WS PLANNING & ARCHITECTURE
30 years of unlocking potential

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"

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 3rd 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 4th 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 5th 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 6th 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 7th 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,

Peter Brownjohn
Senior Planner