINNING  
Customer Signature:



# FINNING

# DAILY SERVICE REPORT

Sheet No.  
1

Date	11-Feb-2004	Dealer Code	M610	Engineer Name	IAN BARNES	Clock No	2736
------	-------------	-------------	------	---------------	------------	----------	------

Customer	P J Brown Ltd	Site Address	Bolney, West Sussex
----------	---------------	--------------	---------------------

Field Repair			Mileage		Travel Time	
Time on Site	Time Off Site	Hours Worked	Out	Return	Out	Return
09.15	14.45	5	75		1hr 45min	

Shop Repair		
Time on	Time Off	Hours Worked
07.00	08.00	1

*The following Sims Details are Required for Each Separate Incident*

Work Order No.	Seg	Model	Serial Number	Hrs/Miles/Km	h/m/k
6905189	01	D6R II	BNC00236	734	H

Part Causing Failure	PD Code	Group No.	Inop. Y/N	Comments
9G-8639	10	4050	Y	cracked through root

### Details of Failure Including Consequential Damage

The ring gear of left hand final drive planetary set had broken along the root of a tooth. This allowed it to spring open and release the locking ring. The broken gear fell down inside the housing causing damage to the planet gears and reaction hub teeth.

### Brief Details of Method of Repair

Fit the new 9G-8638 gear onto the new 106-8535 reaction hub. Collect other parts & tooling and drive to site. Remove the old reaction hub and wash the housing & bearings. Install the new hub assembly and torque fasten the bolts. Install the planetary gear group, drive shaft and cover then fill with 50w oil. Reconnect the track and torque turn the bolts (300lb ft + 180deg). Adjust the track tension. Install a new 9G-9174 drive shaft into the right hand final drive (part of a previous job).

Customer Signature		Print Name
--------------------	--	------------

Job Complete (Y/N)	N	Parts to be returned (Y/N)	Y
--------------------	---	----------------------------	---

What in Your Opinion Caused the Failure?

Possible heat treatment problem on the 9G-8694 ring-gear

Day Start Time	Lunch Time Start	Lunch Time Stop	Day Finish Time	Total Hours Worked (excluding lunch)
07.00	12.00	13.00		

# FINNING

## FIELD SERVICE - BASIC RISK ASSESSMENT

SERVICEMAN : Ion BARNES DATE : 9-2-04

CUSTOMER : PJ BROWN SITE : BOWEY, WEST SUSSEX.

BRIEF DESCRIPTION OF DUTIES OR TASK : \_\_\_\_\_ JOB No : 6905189

Repair Final Drive. DGR.

### HAZARDS OR RISKS PRESENT ON SITE

Are you aware of your responsibilities as detailed in H&S Policy (FIN 063)?.....	YES/NO
Are you aware of the Safety and Environmental Rules in force on this site?.....	YES/NO
Do you have safe access to and from the machine?.....	YES/NO
Is the machine currently in a safe position? (Stable Ground, Overhead Power Lines etc).....	YES/NO
Are you adequately protected against material falling on you from height?.....	YES/NO
Will you take precautions against falling from a height in excess of 2m?.....	YES/NO
Have you adequate illumination to safely complete the job in hand?.....	YES/NO

### HAZARDS OR RISKS ASSOCIATED WITH TASKS

Is the machine or unit currently in a safe condition (Blocked and/or Locked-out)?.....	YES/NO
Are your Portable Power Tools safe and adequate for the task?.....	YES/NO
Is your Test Equipment safe and adequate for the task?.....	YES/NO
Are the manual handling requirements of the task within your safe capabilities?.....	YES/NO
Is available Mechanical Lifting Tackle safe and adequate for the task?.....	YES/NO
Do you have adequate Personal Protective Equipment for the task?.....	YES/NO
Are you aware of precautions to be taken when using Hazardous Substances?.....	YES/NO
Will you take adequate precautions to prevent spillages and environmental contamination?.....	YES/NO
So far as is reasonably practical, will the job be accomplished safely?.....	YES/NO

IF THE ANSWER TO ANY OF THE ABOVE IS NO, IT IS PREFERABLE TO REVIEW & RESOLVE WITH LOCAL SITE MANAGEMENT, BUT IF THE CONCERN CANNOT BE RESOLVED LOCALLY THEN CONTACT YOUR OWN SUPERVISOR FOR ADVICE

### ACTION TAKEN TO REDUCE PERCEIVED HAZARDS :

None Required

SIGNED : Ion Barnes

FINNING (UK) Ltd.

SITE MANAGEMENT

White copy to Job File, Pink copy optional to leave with customer

FIN 334

## Robert Penticost

---

**From:** Mark Robinson  
**Sent:** 11 December 2018 09:08  
**To:** Robert Penticost  
**Subject:** FW: Bolney Park Farm RH17 5RJ

I have asked to be put in an official letter to me ASAP.

Regards,

Mark Robinson  
Transport & Plant Manager  
P J Brown (Construction)Ltd  
Tel: +44 (0) 1293 844216  
Fax: +44 (0) 1293 571164  
Mob: +44 (0) 7889 028974  
Web: [www.pjbrown.co.uk](http://www.pjbrown.co.uk)



P J Brown (Construction)Ltd  
Head Office  
Burlands Farm  
Charlwood Road  
Crawley  
West Sussex  
RH11 0JZ

**From:** Alan Shea (UK) <[ashea@finning.com](mailto:ashea@finning.com)>  
**Sent:** 11 December 2018 08:00  
**To:** Mark Robinson <[Mark.Robinson@pjbrown.co.uk](mailto:Mark.Robinson@pjbrown.co.uk)>  
**Subject:** Bolney Park Farm RH17 5RJ

To Whom It May Concern

We Finning Caterpillar have worked with P J Brown at the above site since 2006 , in that period we have carried out warranty and general repairs to their concrete crushing ( Power plants) and screening ( Power Plants) equipment and repairs to their excavators, loading shovels and dozers.

Many Thanks &  
Best Regards

Alan Shea  
Product Support Sales Manager South East  
Finning UK & Ireland Ltd  
[250 Leigh Road, Slough Trading Estate, Slough \(South East\).SL1 4BD](http://250 Leigh Road, Slough Trading Estate, Slough (South East).SL1 4BD)

To whom it may concern,

**Reference: P J Brown site at Bolney**

Please find attached data of work completed since 2014, unfortunately this is where our data records end, but we have been continuously carrying out onsite repairs for plant and auxiliary equipment for the past 10 years.

Worksheets from the period 2014:

12968607  
12969428  
12970859  
12972165  
12972324  
12972898  
12981509  
12981522  
12982859  
12984686  
12987690  
12995620  
12996428  
12998774  
129100746  
129101427  
129101611  
129103135  
129103931  
129108371  
129110443  
129110548  
129111914

Yours faithfully

Mr D Peters  
Director Pirtek Ashford & Crawley





# WORK ORDER

0800 38 24 38

[www.pirtek.eu](http://www.pirtek.eu)

## PIRTEK CRAWLEY

Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: [accounts@pirtekcrawlley.co.uk](mailto:accounts@pirtekcrawlley.co.uk)

**WORK ORDER NUMBER**  
**12968607**

**Customer Name:** P J Brown Construction Ltd

**Site Address:** BOLNEY, TIP OFF A23

**Description of Work:** CUT AND RE-END JETTING HOSE

**Location of Hose:** JETTING HOSE

**Date:**  
28/05/2014

**Job Ref. No:**

**Customer Order No:**  
MARK/Y359KAN

**Account Ref:**  
PJBS0100

**Technician:**  
Spare Eng 2

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
801-06-06	##801 SERIES (BSPP FEMALE)	1	£5.76	£3.46
UPN-06	##SWAGE FERRULE FOR BRAIDED HYDR	1	£4.75	£2.85
LABOUR	Labour (normal hrs)	0.5	£61.00	£15.00
SERVICE	Service Call (normal hrs)	1	£40.00	£20.00

### OPERATIONAL PROCEDURES

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

### MACHINE DETAILS

**Type:** SWEEPER  
**Serial/Reg.No:** Y395KAN  
**Mileage/Hours:** 278965

**Start:**  
28/05/2014 09:53:00  
**Finish:**  
28/05/2014 10:13:29

<b>Sub-total</b>	£41.31
<b>VAT</b>	£8.26
<b>Total</b>	£49.57

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE

PLEASE PRINT NAME

SIMON MARSHALL





**PIRTEK CRAWLEY**

Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtek-crawley.co.uk

**WORK ORDER NUMBER**  
**12969428**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd  
**Site Address:** BOLNEY, LAND FILL SITE  
**Description of Work:** MAKE HOSE TO PATTERN NOT FITTED OR TESTED  
**Location of Hose:** NA

**Date:** 24/06/2014  
**Job Ref. No:**  
**Customer Order No:** MARK/PL147  
**Account Ref:** PJBS0100  
**Technician:** Tom Healey

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM35-06	##PFM 350 BAR BRAIDED HOSE	1.34	£26.20	£21.06
UPN-06	##SWAGE FERRULE FOR BRAIDED HYDR	2	£4.52	£5.42
801-06-06	##801 SERIES (BSPP FEMALE)	1	£5.49	£3.29
851-06-06	##851 SERIES (BSPP FEMALE 90 DEG	1	£10.88	£6.53
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£3.00	£0.00
800-AC-B	#ASSEMBLY CHARGE - 800 SERIES - BRAIDED HOSE	1	£19.00	£11.40
SERVICE	Service Call (normal hrs)	1	£40.00	£20.00

**OPERATIONAL PROCEDURES**


- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**  
 Type: 20TON DIGGER  
 Serial/Reg.No: V20  
 Mileage/Hours: 1872

**Start:** 24/06/2014 10:04:31  
**Finish:** 24/06/2014 10:22:23

<b>Sub-total</b>	£67.70
<b>VAT</b>	£13.54
<b>Total</b>	£81.24

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE 	PLEASE PRINT NAME <b>STUART</b>
--	------------------------------------

PIRTEK CRAWLEY is the trading name of West Sussex Hydraulics Ltd, a limited liability company registered in the UK No. 10894948. Granted under licence from PIRTEK (UK) LTD



Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtekcreawley.co.uk

**WORK ORDER NUMBER**  
**12970859**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd

**Site Address:** BOLNEY, TIP OFF A23

**Description of Work:** MAKE HOSE TO PATTERN NOT FITTED OR TESTED

**Location of Hose:**

**Date:**  
09/08/2014

**Job Ref. No:**

**Customer Order No:**  
2139SC

**Account Ref:**  
PJBS0100

**Technician:**  
Tom Healey

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM35S-20	#PFM 350 BAR SPIRAL HOSE	0.89	£141.88	£75.76
1801-20-20	#1801 SERIES BSPP FEMALE	2	£91.75	£110.10
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£3.00	£0.00
S1-PART	CJDP-20-20	1	£76.80	£46.08
LABOUR	Labour (normal hrs)	0.75	£61.00	£22.50
DEPOTCALL	Call from Depot (normal hrs)	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

**Type:** CONCRETE  
**Serial/Reg.No:**  
**Mileage/Hours:**

**Start:**  
09/08/2014 10:04:38  
**Finish:**  
09/08/2014 10:47:24

<b>Sub-total</b>	£254.44
<b>VAT</b>	£50.89
<b>Total</b>	£305.33

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE



PLEASE PRINT NAME

SEAN

Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtekcrawlley.co.uk

**WORK ORDER NUMBER**  
**12972165**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd

**Site Address:** BOLNEY, PJ BROWN TIP

**Description of Work:** MAKE UP HOSE TO PATTERN, NOT FITTED

**Location of Hose:**

**Date:**  
 26/09/2014

**Job Ref. No:**

**Customer Order No:**  
 MARK-WARRIER 1800

**Account Ref:**  
 PJBS0100

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

**Technician:**  
 Nathan Soutter

Part Number	Description	Qty	Unit Price	Amount
PFM25-12	##PFM 250 BAR BRAIDED HOSE	2.87	£43.52	£74.94
801-12-12	##801 SERIES (BSPP FEMALE)	1	£14.03	£8.42
851-12-12	##851 SERIES (BSPP FEMALE 90 DEG)	1	£32.32	£19.39
UPN-12	##SWAGE FERRULE FOR BRAIDED HYDR	2	£13.38	£16.06
HKS-01	##HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£3.00	£0.00
800-AC-B	##ASSEMBLY CHARGE - 800 SERIES - BRAIDED HOSE	1	£19.00	£11.40
SERVICE	Service Call (normal hrs)	1	£40.00	£20.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

**Type:** POWER  
**Serial/Reg.No:** WARRIER  
**Mileage/Hours:** 2499

**Start:**  
 26/09/2014 14:01:59  
**Finish:**  
 26/09/2014 14:20:51

<b>Sub-total</b>	£150.21
<b>VAT</b>	£30.04
<b>Total</b>	£180.25

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE



PLEASE PRINT NAME

SHAUN





# WORK ORDER

0800 38 24 38

[www.pirtek.eu](http://www.pirtek.eu)

 Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: [accounts@pirtekcrawlley.co.uk](mailto:accounts@pirtekcrawlley.co.uk)
**WORK ORDER NUMBER**  
**12972324**

<b>Customer Name:</b> P J Brown Construction Ltd	<b>Date:</b> 02/10/2014
<b>Site Address:</b> BOLNEY, TIP	<b>Job Ref. No:</b>
<b>Description of Work:</b> HOSE TO PATTERN	<b>Customer Order No:</b> MARK/WARRIOR 1800
<b>Location of Hose:</b>	<b>Account Ref:</b> PJBS0100
<b>This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health &amp; Safety (OHSAS 18001) accreditations and procedures</b>	<b>Technician:</b> Warren Rivers

Part Number	Description	Qty	Unit Price	Amount
PFM35-04	##PFM 350 BAR BRAIDED HOSE	1.66	£25.26	£25.16
UPN-04	##SWAGE FERRULE FOR BRAIDED HYDR	2	£3.83	£4.60
801-04-04	##801 SERIES (BSPP FEMALE)	2	£4.61	£5.53
HKS-01	##HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£3.00	£0.00
AH-06-04	##BSPP MALE X BSPP MALE	2	£3.38	£4.06
LABOUR	Labour (normal hrs)	0.5	£61.00	£15.00
DEPOTCALL	Call from Depot (normal hrs)	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

Type: **POWERSCREEN**  
 Serial/Reg.No: **WARRIOR**  
 Mileage/Hours:

Start: 02/10/2014 16:23:49  
 Finish: 02/10/2014 16:42:35

<b>Sub-total</b>	£54.35
<b>VAT</b>	£10.87
<b>Total</b>	£65.22

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE



PLEASE PRINT NAME

**SEAN**

Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtek-crawley.co.uk

**WORK ORDER NUMBER**  
**12972898**

**WORK ORDER**

0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

<b>Customer Name:</b> P J Brown Construction Ltd	<b>Date:</b> 23/10/2014
<b>Site Address:</b> BOLNEY, A23 LANDFILL	<b>Job Ref. No:</b>
<b>Description of Work:</b> REPLACED BURST HOSE AS SHOWN BY OPERATOR ,TESTED ALL OK .	<b>Customer Order No:</b> MARK/RX08 FZL
<b>Location of Hose:</b> REAR DOOR	<b>Account Ref:</b> PJBS0100
<b>This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health &amp; Safety (OHSAS 18001) accreditations and procedures</b>	<b>Technician:</b> Graham Senior


Part Number	Description	Qty	Unit Price	Amount
PFM35-04	##PFM 350 BAR BRAIDED HOSE	4.15	£25.26	£62.90
801-04-04	##801 SERIES (BSPP FEMALE)	2	£4.61	£5.53
UPN-04	##SWAGE FERRULE FOR BRAIDED HYDR	2	£3.83	£4.60
HKS-01	##HOSECLEAN PELLETT CHARGE UP TO 1 INCH	1	£3.00	£0.00
CVDP-04-04	##BSPP MALE X BSPP FEMALE 90 DEG	1	£14.33	£8.60
ENV-OB-DISP	##ENVIRONMENTAL OIL SPILL PAD SUPPLY & DISPOSAL (EWC 15 02 02)	1	£3.00	£0.00
CT-02	##CABLE TIES TIE	8	£0.16	£0.77
LABOUR	Labour (normal hrs)	1	£61.00	£30.00
DEPOTCALL	##DEPOTCALL	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

<b>MACHINE DETAILS</b>		<b>Start:</b> 23/10/2014 12:09:32	<b>Sub-total</b> £112.40
Type: <b>ROADSWEEPER</b>	Serial/Reg.No: <b>RX08 FZL</b>	<b>Finish:</b> 23/10/2014 13:07:49	<b>VAT</b> £22.48
Mileage/Hours: <b>134747</b>			<b>Total</b> £134.88

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE 	PLEASE PRINT NAME <b>JOHN COLLIER</b>
--	--



Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtekcrawlley.co.uk

**WORK ORDER NUMBER**  
**12981509**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

<b>Customer Name:</b> P J Brown Construction Ltd	<b>Date:</b> 30/09/2015
<b>Site Address:</b> BOLNEY, TIP OFF A23 RH17 5QD	<b>Job Ref. No:</b>
<b>Description of Work:</b> REMOVED BLOWN HOSE MADE NEW HOSE TO PATTERN AND REFITTED MACHINE TESTED	<b>Customer Order No:</b> H0265
<b>Location of Hose:</b> 129/001952 VALVE BLOCK TO TANK	<b>Account Ref:</b> PJBS0100
<b>This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health &amp; Safety (OHSAS 18001) accreditations and procedures</b>	<b>Technician:</b> Kenny Gwyther

Part Number	Description	Qty	Unit Price	Amount
PFM25-16	##PFM 250 BAR BRAIDED HOSE	3.2	£78.31	£150.36
UPN-16	##SWAGE FERRULE FOR BRAIDED HYDR	2	£22.54	£27.05
801-16-16	##801 SERIES (BSPP FEMALE)	2	£20.45	£24.54
HKS-01	##HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
ENV-OB-DISP	##ENVIRONMENTAL OIL SPILL PAD SUPPLY & DISPOSAL	6	£3.00	£0.00
LABOUR	Labour (normal hrs)	1.5	£61.00	£45.00
DEPOTCALL	Call from Depot (normal hrs)	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

Type: **CRUSHER**

Serial/Reg.No: C12


Mileage/Hours: 7285

Start: 30/09/2015 09:12:56

Finish: 30/09/2015 10:32:40

<b>Sub-total</b>	£246.95
<b>VAT</b>	£49.39
<b>Total</b>	£296.34

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE 	PLEASE PRINT NAME <b>ALAN (FITTER)</b>
--	---





# WORK ORDER

0800 38 24 38

www.pirtek.eu

## PIRTEK CRAWLEY

Unit 5, Stockwell Trading Estate  
Stephenson Way, Crawley RH10 1TN  
Tel: (01293) 571707. Fax: (01293) 571711  
Email: accounts@pirtekcrawlley.co.uk

Page: 1

**WORK ORDER NUMBER**  
**12981522**

**Customer Name:** P J Brown Construction Ltd

**Site Address:** BOLNEY, BROWNS TIP

**Description of Work:** MADE NEW HOSE TO PATTERN AS REQUESTED

**Location of Hose:** 129/001953 PATTERN

**Date:**  
30/09/2015

**Job Ref. No:**

**Customer Order No:**  
MARK/C12 CRUSHER

**Account Ref:**  
PJBS0100

**Technician:**  
Kenny Gwyther

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM25-12	##PFM 250 BAR BRAIDED HOSE	3.29	£43.52	£85.91
UPN-12	##SWAGE FERRULE FOR BRAIDED HYDR	2	£13.38	£16.06
801-12-12	##801 SERIES (BSPP FEMALE)	2	£14.03	£16.84
HKS-01	##HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
HAC-01	##ASSEMBLY CHARGE	1	£22.00	£13.20

### OPERATIONAL PROCEDURES

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

### MACHINE DETAILS

**Type:** CRUSHER  
**Serial/Reg.No:** C12  
**Mileage/Hours:** 7825

**Start:**  
30/09/2015 10:48:22  
**Finish:**  
30/09/2015 11:06:27

<b>Sub-total</b>	£132.01
<b>VAT</b>	£26.40
<b>Total</b>	£158.41

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE

PLEASE PRINT NAME

ALAN

PIRTEK CRAWLEY is the trading name of West Sussex Hydraulics Ltd, a limited liability company registered in the UK No. 10894948. Granted under licence from PIRTEK (UK) LTD

P (F) 475 Rev.1, Oct 2014



Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtekcrawlley.co.uk

**WORK ORDER NUMBER**  
**12982859**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd  
**Site Address:** BOLNEY, TIP OFF A23 BEFORE BOLNEY, SOUTHBOUND, RH175QD  
**Description of Work:** MADE NEW HOSE TO PATTERN  
**Location of Hose:** 129/003830 PATTERN

**Date:** 23/11/2015  
**Job Ref. No:**  
**Customer Order No:** MARK-PL124  
**Account Ref:** PJBS0100  
**Technician:** Kenny Gwyther

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM35-06	##PFM 350 BAR BRAIDED HOSE	1.78	£27.51	£29.38
UPN-06	##SWAGE FERRULE FOR BRAIDED HYDR	2	£4.75	£5.70
801-06-06	##801 SERIES (BSPP FEMALE)	2	£5.76	£6.91
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
HAC-01	#ASSEMBLY CHARGE	1	£22.00	£13.20
DEPOTCALL	Call from Depot (normal hrs)	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

**Type:** EC140V  
**Serial/Reg.No:** EC140V BOLNEY  
**Mileage/Hours:** 3776

**Start:** 23/11/2015 10:56:12  
**Finish:** 23/11/2015 11:08:38

<b>Sub-total</b>	£55.19
<b>VAT</b>	£11.04
<b>Total</b>	£66.23

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE 	PLEASE PRINT NAME <b>SHAUN</b>
---	-----------------------------------



Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571707. Fax: (01293) 571711  
 Email: accounts@pirtek-crawley.co.uk

**WORK ORDER NUMBER**  
**12984686**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd  
**Site Address:** BOLNEY, A23 TIP  
**Description of Work:** REMOVE BURST HOSE MAKE NEW AND RE FIT  
**Location of Hose:** 129005075 QUICK HITCH

**Date:** 12/02/2016  
**Job Ref. No:**  
**Customer Order No:** MARK-PL124  
**Account Ref:** PJBS0100  
**Technician:** Warren Rivers

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM35-04	##PFM 350 BAR BRAIDED HOSE	0.9	£25.26	£13.64
UPN-04	##SWAGE FERRULE FOR BRAIDED HYDR	2	£3.83	£4.60
801-06-04	#801 SERIES (BSPP FEMALE)	1	£6.97	£4.18
898-04-04	##898 SERIES (BSP BANJO)	1	£11.10	£6.66
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
Z-04	##SELF CENTRALISING IMPERIAL BON	2	£0.43	£0.52
ZZ-SGX-20	SPIRAL GUARD BLACK 20MM	0.9	£6.89	£3.72
LABOUR	Labour (normal hrs)	0.5	£61.00	£15.00
DEPOTCALL	#DEPOTCALL	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

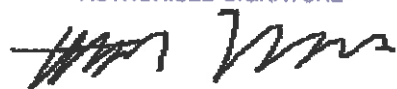
- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**  
 Type: VOLVO 140B  
 Serial/Reg.No: 124  
 Mileage/Hours: 9788

**Start:** 12/02/2016 07:44:57  
**Finish:** 12/02/2016 08:06:46

<b>Sub-total</b>	£48.32
<b>VAT</b>	£9.66
<b>Total</b>	£57.98

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE 	PLEASE PRINT NAME KEIRAN
--	-----------------------------



Unit 5, Stockwell Trading Estate  
 Stephenson Way, Crawley RH10 1TN  
 Tel: (01293) 571 707. Fax: (01293) 571 711  
 Email: accounts@pirtekcrawlley.co.uk

**WORK ORDER NUMBER**  
**12987690**

**WORK ORDER**  
 0800 38 24 38 [www.pirtek.eu](http://www.pirtek.eu)

**Customer Name:** P J Brown Construction Ltd  
**Site Address:** BOLNEY, A23 SOUTH, BEFORE BOLNEY , RH17 5QD  
**Description of Work:** REMOVE BURST HOSES MAKE NEW AND FIT MACHINE TESTED ALL OK  
**Location of Hose:** QUICK HITCH /PUMP 129006807-808

**Date:** 03/06/2016  
**Job Ref. No:**  
**Customer Order No:** MARK/ PL 124  
**Account Ref:** PJBS0100  
**Technician:** Spare Eng 2

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM35-04	##PFM 350 BAR BRAIDED HOSE	0.95	£25.26	£14.40
UPN-04	##SWAGE FERRULE FOR BRAIDED HYDR	2	£3.83	£4.60
801-04-04	##801 SERIES (BSPP FEMALE)	1	£4.61	£2.77
898-04-04	##898 SERIES (BSP BANJO)	1	£11.10	£6.66
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
Z-04	##SELF CENTRALISING IMPERIAL BON	2	£0.43	£0.52
PFM35-08	##PFM 350 BAR BRAIDED HOSE	3.32	£35.25	£70.22
UPN-08	##SWAGE FERRULE FOR BRAIDED HYDR	2	£6.18	£7.42
808-08-08	JIS-BSPP FEMALE 45 DEG	2	£12.65	£15.18
CVDP-08-08	#BSPP MALE X BSPP FEMALE 90 DEG	1	£20.12	£12.07
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
ENV-08-DISP	#ENVIRONMENTAL OIL SPILL PAD SUPPLY & DISPOSAL	2	£3.00	£0.00
CT-02	#CABLE TIES TIE	3	£0.16	£0.29
LABOUR	Labour (normal hrs)	1	£61.00	£30.00
SERVICE	#SERVICE CALL	1	£40.00	£0.00

**OPERATIONAL PROCEDURES**

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

**MACHINE DETAILS**

Type: EC140  
 Serial/Reg.No: 124  
 Mileage/Hours: 10078

Start: 03/06/2016 07:55:21  
 Finish: 03/06/2016 09:03:40

Sub-total	£164.13
VAT	£32.81
<b>Total</b>	<b>£196.94</b>

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE



PLEASE PRINT NAME

K THOMAS



# WORK ORDER

0800 38 24 38

[www.pirtek.eu](http://www.pirtek.eu)

## PIRTEK CRAWLEY

Unit 5, Stockwell Trading Estate  
Stephenson Way, Crawley RH10 1TN

Tel: (01293) 571707. Fax: (01293) 571711

Email: [accounts@pirtekcrawlley.co.uk](mailto:accounts@pirtekcrawlley.co.uk)

**WORK ORDER NUMBER**  
**12995620**

**Customer Name:** P J Brown Construction Ltd  
**Site Address:** BOLNEY, TIP OFF A23 BOLNEY  
**Description of Work:** MADE UP HOSE TO PATTERN  
**Location of Hose:** 129010982 PATTERN

**Date:**  
27/03/2017

**Job Ref. No:**

**Customer Order No:**  
MARK PL217

**Account Ref:**  
PJBS0100

**Technician:**  
Hermano Alves

This work has been completed in accordance with Pirtek quality (ISO 9001), environmental (ISO 14001) and Health & Safety (OHSAS 18001) accreditations and procedures

Part Number	Description	Qty	Unit Price	Amount
PFM25-12	##PFM 250 BAR BRAIDED HOSE	1.27	£47.44	£36.15
UPN-12	##SWAGE FERRULE FOR BRAIDED HYDR	2	£14.58	£17.50
805-17-12	##805 SERIES (JIC FEMALE)	2	£17.15	£20.58
HKS-01	#HOSECLEAN PELLET CHARGE UP TO 1 INCH	1	£0.00	£0.00
HAC-01	#ASSEMBLY CHARGE	1	£22.00	£13.20
SERVICE	#SERVICE CALL	1	£42.00	£21.00

### OPERATIONAL PROCEDURES

- Hoses cleaned
- Hoses tagged
- Covers & clamps replaced
- Oil level checked
- Machine tested
- Site damage
- Oil disposal
- Return old hose to Centre

### MACHINE DETAILS

**Type:**  
**Serial/Reg.No:**  
**Mileage/Hours:** N/a

**Start:**  
27/03/2017 16:23:00  
**Finish:**  
27/03/2017 16:38:49

<b>Sub-total</b>	£108.43
<b>VAT</b>	£21.69
<b>Total</b>	£130.12

I hereby certify receipt of goods and have read and understood the Conditions referred to

AUTHORISED SIGNATURE



PLEASE PRINT NAME

**BILLIE**

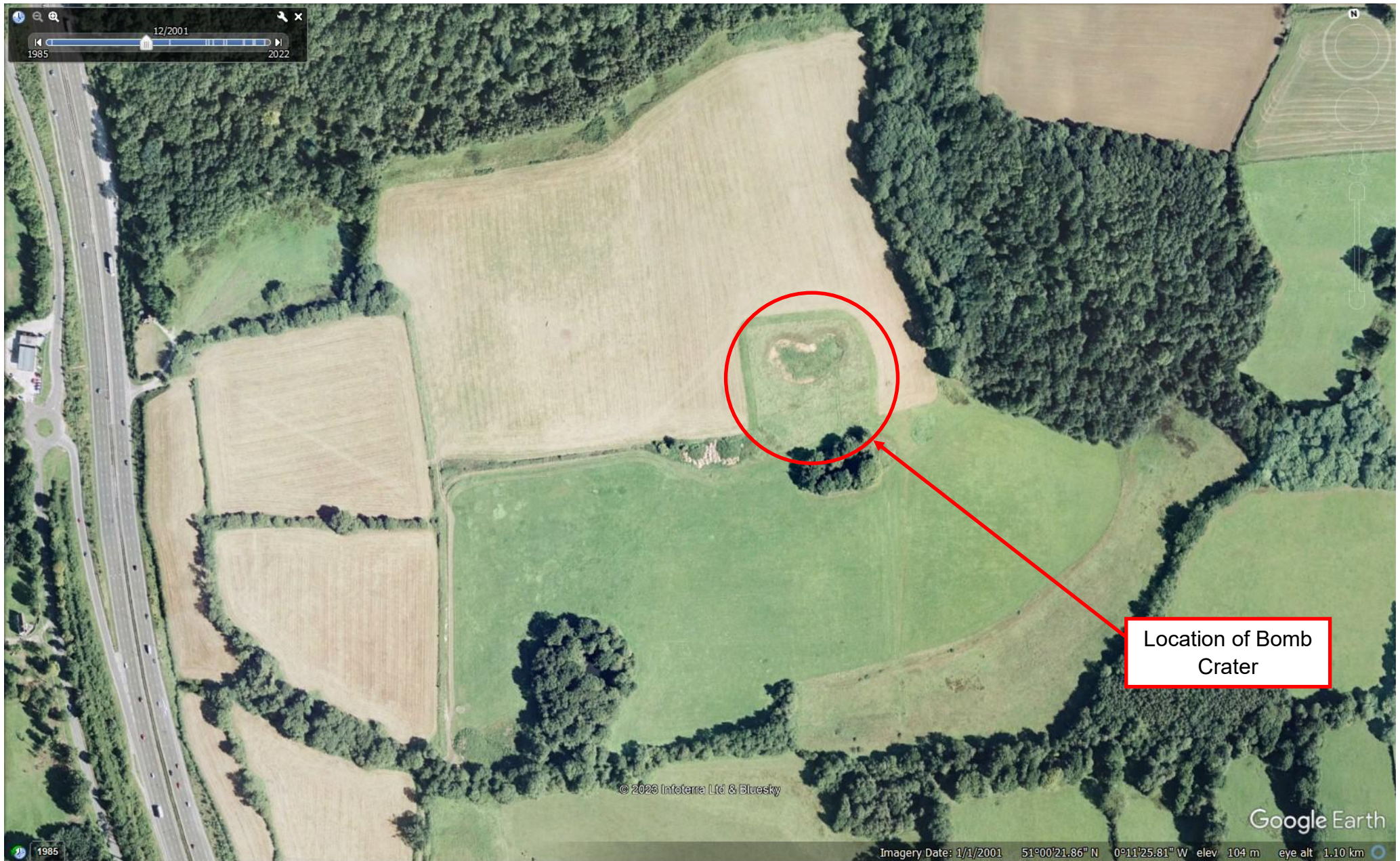


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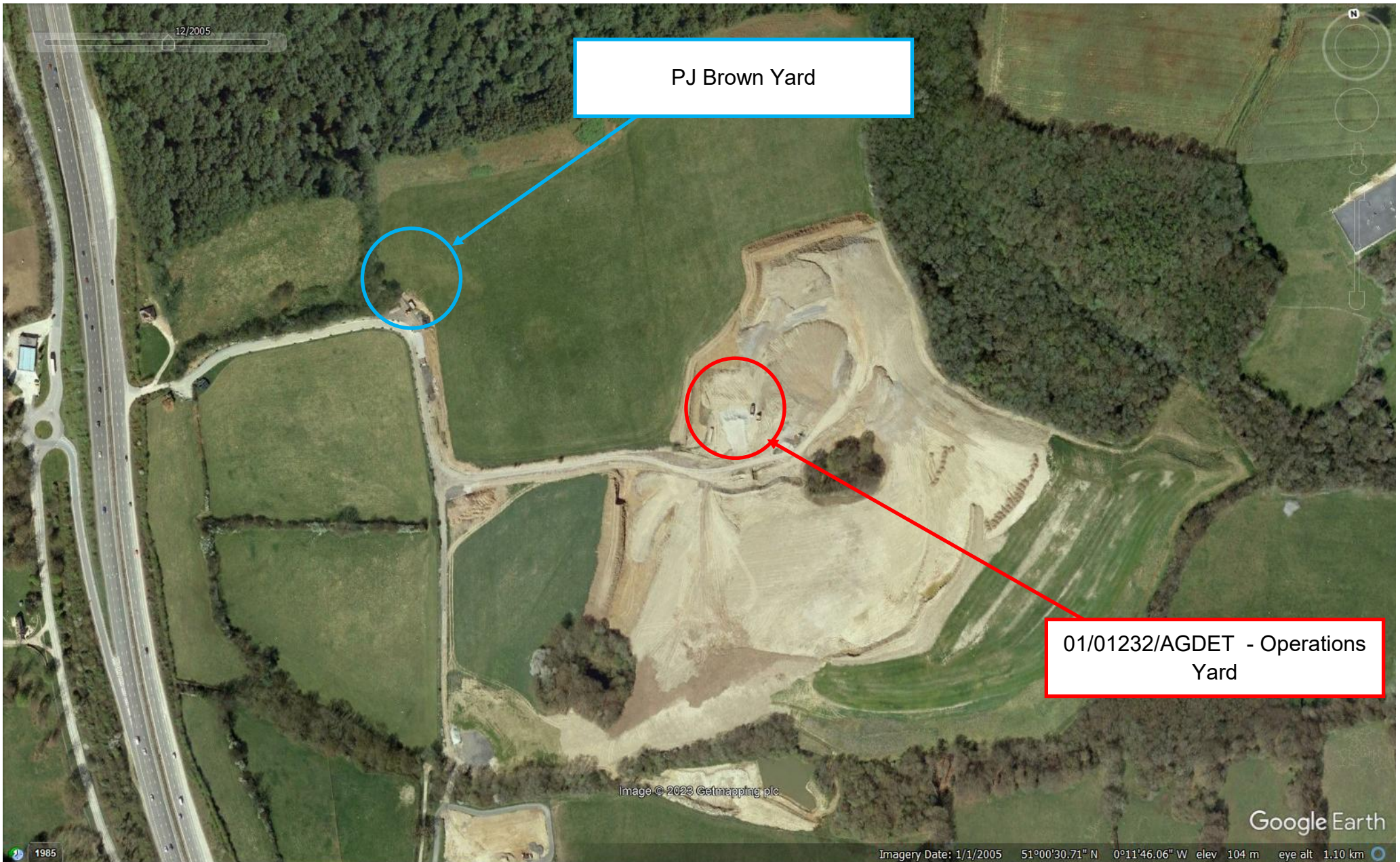
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134729	12969428	24/06/14	P J Brown Construction Ltd	67.70	81.24	Mark/PL147	Completed
135946	12970859	09/08/14	P J Brown Construction Ltd	254.44	305.33	2139SC	Completed
136913	12972165	26/09/14	P J Brown Construction Ltd	150.21	180.25	mark-warrier 1800	Completed
137169	12972324	02/10/14	P J Brown Construction Ltd	54.35	65.22	Mark/Warrior 1800 screener	Completed
137487	12972898	23/10/14	P J Brown Construction Ltd	112.40	134.88	Mark/RX08 FZL	Completed
144581	12981509	30/09/15	P J Brown Construction Ltd	246.95	296.34	H0265	Completed
144579	12981522	30/09/15	P J Brown Construction Ltd	132.01	158.41	Mark/C12 Crusher	Completed
145730	12982859	23/11/15	P J Brown Construction Ltd	55.19	66.23	Mark-PL124	Completed
147152	12984686	12/02/16	P J Brown Construction Ltd	48.32	57.98	Mark-PL124	Completed
149670	12987690	03/06/16	P J Brown Construction Ltd	164.13	196.94	Mark/ PL 124	Completed
155815	12995620	27/03/17	P J Brown Construction Ltd	108.43	130.12	Mark PL217	Completed
156486	12996428	25/04/17	P J Brown Construction Ltd	114.91	137.89	Mark /PL Warrior Screener	Completed
158242	12998774	18/07/17	P J Brown Construction Ltd	65.11	78.13	PL217	Completed
159649	129100746	29/09/17	P J Brown Construction Ltd	296.51	355.81	Mark/ L150E	Completed
160214	129101427	24/10/17	P J Brown Construction Ltd	76.85	92.23	Mark PL152	Completed
160352	129101611	31/10/17	P J Brown Construction Ltd	631.70	758.04	H1489	Completed
166136	129103135	08/01/18	P J Brown Construction Ltd	60.30	72.36	H1711	Completed
166823	129103931	07/02/18	P J Brown Construction Ltd	396.03	475.21	H1795	Completed
170154	129108371	13/07/18	P J Brown Construction Ltd	412.99	495.58	Mark/Crusher	Completed
171722	129110443	28/09/18	P J Brown Construction Ltd	136.17	163.40	Mark/ Warrior 1800	Completed
171836	129110548	02/10/18	P J Brown Construction Ltd	154.02	184.82	AP219	Completed
172805	129111914	26/11/18	P J Brown Construction Ltd	169.96	203.96	AP463	Completed

# APPENDIX 10

Google Earth © Aerial Image dated 01/01/2001—Annotated



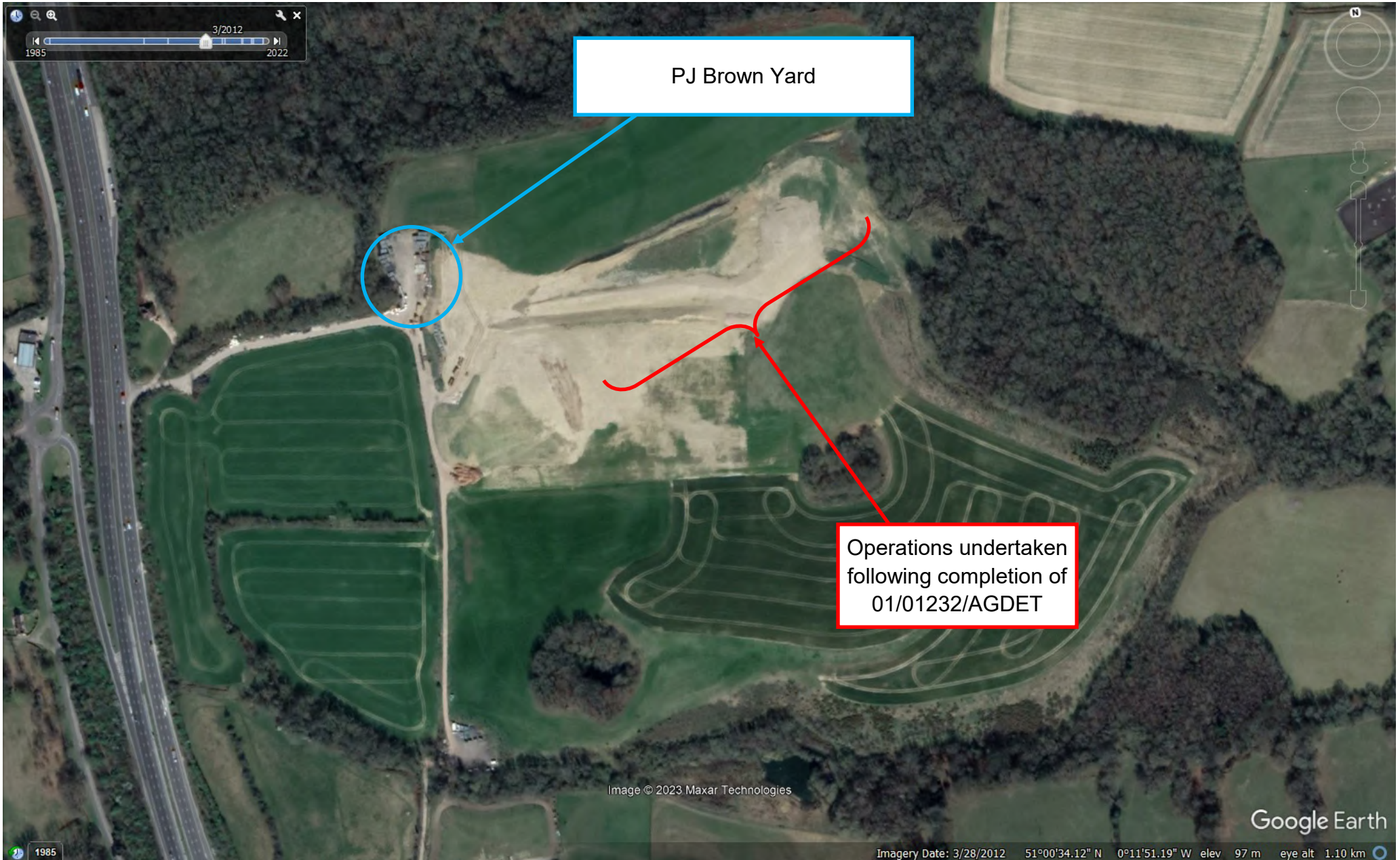
Google Earth © Aerial Image dated 01/01/2005—Annotated

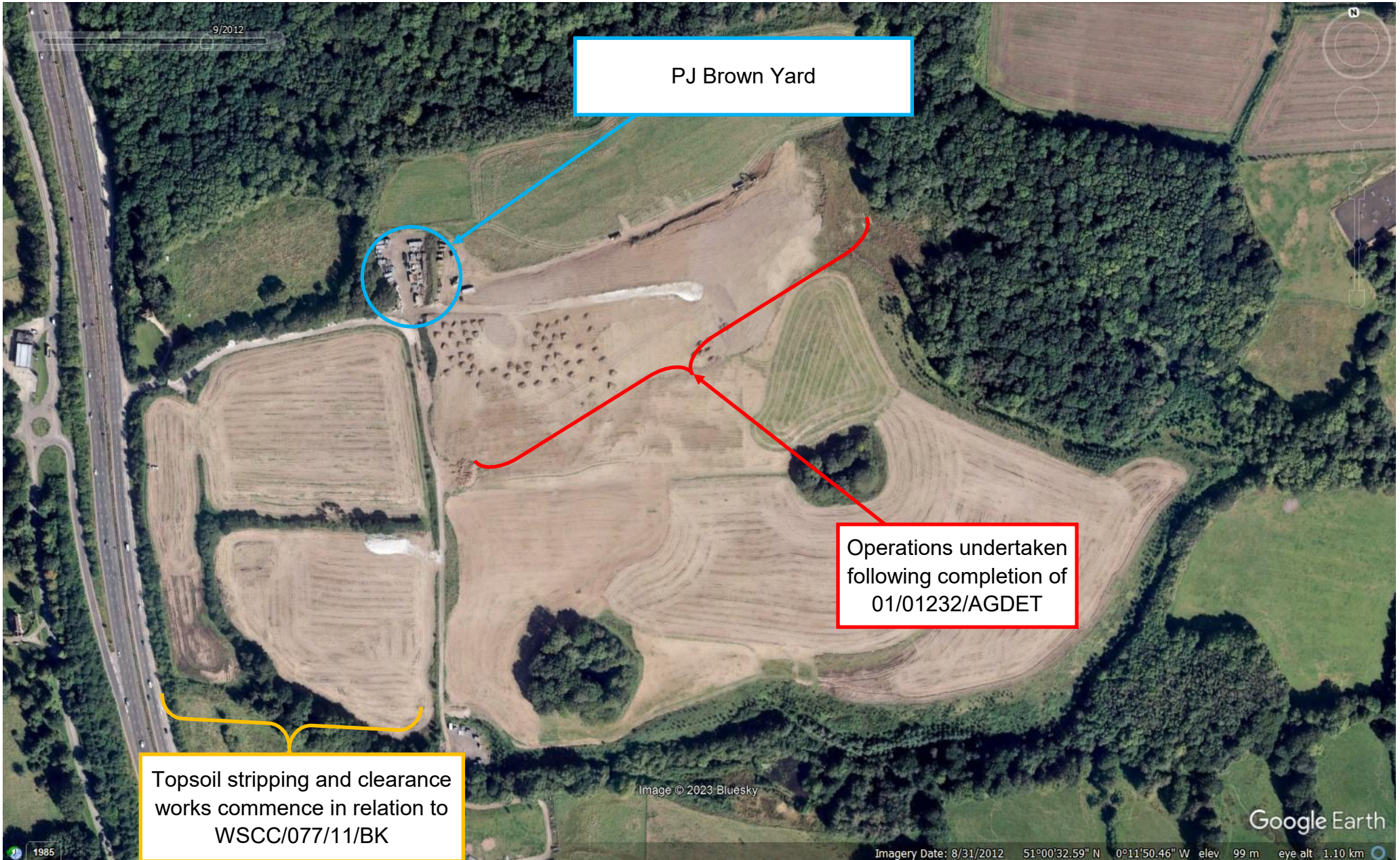


PJ Brown Yard

01/01232/AGDET - Operations  
Yard

Google Earth © Aerial Image dated 28/03/2012—Annotated





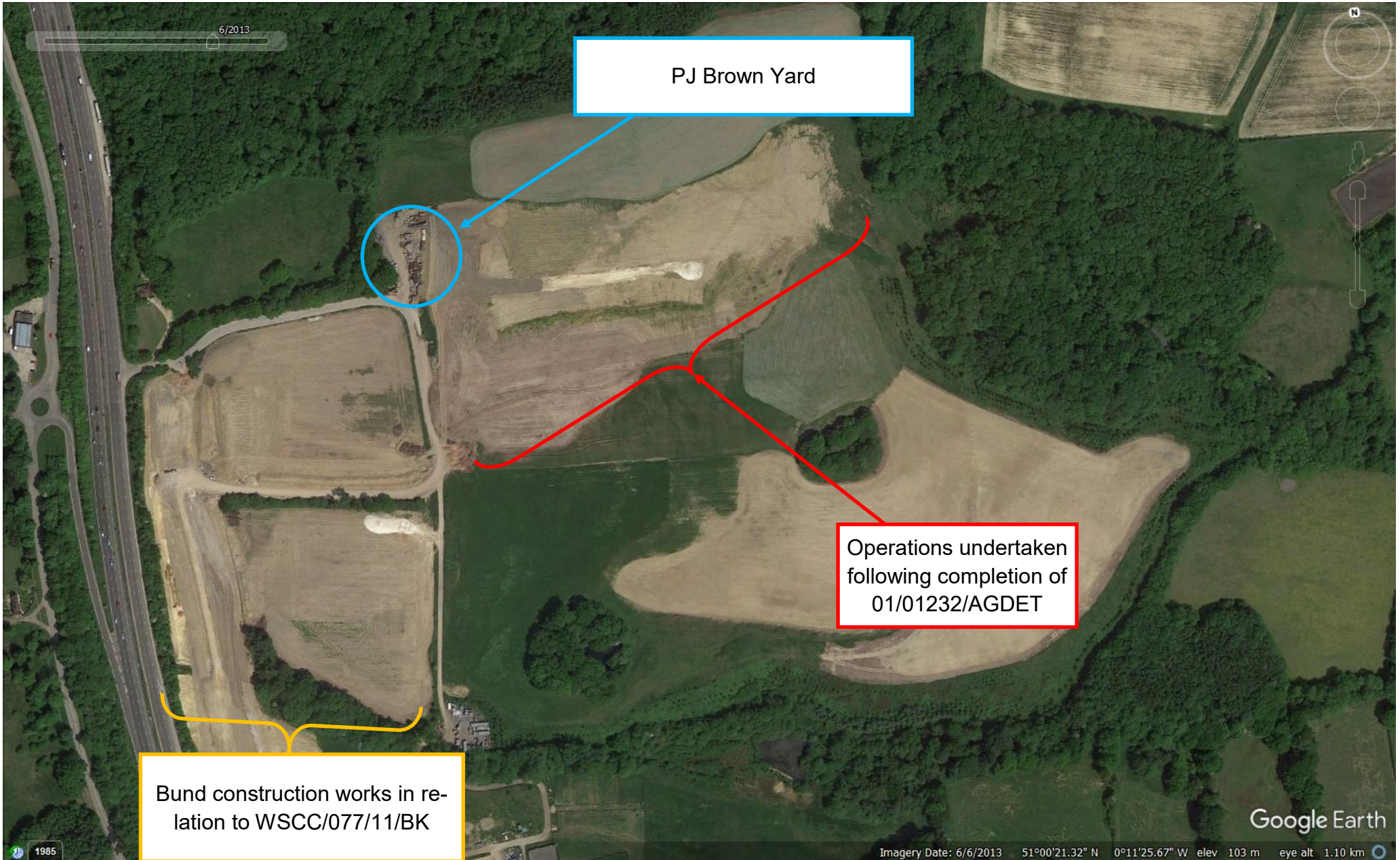
PJ Brown Yard

Operations undertaken following completion of 01/01232/AGDET

Topsoil stripping and clearance works commence in relation to WSCC/077/11/BK

Image © 2023 Bluesky

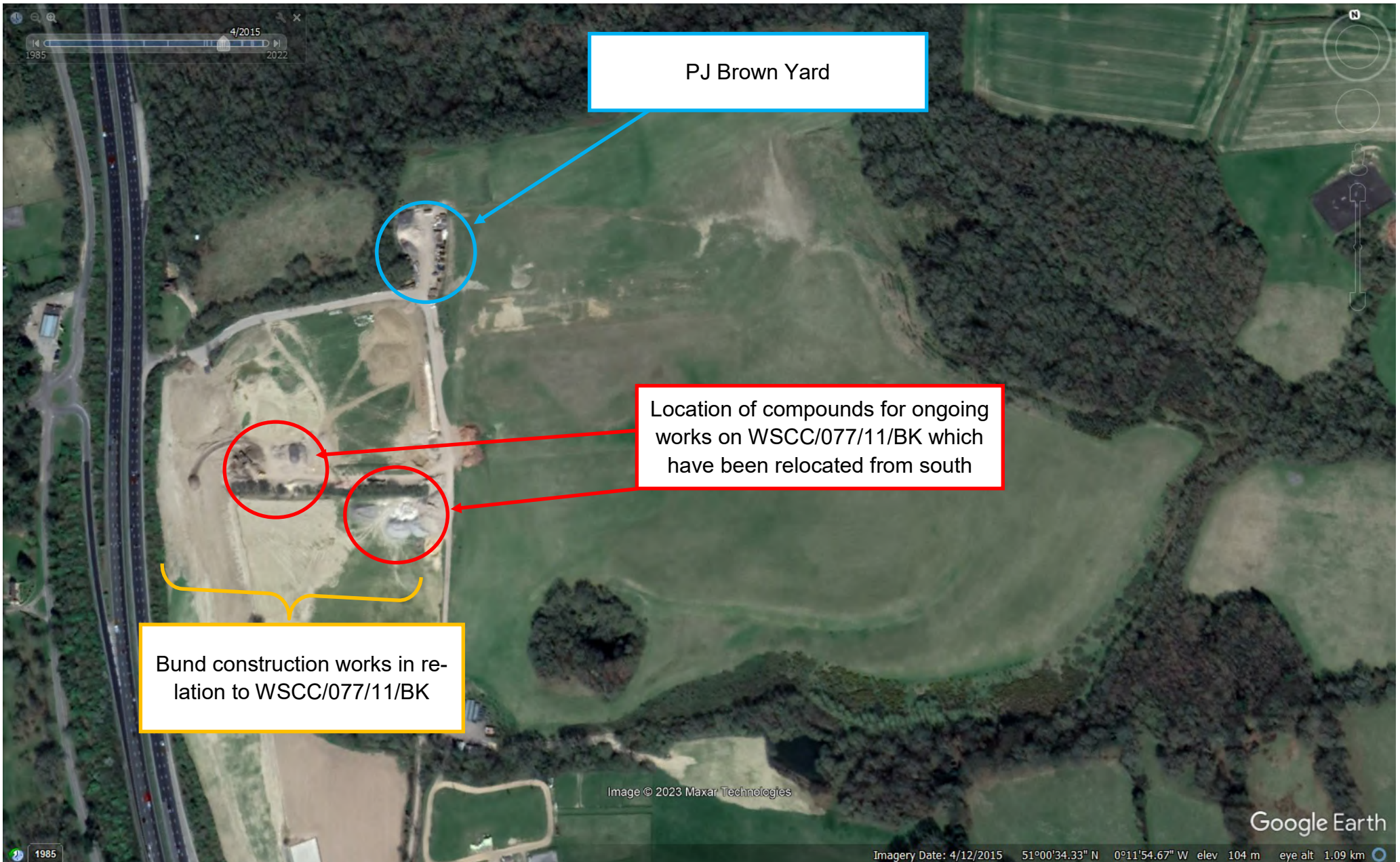
Google Earth



PJ Brown Yard

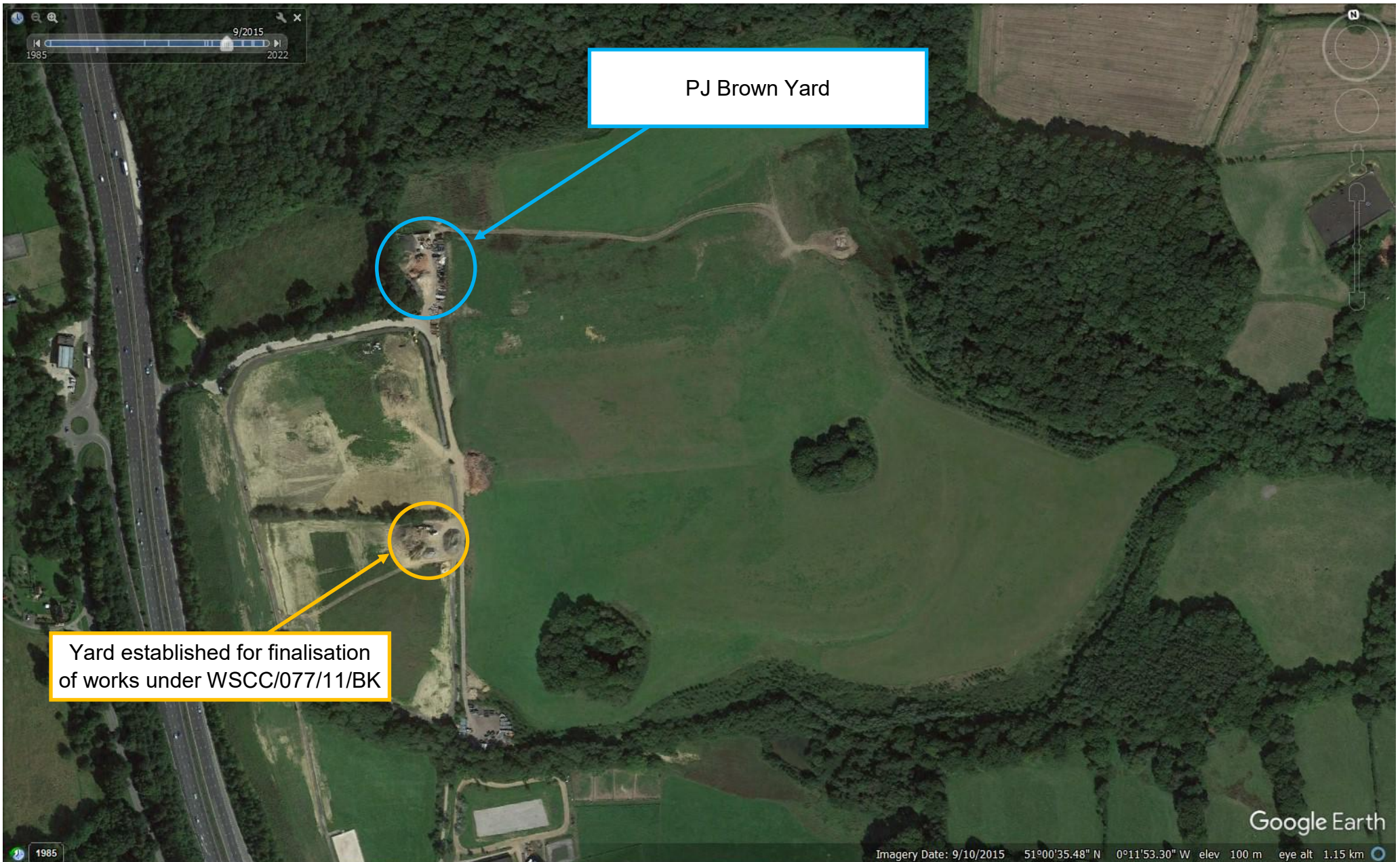
Operations undertaken following completion of 01/01232/AGDET

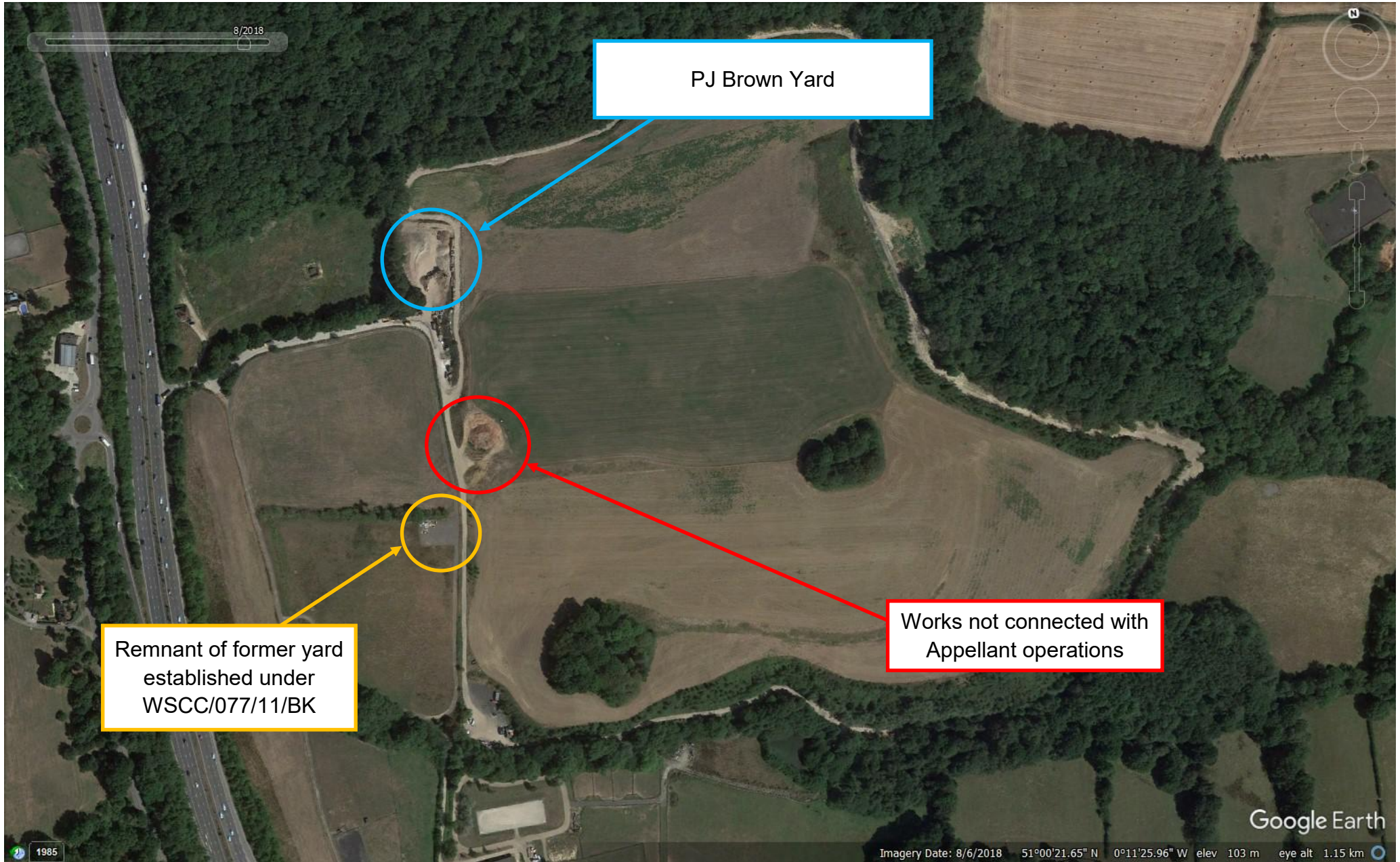
Bund construction works in relation to WSCC/077/11/BK





Google Earth © Aerial Image dated 10/09/2015—Annotated

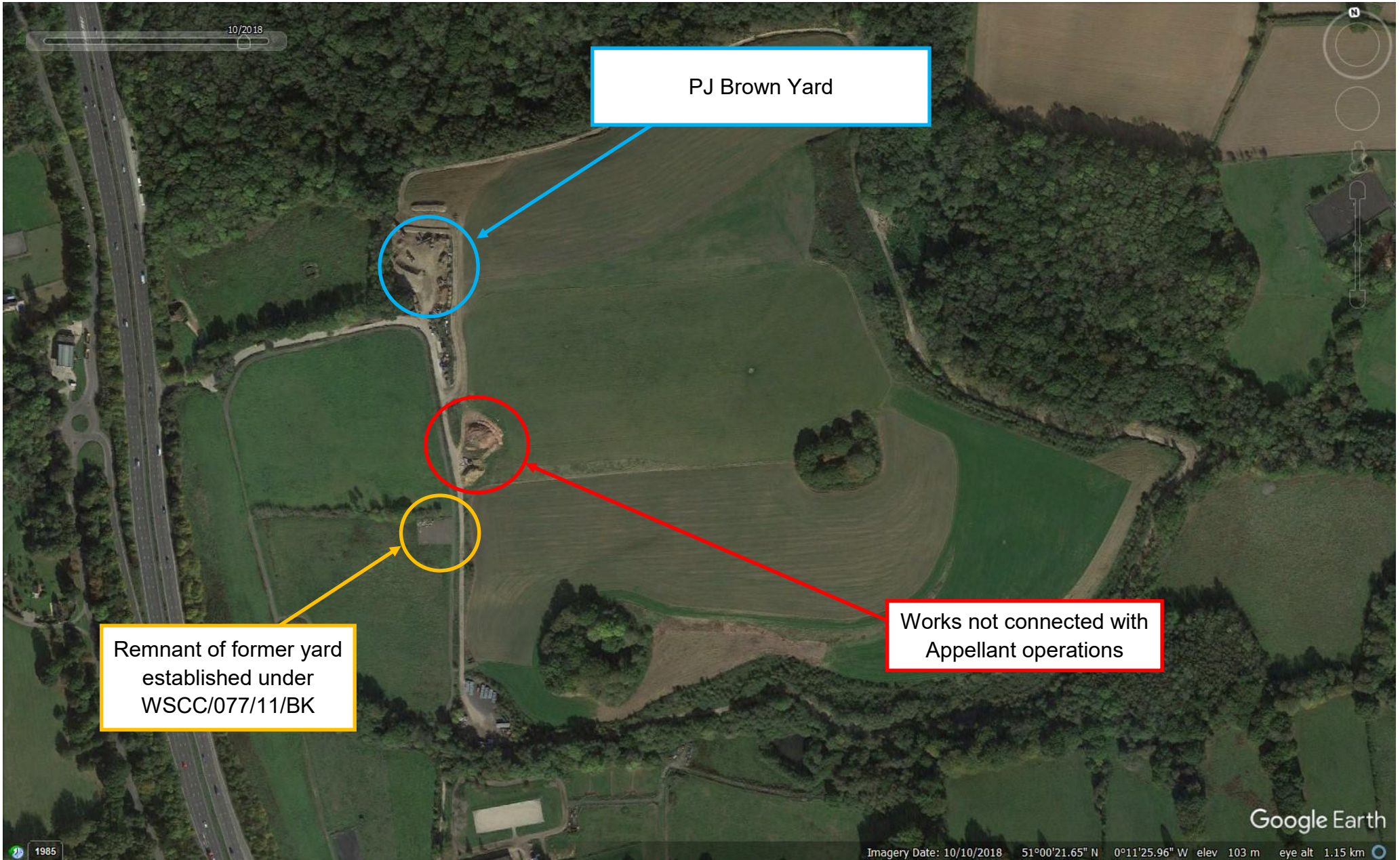




PJ Brown Yard

Remnant of former yard  
established under  
WSCC/077/11/BK

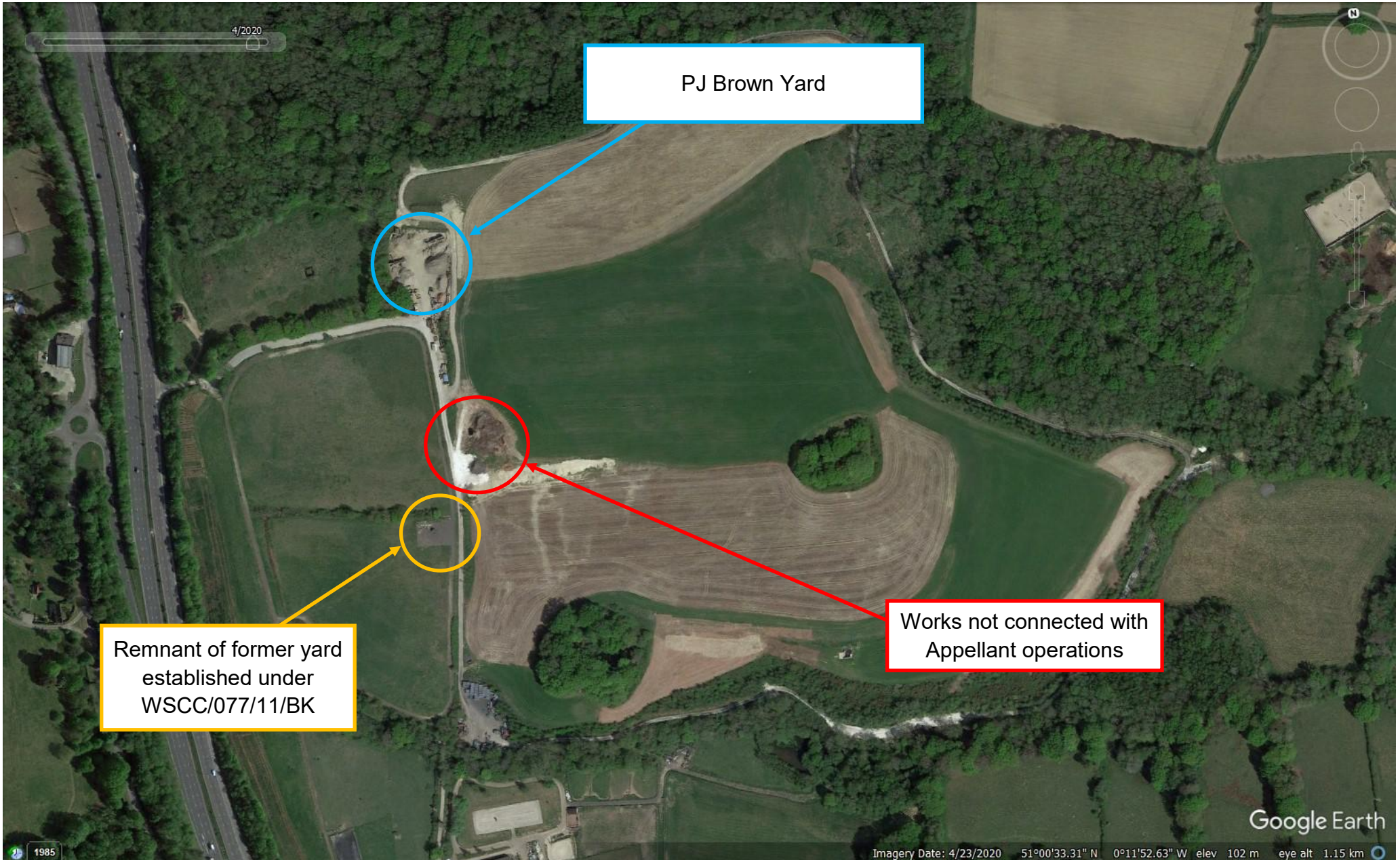
Works not connected with  
Appellant operations



PJ Brown Yard

Works not connected with Appellant operations

Remnant of former yard established under WSCC/077/11/BK

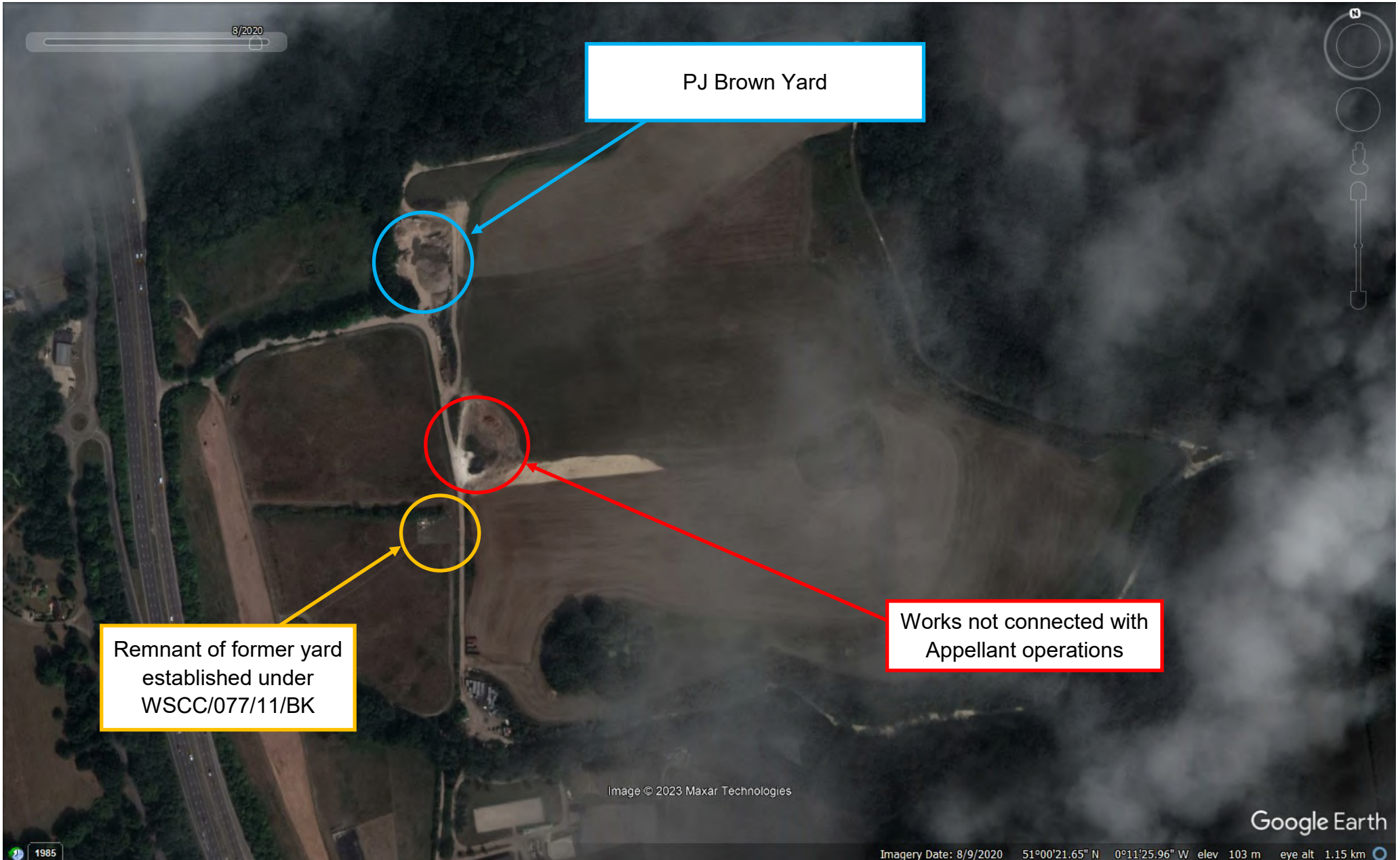


PJ Brown Yard



Works not connected with Appellant operations

Remnant of former yard established under WSCC/077/11/BK

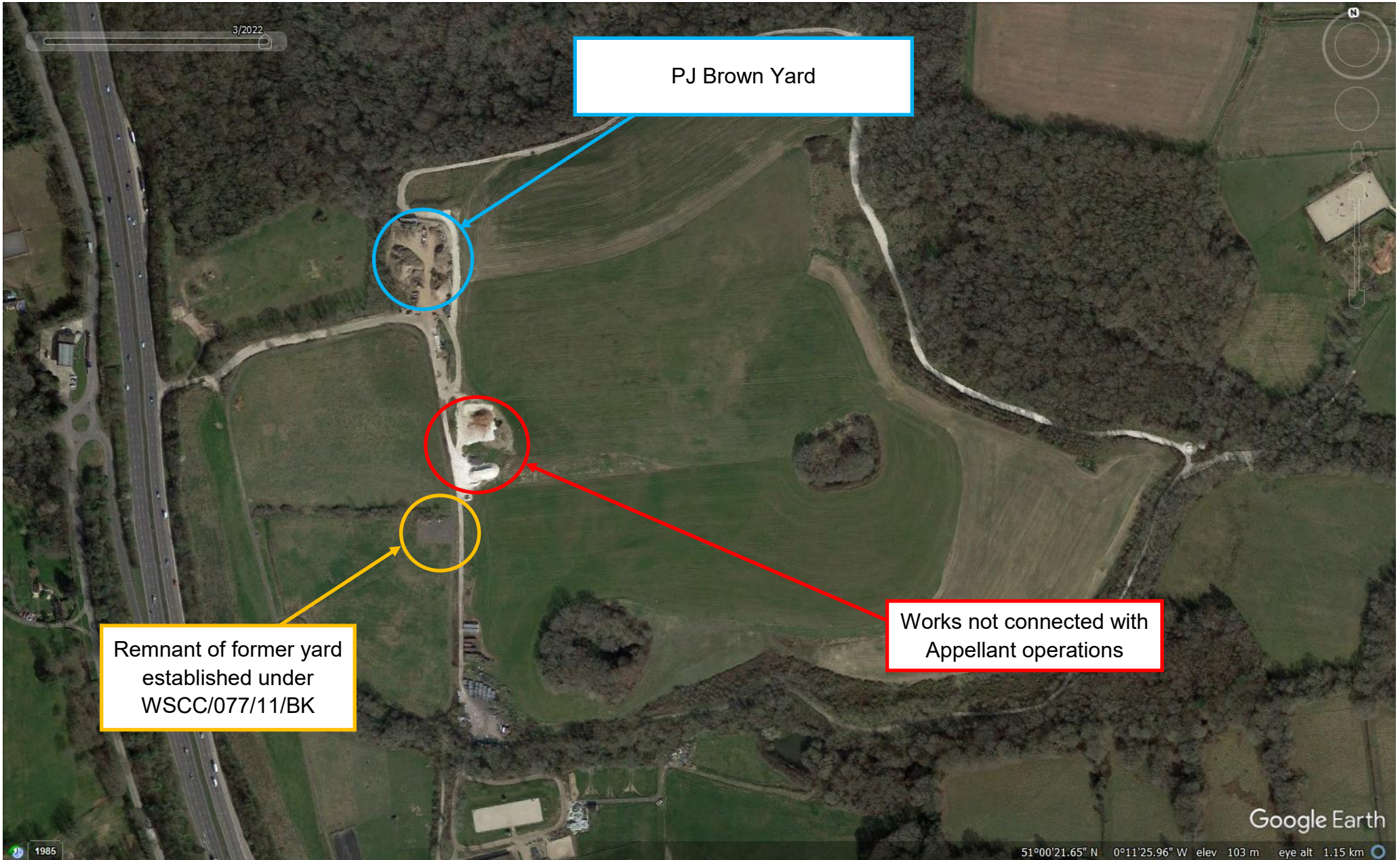


PJ Brown Yard



Remnant of former yard  
established under  
WSCC/077/11/BK

Works not connected with  
Appellant operations



PJ Brown Yard



Remnant of former yard established under WSCC/077/11/BK

Works not connected with Appellant operations

# APPENDIX 11

Tel: 01444 882150  
Fax: 01444 882151

Bolney Park Farm  
Broxmead Lane  
Bolney  
West Sussex  
RH17 5RJ



## BOLNEY PARK FARM

Broxmead Lane Bolney, West Sussex RH17 5RJ  
Tel 01444 882150 Fax 01444 882151  
E mail dane @hickstead.flyer.co.uk

# INVOICE

Attn PJ Brown ( ref B Pentecost)  
Burfands  
Charwood Road  
Ifield Wood  
Crawley  
West Sussex RH11 0JZ

2nd May 2007

### Description

### Value

Storage Advance payment	11,000.00
Planings Agregate and machinery	

**Sub Total**

**11,000.00**

**VAT @ 17.5%**

**1,925.00**

**TOTAL**

**12,925.00**

Please note new VAT No and Bank Details

Vat No 787-8894-30

Bank details: Lloyds TSB High Street Burgess Hill West Sussex RH15 9AH  
sort code 30-91-44 Account No. 1187467



# APPENDIX 12

---

Dated

2001

**DANE RAWLINGS (1)**

and

**P J BROWN trading as P J BROWN CIVIL ENGINEERING AND HAULAGE  
CONTRACTORS (2)**

**LICENCE  
for tipping soil at Bolney Park Farm**

**asb law**  
8 Ifield Road  
Crawley  
West Sussex RH11 7YY  
Tel: 01293 603 603  
Fax: 01293 603 666  
E-mail: [corporate.commercial@asb-law.com](mailto:corporate.commercial@asb-law.com)

**THIS LICENCE** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2001

**BETWEEN:**

- (1) **DANE RAWLINGS** of \_\_\_\_\_ (the “Licensor”)
- (2) **PETER JOHN BROWN trading as P J BROWN CIVIL ENGINEERING AND HAULAGE CONTRACTORS** of Burlands Charlwood Road Ifield Wood Crawley West Sussex RH11 0JZ (the “Licensee”).

**1 DEFINITIONS**

1.1 In this Licence the following expressions shall have the meanings respectively assigned to them:

- “Agent” James Phillips trading as South East Tipping of \_\_\_\_\_
- “Commencement Date” \_\_\_\_\_
- “Payment Date” the due date for monthly payment of the Royalty as set out in clause 3.2.
- “Royalty” the amount payable by the Licensee in accordance with clauses 3.2 and 3.3.
- “Site” Bolney Park Farm \_\_\_\_\_
- “Soil” inert soil.
- “VAT” value added tax or any other tax of a similar nature which may be substituted therefor or levied in addition thereto.

**2 GRANT OF LICENCE**

2.1 In consideration of the payments below and of the covenants on the part of the Licensee contained in this Licence the Licensor grants to the Licensee from the Commencement Date and during the period of this Licence the following exclusive rights and liberties:

- 2.1.1 the exclusive Licence and authority for the Licensee to deposit Soil at the Site; and
- 2.1.2 the right to gain access to and from the Site with or without motor vehicles and plant for the purpose of exercising the right granted above

by the use of all access roads or ways now constructed or which may during the period of this Licence be constructed by or on behalf of the Licensor within the Site.

### **3 PAYMENTS**

- 3.1 On Completion of this Licence, the Licensee shall pay to the Licensor the sum of £40,000 (FORTY THOUSAND POUNDS) on account of the Royalties to be paid under clause 3.2 (the "Advance Payment").
- 3.2 The Licensee shall during the period of this Licence pay to the Licensor a Royalty of £35 per eight wheel lorry load of Soil deposited at the Site, such Royalty to be paid in arrears on the \_\_\_\_\_ day of each month and which shall be deducted from the Advance Payment.
- 3.3 Any Royalty to be paid in relation to other sizes of vehicles shall be agreed in writing between the parties prior to and subject to such vehicles being granted access under clause 2 of this Licence.
- 3.4 The Licensor shall be responsible for counting the number of loads of Soil deposited by the Licensee at the Site and shall within 2 working days from the end of each Payment Date provide the Licensee with a statement setting out the number of loads of Soil deposited by the Licensee for the relevant month.
- 3.5 An assessment of the volume deposited at the Site by the Licensee shall be jointly undertaken by the Licensor and Licensee 8 weeks from the Commencement Date with such volume being agreed in writing and further assessments shall take place as agreed between the parties.
- 3.6 In the event of a dispute relating to any Royalty payment, any assessment under clause 3.5 or Refund (as defined in clause 3.9) the parties shall settle such dispute in writing and shall attempt to reach such settlement:
  - 3.6.1 in relation to any Royalty payment within 14 days of the relevant statement being issued (pursuant to clause 3.4);
  - 3.6.2 in the case of any assessment pursuant to clause 3.5 within 14 days of the assessment; and
  - 3.6.3 in the case of a Refund within 14 days of the written notice being given by the Licensee (pursuant to clause 3.9);

failing which an independent member of the Royal Institute of Chartered Surveyors (the "Institute") will be appointed on application by either party by the President of the Institute for the purposes of determining the quantity of Soil deposited acting as expert and not arbitrator and whose decision shall (save in the case of manifest error) be final and binding on the parties and the cost of appointing such expert shall be borne by the parties equally.

- 3.7 The Royalty payable for any given month shall be adjusted (if applicable) to take into account any overpayment or underpayment by the Licensee for the previous month.
- 3.8 The Royalty shall be deemed to be exclusive of VAT.
- 3.9 In the event that the Licensee decides to cease depositing Soil at the Site for any reason whatsoever (including any event under clause 7), the Licensee shall give to the Licensor written notice of the same and the Licensor shall upon receipt of such notice immediately pay to the Licensee the balance of the Advance Payment (the "Refund")(if any).
- 3.10 If the Licensor fails to immediately pay the Refund to the Licensee then the amount of the Refund due shall bear interest from the date on which the Licensor receives the written notice of the Licensor (given pursuant to clause 3.9) until payment is made in full, both before and after any judgement, at \_\_\_\_\_ per cent per annum over \_\_\_\_\_ Bank Plc base rate from time to time.

#### **4 LICENSOR'S AGENT**

- 4.1 The Licensor hereby confirms and warrants that:
- 4.1.1 he has appointed the Agent as his authorised agent for the performance of his obligations under this Agreement;
- 4.1.2 the Agent is fully authorised on behalf of the Licensor to accept and acknowledge receipt of all monies due to the Licensor under this Agreement and such acknowledgement of any sum shall be deemed sufficient to discharge the Licensee's obligation to pay the same;
- 4.1.3 the Agent is fully authorised on behalf of the Licensor to accept and acknowledge receipt of all notices given to the Licensor by the Licensee under this Agreement; and
- 4.1.4 he agrees to ratify the acts of the Agent.
- 4.2 In the event that the Agent does not perform the obligations of the Licensor as set out in this Agreement the Licensor hereby undertakes to perform the same.

#### **5 LICENSEE'S COVENANTS**

- 5.1 The Licensee agrees to provide to the Licensor (at no expense to the Licensor) the following:
- 5.1.1 A wheelspinner with a portable water dip and concrete base;
- 5.1.2 A roadsweeper as and when required;
- 5.1.3 A D6H machine or similar machine; and
- 5.1.4 Road making materials as agreed between the parties.
- 5.2 The Licensee further agrees to perform (at no expense to the Licensor) the following:

- 5.2.1 Push over and spread out evenly loads of Soil deposited by South East Tipping; and
- 5.2.2 Maintain the internal road at the Site.

## **6 LICENSOR'S COVENANTS**

- 6.1 The Licensor hereby covenants with the Licensee that it will in connection with its use of the Site for whatever purpose cause as little interference or interruption possible to the operations of the Licensee in or upon the Site.
- 6.2 For the avoidance of doubt the Licensor hereby covenants that the use of the Site for the depositing of Soil or otherwise shall only be granted to the Licensor and the Agent and the Licensor further covenants that he will not during the period of this Agreement enter into any other agreements with third parties relating to the same.

## **7 FORCE MAJEURE**

- 7.1 Notwithstanding any other provisions of this Licence neither party shall be under any liability to the other to the extent that it may be hindered or prevented from performing any of its obligations by reason of any circumstances whatever beyond the control of the party affected including but not limited to the following circumstances namely acts of God war labour disputes fire riot explosion act of national or local authority (other than where the imposition thereof is due to the act neglect or default of the party affected).

## **8 NOTICES**

- 8.1 Any notice or other information required to be given by any of the parties under this Licence may be given by hand or sent by first class post, facsimile transmission or comparable means of communications, to the address of the addressee as set out in this Licence (and in the case of notices addressed to the Licensor, this includes the address of the Agent) or to such other address as the addressee may from time to time have notified for the purpose of this Clause. Communications sent by post shall be deemed to have been received forty-eight hours after posting. Communications sent by facsimile may be made between 9.00 am and 4.00 pm on any business day and shall be deemed to be received 1 hour after despatch provided that any notice received outside such hours shall be deemed to be served on the next succeeding business day. In proving service by post it shall only be necessary to prove that a communication sent was contained in an envelope which was duly and correctly addressed, stamped and posted in accordance with this Clause.

IN WITNESS whereof this Deed has been executed by the Licensor and the Licensee the day and year first above written.

SIGNED AS A DEED by the said )  
**DANE RAWLINGS** )  
in the presence of: )

.....

.....  
Signature of Witness

Name:

Address:

Occupation:

SIGNED AS A DEED by the said )  
**PETER JOHN BROWN** )  
in the presence of: )

.....

.....  
Signature of Witness

Name:

Address:

Occupation:

# APPENDIX 13



14<sup>th</sup> December 2001

J Phillips  
South Eastern Tipping Ltd  
Pedham Place Farm  
Old London Road  
Farningham  
Kent  
DA4 0WA

Dear Mr Philips

**Re: Tipping Bolney Court Farm**

We write to confirm that any material tipped at Bolney Court Farm will be inert only originating from various sites in our area.

Any contaminated material will be notified by the developer and taken to an appropriate site.

Yours sincerely,

P J Brown.

# APPENDIX 14

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
3899  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060-P-50089

**Acct No.** C525

**Date** 19/07/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
13/07/2012	32588-93	Hardcore Delivered by Load	6.00	125.00	750.00
16/07/2012	32594-9,8850-4	Hardcore Delivered by Load	11.00	125.00	1375.00
17/07/2012	32924,5	Hardcore Delivered by Load	2.00	125.00	250.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	2375.00
Vat 20% £	475.00
<b>Total £</b>	<b>2850.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4271  
  
**Site Address**  
A23, Handcross to Warminglid

**Site Code** CAR008

**Order No.** 4060MO002012

**Acct No.** C525

**Date** 21/08/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
03/08/2012	41306-8	Hardcore Delivered by Load	3.00	125.00	375.00
03/08/2012	32474	Hardcore Delivered by Load	1.00	125.00	125.00
03/08/2012	38856-8	Hardcore Delivered by Load	3.00	125.00	375.00
03/08/2012	41718-21	Hardcore Delivered by Load	4.00	125.00	500.00
10/08/2012	41309	Hardcore Delivered by Load	1.00	125.00	125.00
10/08/2012	32475	Hardcore Delivered by Load	1.00	125.00	125.00
10/08/2012	41724	Hardcore Delivered by Load	1.00	125.00	125.00
10/08/2012	19185	Hardcore Delivered by Load	1.00	125.00	125.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	1875.00
Vat 20% £	375.00
<b>Total £</b>	<b>2250.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4579  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060MO002012

**Acct No.** C525

**Date** 17/09/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
12/09/2012	33977-9	Hardcore Delivered by Load	3.00	125.00	375.00
12/09/2012	38673-5	Hardcore Delivered by Load	3.00	125.00	375.00
13/09/2012	32945-7,9	Hardcore Delivered by Load	4.00	125.00	500.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	1250.00
Vat 20% £	250.00
<b>Total £</b>	<b>1500.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4713  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060MO002012

**Acct No.** C525

**Date** 24/09/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
17/09/2012	19194-8	Hardcore Delivered by Load	5.00	125.00	625.00
17/09/2012	41938-41	Hardcore Delivered by Load	4.00	125.00	500.00
18/09/2012	22053	Hardcore Delivered by Load	1.00	125.00	125.00
18/09/2012	38885	Hardcore Delivered by Load	1.00	125.00	125.00
20/09/2012	41317	Hardcore Delivered by Load	1.00	125.00	125.00
21/09/2012	20414,5,7-9	Hardcore Delivered by Load	5.00	125.00	625.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

<b>Net £</b>	2125.00
<b>Vat 20% £</b>	425.00
<b>Total £</b>	2550.00

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4807  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060A2002012

**Acct No.** C525

**Date** 30/09/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
24/09/2012	41318	Hardcore Delivered by Load	1.00	125.00	125.00
25/09/2012	22056-60	Hardcore Delivered by Load	5.00	125.00	625.00
26/09/2012	32486-90	Hardcore Delivered by Load	5.00	125.00	625.00
27/09/2012	32491-7	Hardcore Delivered by Load	7.00	125.00	875.00
28/09/2012	32498,9,5850-2	Hardcore Delivered by Load	5.00	125.00	625.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	2875.00
Vat 20% £	575.00
<b>Total £</b>	<b>3450.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4897  
  
**Site Address**  
A23, Handcross to Warminglid

**Site Code** CAR008

**Order No.** 4080A2002012

**Acct No.** C525

**Date** 08/10/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
01/10/2012	35861-9	Hardcore Delivered by Load	9.00	125.00	1125.00
02/10/2012	35870-5	Hardcore Delivered by Load	6.00	125.00	750.00
03/10/2012	38892-6	Hardcore Delivered by Load	5.00	125.00	625.00
03/10/2012	40398,9	Hardcore Delivered by Load	2.00	125.00	250.00
04/10/2012	22250-7	Hardcore Delivered by Load	8.00	125.00	1000.00
04/10/2012	38897	Hardcore Delivered by Load	1.00	125.00	125.00
05/10/2012	22258-63	Hardcore Delivered by Load	6.00	125.00	750.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	4625.00
Vat 20% £	925.00
<b>Total £</b>	<b>5550.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service



**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
4943  
  
**Site Address**  
A23, Handcross to Warminglid

**Site Code** CAR008

**Order No.** 4060A2002012

**Acct No.** C525

**Date** 16/10/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
08/10/2012	22264-70	Hardcore Delivered by Load	7.00	125.00	875.00
11/10/2012	22275-83	Hardcore Delivered by Load	9.00	125.00	1125.00
11/10/2012	32742	Hardcore Delivered by Load	1.00	125.00	125.00
11/10/2012	23506-14	Hardcore Delivered by Load	9.00	125.00	1125.00
12/10/2012	23515-22	Hardcore Delivered by Load	8.00	125.00	1000.00
12/10/2012	22264-92	Hardcore Delivered by Load	9.00	125.00	1125.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	5375.00
Vat 20% £	1075.00
<b>Total £</b>	<b>6450.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
5093  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060A2002012

**Acct No.** C525

**Date** 22/10/2012

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
15/10/2012	23524-30	Hardcore Delivered by Load	7.00	125.00	875.00
15/10/2012	23428-31	Hardcore Delivered by Load	4.00	125.00	500.00
16/10/2012	23532-5	Hardcore Delivered by Load	4.00	125.00	500.00
17/10/2012	22301	Hardcore Delivered by Load	1.00	125.00	125.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	2000.00
Vat 20% £	400.00
<b>Total £</b>	<b>2400.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
7021  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060A5002012

**Acct No.** C525

**Date** 25/03/2013

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
20/03/2013	63694	Concrete Away By Load	1.00	50.00	50.00
21/03/2013	59189-93	Concrete Away By Load	5.00	50.00	250.00
21/03/2013	63695	Concrete Away By Load	1.00	50.00	50.00
22/03/2013	36845,6	Concrete Away By Load	2.00	50.00	100.00
22/03/2013	61120,1	Concrete Away By Load	2.00	50.00	100.00
22/03/2013	59194-6,9	Concrete Away By Load	4.00	50.00	200.00
22/03/2013	63266,7	Concrete Away By Load	2.00	50.00	100.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	850.00
Vat 20% £	170.00
<b>Total £</b>	<b>1020.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

**Accts Dept**  
Carillion Civil Engineering  
Invoice Processing  
PO Box 6855  
Wolverhampton  
  
WV1 9XD

**Invoice No.**  
7026  
  
**Site Address**  
A23, Handcross to Warringlid

**Site Code** CAR008

**Order No.** 4060A5002012

**Acct No.** C525

**Date** 25/03/2013

DATE	TICKET No.s	TYPE	QUANTITY	RATE	VALUE
22/03/2013	36847-50	Tarmac Load Away	4.00	90.00	360.00
22/03/2013	61122-5	Tarmac Load Away	4.00	90.00	360.00
22/03/2013	59197,8,200	Tarmac Load Away	3.00	90.00	270.00
22/03/2013	63265	Tarmac Load Away	1.00	90.00	90.00
23/03/2013	63268-70	Tarmac Load Away	3.00	90.00	270.00

Please make cheques payable to P J Brown (Construction) Ltd  
For BACS payments please use your customer account number  
as the reference. Sort Code : 20-24-00 Account Number : 53985105

Net £	1350.00
Vat 20% £	270.00
<b>Total £</b>	<b>1620.00</b>

E. & O. E.  
Terms:30 Days  
Prompt Payment Ensures Good Service

# **APPENDIX 15**

# Permit

## The Environmental Permitting (England & Wales) Regulations 2016

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P.J.Brown (Civil Engineering) Limited

Bolney Park Farm Recycling Facility

Bolney Park Farm

Broxmead Lane

Bolney

Haywards Heath

RH17 5RJ

### **Permit number**

EPR/JB3502UD

# Permit

## The Environmental Permitting (England and Wales) Regulations 2016

### Permit number

**EPR/JB3502UD**

The Environment Agency hereby authorises, under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016

**P.J.Brown (Civil Engineering) Limited** (“the operator”),

whose registered office is

**Burlands Charlwood Road**

**Ifield**

**Crawley**

**West Sussex**

**RH11 0JZ**

company registration number 07185077

to operate waste operations described in standard rules **SR2008 No 11** at

**Bolney Park Farm Recycling Facility**

**Bolney Park Farm**

**Broxmead Lane**

**Bolney**

**Haywards Heath**

**RH17 5RJ**

to the extent authorised by and subject to the conditions of this permit.

Under regulation 27(2) of the Regulations, standard rules **SR2008 No 11** are conditions of this permit.

Name	Date
Vicky Patchett	20/10/2020

Authorised on behalf of the Environment Agency

# Schedule 1 – Site plan

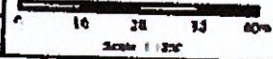
This is the plan referred to in the standard rules SR2008 No. 11



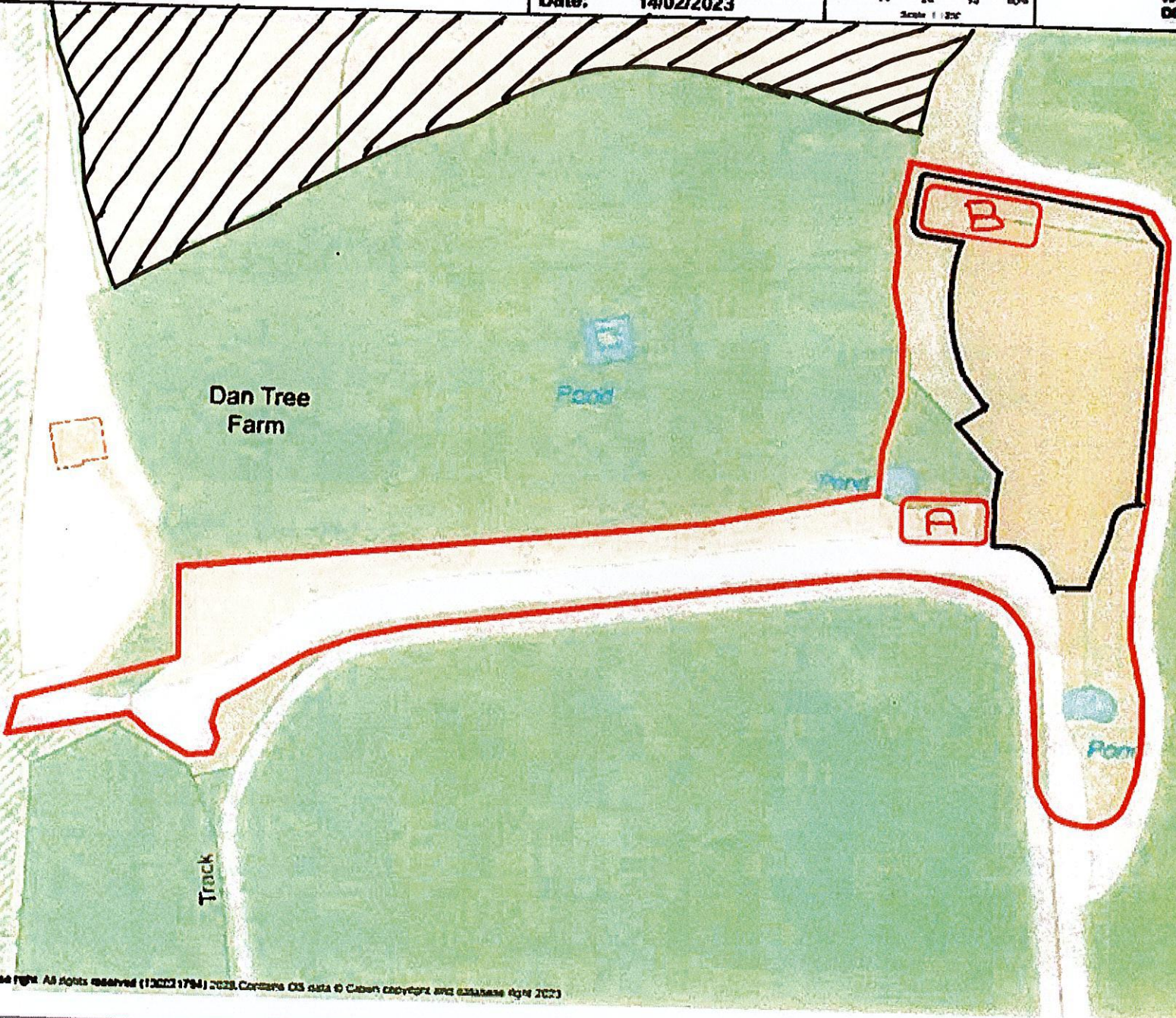
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# APPENDIX 16



AW



# APPENDIX 17



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# Appeal Decision

Site visit made on 6 April 2023

**by D Szymanski BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 June 2023**

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**Appeal Ref: APP/P3800/W/21/3266534**

**Kilmarnock Farm, Charlwood Road, Ifield RH11 0JY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by PJ Brown Construction Ltd against the decision of West Sussex County Council.
  - The application Ref WSCC/081/19, dated 20 December 2019, was refused by notice dated 9 July 2020.
  - The development proposed is Temporary Concrete Crushing and Soil Recycling Facility.
- 

## Decision

1. The appeal is dismissed.

## Procedural Matters and Planning Policy

2. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. This includes changes to policies in respect of flood risk and subsequent associated guidance in the Planning Practice Guidance (the PPG). The Council and the appellant have been given the opportunity to comment upon the implications of these matters, which is reflected in my setting out of the main issues and reasoning below.
3. The appeal site is within the Sussex North Water Supply Zone (the SNWSZ) in which Natural England (NE) has updated its advice in relation to the effects of development activities including water abstraction upon the integrity of the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar Site (the Arun Valley) as Habitats sites. I have given the Council and the Appellant the opportunity to comment upon this matter, which is reflected in my setting out of the main issues and my reasoning below.
4. The Council's first reason for refusal in its decision notice alleges the proposal would not be on 'suitable' previously developed land or well-located in accordance with the development plan. As the appeal site is not an allocated site in Policy W10 of the West Sussex Waste Local Plan (2014) (the WLP), Policy W4 of the WLP states that if not proposed on an active landfill site or mineral working, proposals will be permitted, provided they are located in accordance with Policy W3 of the WLP.
5. The Council accepted the Appellant had demonstrated the proposal cannot be delivered on permitted or allocated sites as required by W3(a)(i), and it falls within an 'Area of Search' under W3(a)(ii). Having been deemed to have met Policy W3(a), proposals must meet W3(b). This includes requirements that it

must be (i) on suitable previously developed land outside built-up areas, or, (iv) well-related to the Lorry Route Network (LRN). The Council accepts that on-balance the proposal constitutes previously developed land for the purposes of W3(b)(i), and I see no reason to disagree.

6. However, the Council's objection in respect of Policy W3(b) is that it does not consider the site 'suitable' given its objections in the decision notice in respect of the countryside, noise and disturbance, the location on the highway network and highway safety. My findings in respect of these main issues will determine whether the appeal site can be considered 'suitable'.

### **Main Issues**

7. The main issues are:

- the effect of the proposed development upon Habitats sites;
- whether or not the proposed development is compliant with policies in respect of flood risk;
- the effect of the proposed development upon the character and appearance of the countryside;
- whether or not the proposed development would ensure satisfactory conditions for neighbouring and local receptors with particular reference to noise and dust;
- the effect of the proposed development upon any future expansion of Gatwick Airport; and,
- whether or not the proposed development is in a suitable location on the highway network and can be accessed safely.

### **Reasons**

#### *Habitats sites*

8. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that where a plan or project is likely to result in a significant effect on a European site (Habitats site) in this case the Arun Valley, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project upon the integrity of the European site in view of its conservation objectives.
9. The Arun Valley includes washlands, floodplains, neutral wet grasslands and wet meadows dissected by a network of ditches, marshes and seasonal pools. These habitats support internationally and nationally important populations of seven wetland invertebrate species including the Little Whirlpool Ramshorn snail, rare plant species including various types of Milfoils and Dropworts, the Bewick's Swan, and important waterfowl assemblages.
10. The conservation objectives of the Arun Valley are to maintain or restore the integrity of the sites by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features and species, the population of the qualifying features and species, and the distribution of the qualifying features and species within the Arun Valley.

11. NE advice is that within the SNWSZ it cannot be concluded that existing groundwater abstraction is not having an adverse impact on the integrity of the Arun Valley through reduced water levels<sup>1</sup>. Based upon monitoring, it is understood the existing condition of the sites is 'Unfavourable'. Therefore, Likely Significant Effects (LSEs) from many types of new development cannot be ruled out. NE considers that further development with a requirement for additional abstraction in the SNWSZ is likely to have an adverse impact upon the Arun Valley.
12. The proposal would be likely to use a public water supply for purposes including operating a wheel wash, suppressing any dust emissions and the provision staff facilities. The plans show swales, an interceptor, and detention ponds with reed beds, as part of water treatment. Therefore, alone and in combination with other development, the proposal would be likely to have a water demand within the SNWSZ, resulting in LSEs on the Arun Valley.
13. NE is of the view the appeal proposal would have an impact on the Arun Valley sites. It is working with partner organisations to develop and implement Water Neutrality (WN), to ensure future developments can proceed without further adversely affecting Habitats sites. WN requires that for every new development requiring a public water supply from the SNWSZ, total water use in the SNWSZ after the development must be equal to or less than the total water-use before the new development. The amount of water used needs to be calculated and it needs to be demonstrated how the appeal proposal can achieve no net increase in water consumption.
14. Presently no strategic mitigation scheme is in place and an applicant is required to demonstrate how they intend to secure WN with their own mitigation strategy. There are existing uses on the appeal site to be removed, with some reliance upon mains water. However, their planning status and their water consumption is not agreed between the Council and the appellant. The appellant also acknowledges there might be a need to submit applications to the relevant planning authority, to reach agreement upon the water consumption baseline. Therefore, the appellant has advised they are not presently able to agree a baseline or demonstrate WN.
15. In consequence, the appeal proposal does not have robust calculations and a deliverable mitigation scheme in place to ensure it is water neutral. Therefore, I can only conclude that it is not demonstrated the proposal makes sufficient provision to mitigate LSEs and thus maintain or restore the integrity of the Arun Valley Habitats sites.
16. Applying the precautionary principle, in the absence of appropriate mitigation being secured, the appeal scheme would have LSEs upon the integrity of the Arun Valley Habitats sites, and it would fail to adhere to their conservation objectives. Imperative reasons of overriding public interest do not exist, it has not been put to me there are no alternative solutions, and no compensatory measures will be provided. Therefore, Regulation 63(5) of the Regulations precludes the proposal from proceeding.
17. In-light of the foregoing, the proposed development conflicts with Policy W14 of the WLP and Policy 31 of the Horsham District Policy Framework (2015) (the

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<sup>1</sup> Natural England's Advice Note regarding Water Neutrality within the Sussex North Water Supply Zone: February 2022 V2.

HDPF). Amongst other things, these require where development is anticipated to have direct or indirect adverse impacts on sites or features of biodiversity importance, a favourable conservation status is maintained, and appropriate mitigation measures provided. It also conflicts with paragraph 180a) of the Framework which states that if significant harm to biodiversity cannot be avoided or adequately mitigated, then planning permission should be refused.

### *Flood Risk*

18. Paragraphs 159 and 161 – 163 of the Framework seek to direct development away from areas at risk of flooding from all sources, and where development is necessary in such areas it should be made safe for its lifetime without increasing the risk of flooding elsewhere. The Framework applies the sequential approach to avoid where possible risk of flooding to people and property now and in the future, and development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding.
19. A small part of the north of the appeal site that is currently occupied by some informal grassland surrounding a mobile home is shown on the surface water maps as being at a high risk of surface water flooding. From what I saw, land drains from the north along a thin corridor before running through this part of the appeal site and then outside the boundary of the existing hardstanding.
20. The submitted drainage layout shows that surface water from the site would discharge into new detention ponds via new swales or French drains, a channel and interceptor. The layout indicates the area at a high-risk of flooding would be occupied by part of a landscaped strip integrating an acoustic barrier and an approximately 3m wide swale inside that barrier, along a broadly similar alignment to the existing surface water run-off pathway.
21. Despite part of the site being within an area at high risk of flooding I have not been provided with a sequential test, nor has it been argued a sequential test would not be required. The proposed layout would appear to suggest it has a potential to increase the risk of flooding to property. For an acoustic fence to be effective it should have few if any gaps, and for reasons I go on to discuss it is an important and significant element of the appeal scheme. The layout suggests it would result in the risk of flooding around the barrier and could result in increased flooding of a modest part of the adjacent field. While this might only be for a temporary period of five years, the objective of avoiding risk of flooding to people and property at present, is not demonstrated.
22. Both main parties also suggest the current drainage design might not take into account the most up to date flood risk guidance, or changes to climate change allowances required to be considered as part of assessment and design of a scheme. The appellant's view is that there might be significant updates and amendments necessary for the scheme to comply with the policies of the Framework and the guidance in the PPG. Having regard to the Wheatcroft principles<sup>2</sup>, I cannot be certain whether or not any necessary changes would result in significant and material amendments to such a degree, that the appeal scheme might be significantly changed.

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<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37].

23. Therefore, based upon the evidence the before me, I cannot conclude the appeal scheme is compliant with policies in respect of flood risk, in conflict with the aims of paragraphs 159 and 161 – 163 the Framework, the relevant objectives of which I have set out above.

*Character and appearance*

24. The appeal site comprises approximately 0.66 hectares of land on the eastern side of the Kilmarnock Farm business complex. Although designated as countryside much of the site comprises previously developed land that was occupied by made ground in use for parking, commercial and equine buildings and mobile homes. To the east the appeal site includes part of a grass paddock, some stables, a field gate, and mature hedgerow on Charlwood Road.
25. The appeal site is viewed in the context of the variety of neighbouring buildings and premises on the farm to its west and experienced in the backdrop of aircraft from Gatwick airport. However, the site and farm surrounds are set within the gently undulating countryside of the Northern Vales and Upper Mole Farmlands landscape character areas. It is typified by fields punctuated by clusters of buildings in varying uses, with a sense of wider containment due to the sizeable mature forested areas, so the surrounds have predominantly rural character. As a whole, the appeal site is in keeping with and makes a neutral contribution to the character and appearance of the area.
26. The proposal would enclose and develop a significant area of paddock, extending built development and enclosing it with an approximately 4.5m acoustic barrier. The hardstanding and structures would necessitate vegetation removal including a number of trees of a range of maturity to facilitate the approximately 37m wide bell-mouth access. The new development, plant and vehicles, processing of materials, and stockpiles, would result in a significant incursion of new operational development in the countryside, with a marked increase in the amount and intensity of development at the site.
27. Notwithstanding the acoustic barrier, landscaping and layout, some parts of the plant, machinery and activity, would be visible or perceptible from surrounding land. The significantly widened access would be clearly visible from Charlwood Road. While the proposal might have a limited effect upon key landscape features and maintain a sizeable gap to the wood, there would be harmful effects to the character and appearance of the countryside for a temporary period. In consequence, it cannot be considered sympathetic to its location.
28. The appellant's Landscape & Visual Impact Assessment (LVIA) concludes that during construction effects would likely to be high adverse and once operational low adverse from Charlwood Road and low adverse descending to neutral from the footpath as landscaping matures. However, due to its inherent rural and verdant character I do not agree the landscape value or sensitivity is 'low', or that it would only be motorists viewing the site from the highway. Based upon what I saw, I consider it of moderate value and given the variety of road users and proximity to the public rights of way network, I do not consider it would only be motorists observing the site from Charlwood Road. Based upon the indicative landscaping, it is not demonstrated there would be sufficient time or scope for planting proposals to reduce the landscape effects to neutral.
29. A sympathetic external treatment of the acoustic barrier and a detailed landscaping scheme with mature landscape elements could limit the effects of



- the proposal. The access area could be enhanced by landscaping but having regard to the temporary duration of the operation of five years as proposed and the Council's planning condition in this regard, due to the need to maintain sufficient visibility, this would be of limited effect.
30. A condition securing the reinstatement of the site to require it be restored to a suitable form, as set out in the Council's suggested planning conditions, would mean the harm is temporary, and it is possible there might be some minor longer-term benefits secured. However, even allowing for what could be achieved with suitably worded planning conditions, these could not fully overcome the harmful effects during construction and operation. The harm would be visible from surrounding fields, limited points on Charlwood Road around the access, and for a significant length of the footpath east of the site.
  31. It is not demonstrated the proposal is essential to its countryside location or falls within one of the categories of development considered to be acceptable in the countryside under Policy 26 of the HDPF such as directly for the disposal of waste. In-light of my findings in respect of Habitats sites, flood risk, and this main issue, I cannot regard it to be enabling the sustainable development of rural areas. Therefore, based upon the evidence before me, it would be considered inappropriate to a countryside location under Policy 26.
  32. For the reasons set out above, the proposed development would be harmful to the character and appearance of the countryside. These effects would be temporary, but nevertheless it would conflict with the aims of Policies W11 and W12 of the WLP and Policies 25 and 26 of the HDPF. In combination and amongst other things, these require that development is of a high-quality design of an appropriate scale and form, considering the need to integrate with adjoining land uses, maintaining and reinforcing local character, not resulting in a significant increase in the overall level of activity and not having an unacceptable impact upon the character and distinctiveness of the area.
  33. It would also conflict with paragraphs 130b) and c) and 174b) of the Framework which expect development to recognise the intrinsic character and beauty of the countryside, integrate effective landscaping, and be sympathetic to the surrounding landscape setting.
  34. While not cited in the decision notice under reason for refusal no. 2, the appellant has referenced Policy 33 of the HDPF and Policy W19 of the WLP. In respect of this main issue, I do not agree with the appellant's view the proposal is compliant with Policy 33 given its requirement that development is sympathetic to the distinctive characteristics of its surrounds. Policy W19 of the WLP is primarily in relation to the effects of emissions, which I have considered under the main issue below.

#### *Dust and noise*

35. The proposal would typically necessitate the use of plant and machinery such as a mobile screener, a crusher, an excavator and a loading shovel, as well as wheel washing, reversing alarms, the delivery of waste and export of processed materials between 08:00 to 17:00hrs Monday to Friday and 08:00 to 13:00 Saturdays. Existing mobile properties would be removed from the appeal site. Receptors listed in the appellant's Noise Assessment (NA) include businesses on the farm, Kilmarnock farmhouse approximately 15m from the site, Ifield Court Lodge approximately 130m away, Little Foxes Hotel approximately 160m

- away, an outreach centre approximately 200m away, and footpath 1511 approximately 75m to the east.
36. From what I saw and the evidence before me, the noise environment was influenced by businesses at farm and Charlwood Road, with frequent elevated peaks when aircraft were passing from the airport a short distance away. The NA concludes that subject to the imposition of suitably worded planning conditions to secure mitigation measures such as an up to 4.5m acoustic barrier, the proposed development would be in the order of the prevailing background noise levels at the closest properties.
37. However, the evidence does not address whether the NA included or should have included a correction penalty for impulsive or tonal noise, given there is no reference to this having been applied in the NA. The evidence also suggests that the NA has not considered the effects upon a previously approved dwelling (the Plumber's Block) constructed under a prior approval. The plans before me suggest this is located very close to the site boundary. However, the details of its boundaries, construction and layout are not confirmed.
38. Based upon the NA, with mitigation, the noise levels would be between approximately 2 dB(A) to 16 dB(A) below the background levels at the assessed receptors. However, it is not clear whether any penalty factor might change noise levels experienced. The appellant has argued that the Plumber's Block dwelling and the farmhouse would revert from residential to commercial uses. However, it is not explained if they are now permanently vacated, whether the changes require express consents or how any consents or changes of use would be secured. For these reasons, even having regard to measures that could be imposed by suitably worded planning conditions, I have significant doubts as to whether the proposal could secure satisfactory living conditions at the farmhouse and the Plumber's Block.
39. The Council refers to other businesses and uses in and around Kilmarnock Farm. These include businesses such as automotive garages, scaffolders, and Class E uses, which are likely to be less sensitive to noise than, for example, residential uses and overnight accommodation. Having regard to the existing noise environment at the farm complex, the nature of those businesses, and the substantive assessment in the NA, this is suggestive that even allowing for any penalty factor, the resultant noise would still allow those businesses to operate satisfactorily.
40. The equine uses such as stables and paddocks in the vicinity of the site are under the control of the landowner of the appeal site and farm. Those uses on the site are proposed to cease if the appeal were to be allowed. However, there is no substantive evidence provided by the Council that would lead me to believe equine uses have the sensitivity to noise as residential uses, or even if it were necessary, the landowner could not and would move the animals to a more suitable location during the hours of use if the appeal facility were deemed to be of detriment to welfare. Moreover, the evidence suggests some of the stables have been permitted for use for self-storage, so it is not intended for the animals to be housed in them. Therefore, the evidence before me suggests the proposal would not harmfully affect the equine uses.
41. The NA does specifically refer to a finding upon any effects to the enjoyment of footpath 1511 east of the site. Having regard to the noise levels anticipated at P1 and P5 in particular, and the levels set out on the noise contour plans, if a

- penalty factor for impulsive or tonal noise were integrated into the calculation, it appears likely that with mitigation, noise at the footpath would be above the background noise levels. Given the uncertainty surrounding the effect of any correction factor for impulsive or tonal noise, I cannot be certain the noise would not significantly affect the enjoyment of the footpath.
42. The Ifield Village Conservation Area Advisory Committee has referred to harmful effects upon a day centre for people with learning difficulties. This facility (receptor P5 in the NA) is approximately 200m from the site. The NA suggests it would experience noise levels of 3 dB(A) below background without any penalty factor. Under section 149 of the Equality Act 2010 (the Act), the decision maker must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to foster good relations between those who share protected characteristics and those who do not.
  43. I am mindful to have regard to the need to minimise the disadvantages suffered by persons who share a relevant protected. Based upon the limited evidence before me, the users of the centre appear to have disabilities, so have a protected characteristic. Neither the Council nor the appellant advance substantive evidence explaining how this is assessed. Were I minded to allow this appeal, I would have needed sufficient certainty as to any effects upon the users of the centre. However, as I am dismissing this appeal for other reasons, and my decision upon it will not result in any effects upon the outreach centre users, I have not considered this matter in detail.
  44. Interested party representations have been received in relation other wider properties and uses. The NA suggests noise levels from the proposal in their general vicinity would be 12 dB(A) to 16 dB(A) below background levels. This suggests that even allowing for any correction factor, the proposal would not result in harmful conditions at those properties or prevent them operating, and there is no substantive evidence advanced to the contrary.
  45. While the Council refers to the effects of dust upon nearby receptors, it has provided little further substantive justification to demonstrate the proposal would result in harmful effects. The Air Quality Assessment (AQA) considers the effects from the operation of the site and HGV movements. While there would be a risk of dust impacts within 20m of the appeal site which may affect the Plumber's Block and the farmhouse, the wind rose shows that there is proportionally little wind blowing in these directions and the prevailing wind is from the west and south westerly directions.
  46. The appellant has detailed various dust suppression measures and working practice options, a Construction Management Plan, and monitoring. While I note the concerns, there is no substantive evidence advanced that would lead me to doubt the findings of the AQA and that the proposed development could be satisfactorily operated without harmful effects upon neighbouring occupiers. Moreover, in accordance with paragraph 188 of the Framework, I have no reason to conclude the proposal would and could not be operated in accordance with the Environmental Permitting regime nor that it would not be regulated and enforced if necessary.
  47. Nevertheless, for the reasons set out above, I cannot be certain the proposed development would provide satisfactory living conditions at two nearby residential properties and that it would not adversely affect the enjoyment of a public right of way. Therefore, it would conflict with Policy W19 of the WLP and

Policy 33 of the HDPF. Amongst other things these require that development is suitably controlled and avoids unacceptable harm to the amenity or health of nearby occupiers of nearby property and land. It would also conflict with paragraphs 130f) and 185a) of the Framework, which have similar objectives.

### *Gatwick Airport*

48. The appeal site is on land safeguarded for a possible additional runway and associated works at Gatwick airport under the Gatwick Airport Master Plan (2019) (GAMP). Paragraph 5.9 of the Aviation Policy Framework (2013) (the APF) sets out an objective to safeguard land outside existing airports that may be required for future airport development. Paragraph 106e) and f) of the Framework recognise the importance of making provision for large scale transport facilities and maintaining a national network of general aviation airfields, and their need to adapt and change over time taking into account their economic value, leisure, training and emergency service needs, and the Government's General Aviation Strategy.
49. While the land is recognised in the policy map for the HDPF, there is no specific policy to protect it. As guidance, the Council refers me to Policy GAT2 in the Crawley Local Plan (2015), in which part of the wider safeguarded area is located. Its supporting text defines incompatible development as that which would add constraints or increase the costs or complexity to the development or operation of an additional runway. There is nothing before me to suggest this is not an appropriate definition for the purposes of my assessment.
50. Gatwick Airport Limited (GAL) stated in June 2019 they were not actively pursuing an additional runway to the south of Gatwick at that time but maintained an objection to the current proposal in February 2020. Safeguarding of land would preserve the option of building an additional runway to meet the future airport capacity gap that the Government's forecasts indicate will occur beyond 2030. The appellant informs me the airport lost out to a bid by Heathrow Airport to obtain government approval for an additional runway and the Airports National Policy Statement (2018) (the ANPS) strongly supports a third runway at Heathrow.
51. The appellant cites the effects of the pandemic referred to by an airport spokesperson<sup>3</sup>, suggesting it might take 4 – 5 years to return to pre-pandemic levels of travel. They also inform me it is CBC's position in their draft local plan that there is not robust evidence to continue the safeguarding of land for a further runway, and the GAMP suggests one scenario is continuing to safeguard land for an additional runway to increase capacity, but the latter of these scenarios is not being pursued by GAL at this time.
52. It is not clear whether the 4 – 5 year projection for passenger numbers to recover is being borne out. There is little evidence to substantiate, with certainty a new runway is unlikely in the next 15 – 20 years. These matters would also be the subject of a variety of economic and social variables. Neither party has provided up-to-date substantive evidence to demonstrate what I could consider to be a certain and current position with respect to a runway.
53. The Council's suggested planning conditions would limit the development to 5 years from the date of any decision, and the appellant has not expressed an

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<sup>3</sup> BBC News – Coronavirus: Gatwick Airport' will take five years to recover' (<https://www.bbc.co.uk/news/uk-england-sussex-53943633> 28 August 2020).

objection to this. Even if such a limitation were imposed, the appeal site and immediate surroundings might well be required for preliminary, investigative works or environmental monitoring works well in advance of any application for consent for a new runway. The appeal proposal could alter or complicate such work. Given the uncertainties around the timing of any application and advance works if needed, it has not been demonstrated the proposed development would not add constraints or increase the costs or complexity of providing a new runway. Therefore, notwithstanding the intended temporary duration of the operation, it is considered incompatible with the future expansion of Gatwick Airport as currently set out in policy.

54. For the reasons set out above, it is not demonstrated the proposal would not adversely affect any future expansion of Gatwick Airport. It would conflict with paragraphs 5.8 – 5.9 of the APF insofar as these seek to ensure safeguarded land is protected from incompatible development. While the Council has concluded the proposal conflicts with the Aviation White Paper (2003), it is my understanding this reference is to The Future of Air Transport (2003) White Paper which is withdrawn. Therefore, I have not concluded against it.

### *Highways*

55. Policy W3(b)(iv) of the WLP requires that sites are well-related to the LRN and Policy W18(c)(i) that materials are capable of being transported using the LRN with minimal use of local roads, unless special justification can be shown. They do not define what is 'minimal' or 'well-related', so it is a matter for the decision maker to determine based upon the circumstances. The Council does not express a specific objection to the distance to the LRN, suggesting the objection is primarily in relation to highway suitability and safety.
56. The number and nature of total vehicle movements currently generated by the appeal site are not clear. It is put to me the proposal would be likely to reduce the number of overall vehicle movements, but it is not detailed how this conclusion is reached. From what I saw and the evidence before me, it would appear highly likely the proposal would result in a marked increase in HGV movements.
57. I have not been provided with a planning obligation to secure the routing of approximately 30-inbound and 30-outbound daily vehicle movements to and from the east as sought by the Council and the appellant has not stated they would be willing to accept one. Were this to be agreed, it may complicate or result in an elongated route given the stated intention of vehicles to return to the Burlands Farm premises to the west at the end of each day<sup>4</sup>.
58. The nearest part of the LRN is the A23 approximately 2km south-east of the site. To access it HGVs would need to use Charlwood Road which is a 'C' Class local distributor road before reaching Ifield Avenue. The Highway Authority (HA) does not appear to raise any significant concerns over the use of Ifield Avenue given its general alignment, width, capacity and infrastructure for non-motorised users. Notwithstanding the Council's concerns, I see no substantive reason it could not be used safely by new site traffic.
59. However, the HA expresses significant concerns about the suitability of Charlwood Road in the vicinity of the appeal site. It has a relatively rural

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<sup>4</sup> Paragraph 4.2 of the Planning Statement by WS Planning & Architecture (Ref. J002999).

- character, no footways, a limited carriageway and verge widths with clear evidence of overrunning, and little vulnerable user infrastructure. ATC data suggests regular cycle use and the Council informs me it is used by equestrians and walkers to access the wider rights of way network.
60. In the vicinity of the appeal site, the Charlwood Road was the subject of seven accidents between 2013 – 2018<sup>5</sup> and the Highway Authority (HA) has explained there have been three others in the area since the data was interrogated for the Road Safety Audit (RSA). An Inspector for a previous 2014 appeal proposal at Burlands<sup>6</sup> Farm that included further HGV movements (10-in, 10-out) was of the view the route to the A23 was poor, had an absence of facilities for vulnerable road users, a poor accident record, and was not well-related to the LRN at that time.
61. While this proposal is closer to the A23 than the 2014 proposal, HGVs would utilise the same stretch of road. Both that Inspector and the HA share the view the number of accidents is disproportionately high regardless of no design deficiencies having been identified. For these reasons, the HA is of the view the effect of the proposed development upon the road network would be severe. I see no substantive reason why the concerns of the HA should not be given significant weight. While the appellant's evidence explains the accidents, there is little further analysis of the carriageway undertaken to overcome the concerns raised.
62. The appellant suggests the proposed number of movements is similar to that previously accessing Kilmarnock Farm between 1999 – 2012 for various infilling and land drainage works. I am informed they utilised the appeal access, and there were no associated accidents. The HA confirms there was a single incident in 2003 involving one of the appellant's HGVs, though that HGV driver was not at fault. However, based upon the evidence before me, suggests those proposals generated fewer overall movements over less sustained periods and given they were some time ago, I cannot be certain the amount and nature of traffic using Charlwood Road is similar to the present day.
63. The HA judged, for a proposal at Red Gables<sup>7</sup>, that just over a quarter of the number of vehicle movements proposed in this appeal scheme, would not lead to a severe impact. So the circumstances and effects are not the same and do not justify allowing this appeal. An Inspector's finding in respect<sup>8</sup> of the site having easy access to the strategic road network around Crawley, when considering the use of land for car valeting is also noted. However, this was in the context of a scheme that would primarily generate car movements.
64. I am informed that a similar number of HGVs presently utilise this stretch of road to access Burlands Farm. However, even were that to be the case, there is no explanation that would lead me to conclude other than that the proposal is likely to significantly increase HGV movements on a section of road with a number of recorded accidents. Such is the width, alignment and lack of vulnerable user infrastructure, based upon the evidence before me, the use by a significant number of additional HGVs would be detrimental to highway safety. Therefore, the nature of the highway to access the LRN, means I

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<sup>5</sup> Appendix C (Collision report 01/09/2013 – 31/08/2018) of Transport Statement dated 22/11/2019.

<sup>6</sup> Appeal Ref. APP/P3800/A/14/2227993.

<sup>7</sup> Highway Authority response dated 08/08/2018 to application Ref. DC/18/1455.

<sup>8</sup> Appeal Ref. APP/Z3825/W/15/3004320.

- cannot regard the site as being well-related to the LRN. The number and route of vehicle movements proposed, suggests the use of local roads cannot be considered minimal and I do not consider special justification has been shown.
65. The appellant's RSA recommends a telegraph pole be relocated from the west of the access as it is an obstruction to visibility. While the RSA is of the view the impact is limited, it would be close to where drivers would be emerging, causing obstruction to their line-of-sight. Given its proximity to emerging vehicles, the effect upon visibility and upon the path of HGVs entering from the west, I am of the view it would be prejudicial to highway safety.
66. It is not disputed that the visibility splays should be 2.4m x 126m to the southeast and 2.4m x 97m to the northwest. The plans show the visibility splay cannot be achieved in a south easterly direction within land within the landowner's control or the public highway. However, the appellant is of the view they could obtain the necessary landowner's agreement to achieve the visibility splay. In respect of the telegraph pole and splays, the Council's condition to require clear specified splays are provided, would remedy these matters. However, this does not mitigate or overcome my other concerns.
67. For the reasons set out above it is not demonstrated the proposal would be in a suitable location on the highway network, or that it could be accessed safely. Therefore, it would conflict with the aims of Policies W3, W4 and W18 of the WLP and Policy 40 of the HDPF. Amongst other things these require that proposals are well-related to the LRN, use of local roads is minimised, and that vehicle movements associated with the development will not have an adverse impact on the safety of all road users. It would also conflict with the aims of paragraphs 110 and 111 of the Framework, which have similar objectives.

### **Other Matters**

68. Policy W1 of the WLP supports facilities on un-allocated sites where it is demonstrated there is a market need. I have not been provided with the figures of the latest Annual Monitoring Report (AMR), but I am informed the 2017/18 AMR identifies a continuing and increasing demand for such facilities as that proposed. I am advised the WLP contains a capacity requirement for 0.68m tonnes per year to 2031 for the transfer, recycling, and treatment of commercial and industrial waste and construction, demolition, and excavation waste.
69. It is understood the appellant's company are currently depositing waste at other operator's facilities although the tonnages, nature of facilities and locations of them is not clear. This proposal would create 75,000 tonnes of capacity per year of inert waste recycling for aggregates and soils for use in the local market close to the urban areas of Horsham and Crawley which is the appellant's primary market. It would reduce the appellant's carbon footprint and vehicle miles from the current arrangements.
70. The proposal would be consistent with the principle of net self-sufficiency for West Sussex, supported by Policy W1 and would drive waste up the hierarchy as sought by the WLP and National Planning Policy for Waste (2014) (the NPPW). There is no dispute the proposal gains support from Policy W1.
71. Some interested parties have concerns of the effect of the proposal upon the Ifield Conservation Area (the ICA) due to noise and HGV movements. I have

considered this having regard to my duties under section 72 of the of the Planning Listed Buildings and Conservation Areas Act 1990 (the LBCAA), and any potential effects upon the setting of the ICA. The ICA is centred around the historic village as a scattered rural settlement, taking in its hinterland and some later development along Langley Lane and Ifield Green.

72. The ICA derives its character, appearance and significance from its historic settlement form with its high-quality historic buildings such as the church, a public house and cottages, as well as and the more recent generously sized high-quality residential and other buildings set within maturely vegetated green spaces, mature trees and wider rural grassland areas. Its setting to the north and east includes and is characterised by residential development and fields off Ifield Green, Ifield Avenue and Charlwood Road. From what I saw, it is primarily the surrounding fields, mature hedgerows and tree belts within its setting that contribute most to its significance. I could not see any intervisibility between the ICA and appeal site. Like aircraft from the airport, traffic on some highways is audible from the eastern side of the ICA and so has some influence upon both its character and setting.
73. It is not suggested there would be further vehicle movements through the ICA from the proposal. The technical analysis in the NA, suggests the appeal site would not be likely to be audible, above the existing noise environment during the times of its operation, within the ICA or within much of its immediate setting. There would be further HGVs travelling along Ifield Avenue and Charlwood Road, in proximity to parts of the eastern extent of the ICA. However, having regard to the number and duration of these, there would not be a significant overall increase in noise from them.
74. Based upon the evidence before me, I consider that the proposed development would not result in overall harmful effects upon the character, appearance and significance of the ICA and its setting. Therefore, it would preserve the character of the ICA and the contribution of its setting to its significance. In consequence, this would be a neutral matter.

### **Planning Balance**

75. The Council does not appear to dispute that the proposed development would result in efficiencies in the management of waste and reducing carbon, in compliance with WLP objectives and targets. The WLP highlights that private new facilities are essential for a more sustainable approach to dealing with waste in the County. I give the sustainable waste management benefits of providing further waste recycling capacity of this magnitude in close proximity to two large urban areas, significant weight.
76. The proposed development would result in significant temporary economic benefits from construction and restoration, and once completed there would be medium-term economic and social benefits through direct employment, the processing of waste arisings and the supply of recycled materials to the construction industry and the associated benefits that brings.
77. The appeal site appears to have a very limited ecological value at the present time. Notwithstanding the temporary life of the facility, subject to the imposition of suitably worded planning conditions, it is possible the proposed development could secure an overall biodiversity benefit. Having regard to the indicative planting proposals before me and the extent of the appeal site, this



would be likely to be a modest benefit. It is not demonstrated the proposed development could and would achieve a net landscape benefit, so I consider this would be more of a neutral matter.

78. It is not disputed several sites in the area are unsuitable. However, the extent of any wider search exercise is not fully clear, and I cannot conclude all potential other sites are exhausted. Based upon the evidence before me, this is a matter that attracts limited weight in favour of the proposal. The appellant's appeal statement refers to the implications of an on-going enforcement appeal<sup>9</sup> for their pre-existing operations in 2021. However, the status of this is not clear. Nonetheless, overall, the benefits of the development attract significant weight in favour of the scheme.
79. Were I to agree the proposed development would be, or with the imposition of suitably worded planning conditions, could be made compliant with policies in respect of matters such as lighting, construction management, access and parking standards, arboricultural matters, drainage, design of buildings and structures, dust suppression, wheel cleansing, noise mitigation, and heritage assets, these would be neutral matters in the planning balance.
80. I have found the proposal would be harmful to the character and appearance of the countryside, it has not been demonstrated the proposal would be compliant with policies for flood risk or the future expansion of Gatwick Airport. It is not demonstrated it would secure satisfactory living conditions to nearby occupiers, would not harmfully affect the enjoyment of a public right of way, or can be considered in a suitable location on the highway network and accessed safely. Therefore, I cannot regard it as being a suitable previously developed site, as required by Policy W3 of the WLP. In combination, these are matters that attract significant weight against the scheme. These are such that in combination they outweigh the benefits of the proposal.
81. Moreover, Regulation 63(5) of the 2017 Habitats Regulations states that the competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site. Therefore, the appeal cannot be allowed.

## **Conclusion**

82. The proposed development would be contrary to the development plan and the National Planning Policy Framework read as a whole, and there are no considerations advanced, including the policies of the Framework and the NPPW, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR

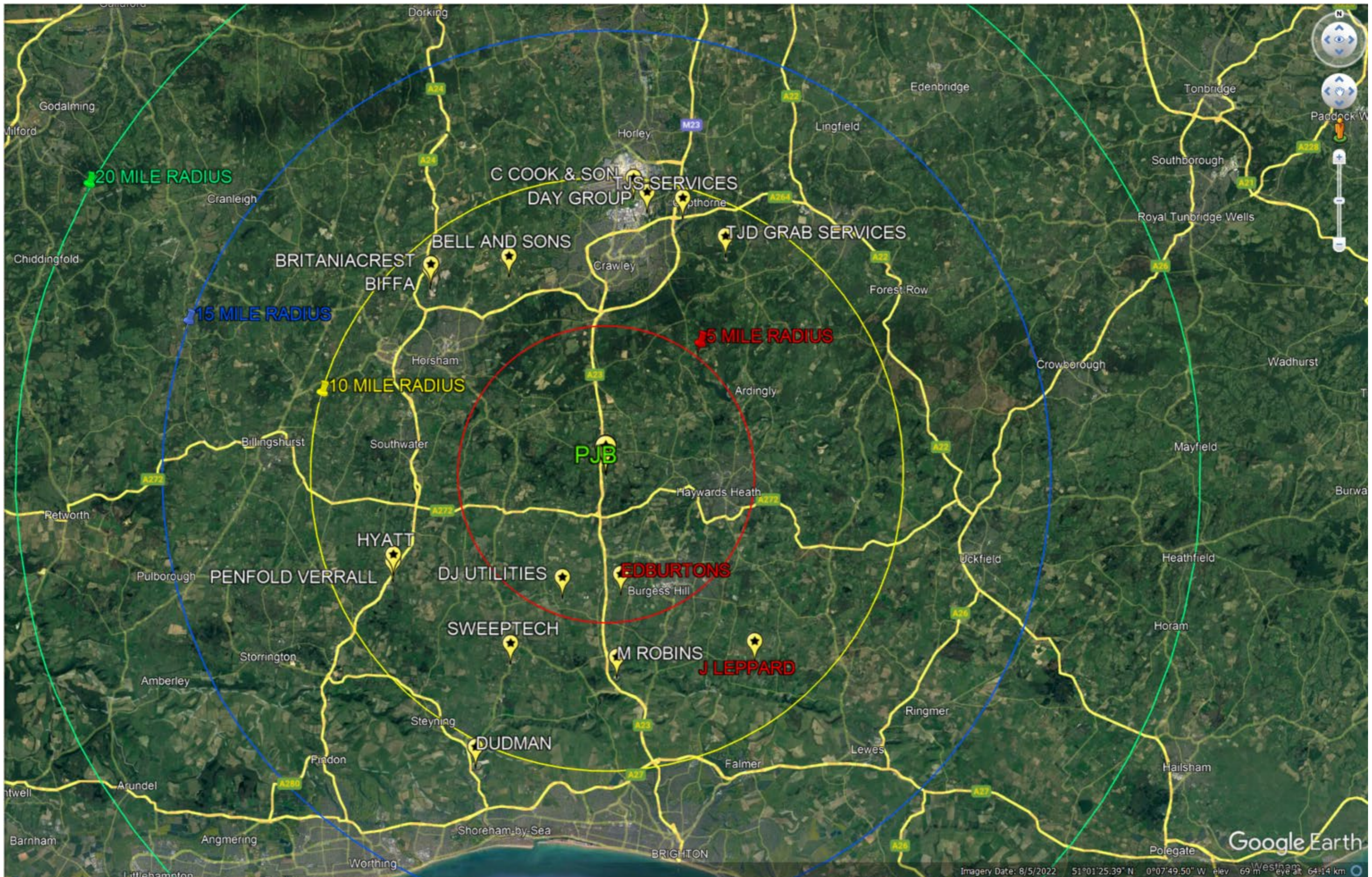
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<sup>9</sup> APP/P3800/C/20/3247574.

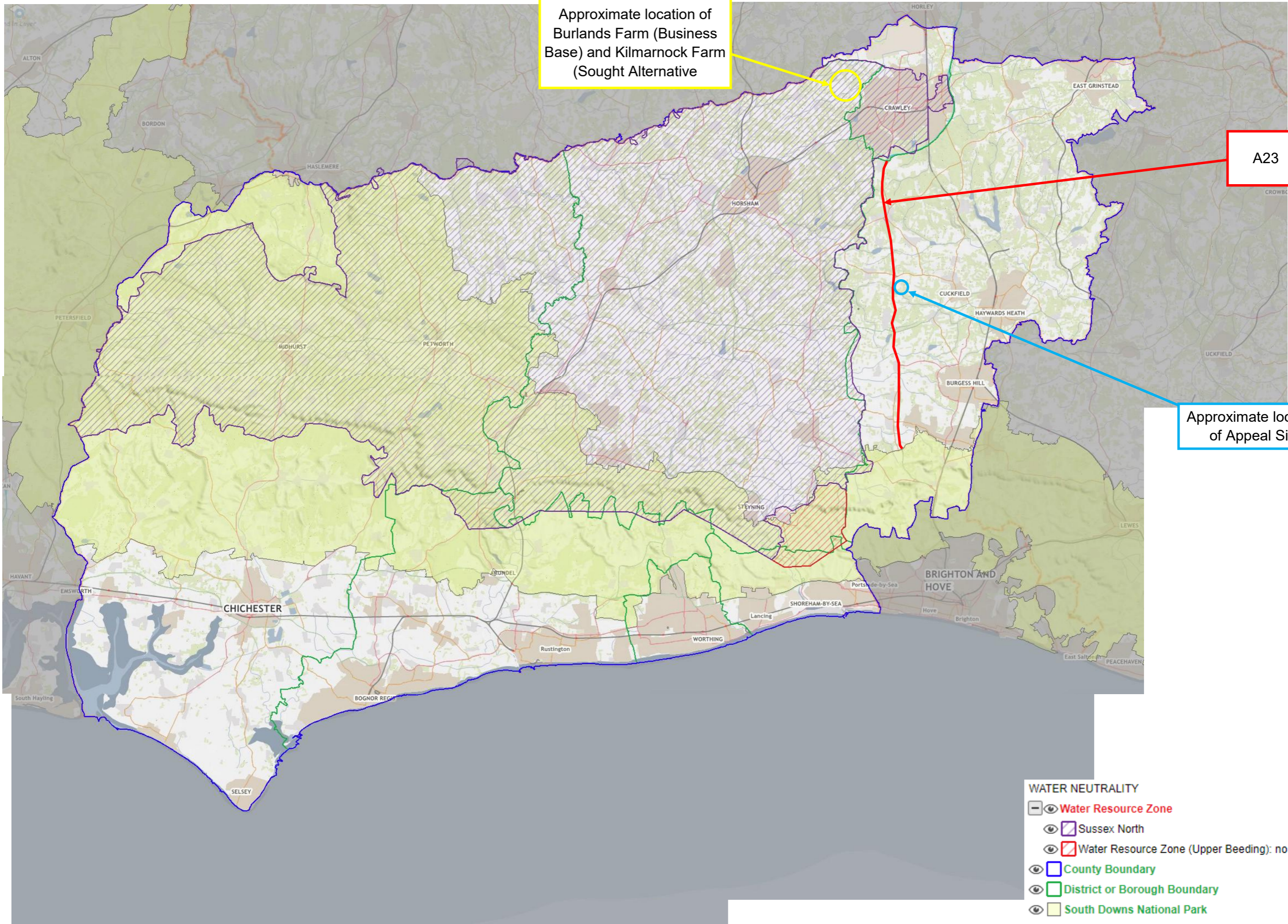
# APPENDIX 18







# APPENDIX 19



Approximate location of Burlands Farm (Business Base) and Kilmarnock Farm (Sought Alternative)

A23

Approximate location of Appeal Site

- WATER NEUTRALITY**
- Water Resource Zone
  - Sussex North
  - Water Resource Zone (Upper Beeding): no offsetting
  - County Boundary
  - District or Borough Boundary
  - South Downs National Park