

Land East of Dan Tree Farm, Bolney, West Sussex.

Statement of Common Ground between PJ Brown (Civil Engineering) Ltd., Mid Sussex District Council and West Sussex County Council, and National Highways

August 27, 2024

Version 2.0

Planning Inspectorate Ref: APP/D3830/C23/3319435.

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Revision History

Revision	Revision date	Details	Authorised	Name	Position
1	01/08/2024	Final Draft			
2	22/08/2024	Council and Appellant Comments			

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Status of the Statement of Common Ground

PJ Brown (Civil Engineering) Ltd., the [Councils], and National Highways agree that this draft Statement of Common Ground (SoCG) is an accurate description of the matters raised and the current status of each matter.

On Behalf of PJ Brown (Civil Engineering) Ltd.

Name	
Position	
Organisation	PJ Brown (Civil Engineering) Ltd.
Signature	

On Behalf of [the Councils]

Name/s		
Position/s		
Organisation/s	MSDC	
Signature/s		

On Behalf of National Highways

Name	
Position	
Organisation	National Highways
Signature	

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1. Introduction

Overview

- 1.1 Submitted without prejudice.
- 1.2 This Statement of Common Ground (“SoCG”) has been prepared to set out the areas of agreement of National Highways, the Appellant and the two local authorities on the position regarding the Enforcement Notice which is the subject of the appeal.
- 1.3 The basic functions of a SoCG are:
- (a) To provide a written statement prepared jointly by the applicant and another party or parties.
 - (b) To set out matters on which there is agreement and where agreement has not been reached; and
 - (c) To provide references to show where those matters are dealt with in the written representations or other documentary evidence.
- 1.4 A SoCG is a useful and established means of ensuring that the evidence provided at examination focuses on the material differences between the parties and aims to facilitate a more efficient examination process.

Planning and Development

- 1.5 With respect to the Enforcement Notice, it is alleged that PJ Brown (Civil Engineering) Ltd. has breached planning controls insofar as:
- Without planning permission:
 - a) The material change of use of the Land from agriculture to a mixed use of:
 - (i) the importation, processing, storage and export of waste material upon the Land
 - (ii) the deposition of waste material upon the Land
 - (iii) the storage of building materials upon the Land
 - (iv) the storage of plant, machinery and containers upon the Land
- And the
- b) - the operational development comprising:
 - (i) - the laying and construction of hardstanding upon the Land
- 1.6 An appeal under grounds (a), (b), (d), (f) and (g) of section 174(2) of the Town and Country Planning Act 1990 has been submitted against the Enforcement Notice served by the District Planning Authority.

1.7 Under Section 174(2) of the Town and Country Planning Act 1990, appeals against enforcement notices can be made on various grounds. The grounds you mentioned are as follows:

- (i) **Ground (a):** That planning permission should be granted. This ground is used when the Appellant believes that the development or use in question should be permitted, and therefore, the enforcement notice should be quashed.
- (ii) **Ground (b):** That the breach of control alleged in the enforcement notice has not occurred. The Appellant argues that the matters stated in the enforcement notice have not actually happened as a matter of fact.
- (iii) **Ground (d):** That at the date when the notice was issued, no enforcement action could be taken. This is based on the argument that the breach of planning control is immune from enforcement due to the passage of time. For example, operational development becomes immune after four years and a change of use after ten years.
- (iv) **Ground (f):** That the steps required to comply with the notice are excessive. The Appellant claims that the actions required by the enforcement notice go beyond what is necessary to remedy the breach of planning control.
- (v) **Ground (g):** That the time given to comply with the notice is too short. Here, the Appellant argues that the period specified for compliance with the notice is unreasonable and should be extended.

1.8 The Appellant submits that the **Ground (d)** case ought to be considered first and foremost. Nonetheless, in the event that the **Ground (a)** appeal is considered, it will be submitted by the Appellant that planning permission ought to be granted for the development for a temporary period of four years.

Parties to this Statement of Common Ground

- 1.9 This SoCG has been prepared by (1) PJ Brown (Civil Engineering) Ltd (as the Applicant), (2) the Councils, and (3) National Highways.
- 1.10 PJ Brown (Civil Engineering) Ltd is the Appellant and the owner and operator of land east of Dan Tree Farm, Bolney, West Sussex.
- 1.11 The Councils are the Local Planning Authorities (LPA) acting as the enforcement authorities. They are Mid Sussex District Council, and West Sussex County Council (also acting as the mineral and waste authority).
- 1.12 National Highways is responsible for the management and improvement of the Strategic Road Network in England, which comprises motorways and major A roads.
- 1.13 In this SoCG, PJ Brown (Civil Engineering) Ltd., the Councils, and National Highways are collectively referred to as “the Parties”.

Purpose and Structure of this Document

- 1.14 The purpose of this document is to identify and summarise any agreement, disagreement or matters outstanding between the parties on matters relevant to the Inquiry so as to assist the Planning Inspectorate in its consideration of the Appeal reference APP/D3830/C23/3319435.
- 1.15 Section 1 of this SoCG is designed to act as a general introduction to the development and to the parties concerned.
- 1.16 Section 2 of this SoCG sets out the matters which have been agreed or which remain outstanding, together with any matters upon which it has not been possible to reach agreement.
- 1.17 The Table in Section 2 use a colour coding system to indicate the status of the matters between the Parties.

2. Matters Agreed and Matters Not Agreed

- 2.1 **Table 2-1** contains a list of ‘matters agreed’ (shaded green); a list of matters in respect of which discussion is ongoing (shaded orange) and a list of matters not agreed (shaded red) at the date of the Inquiry, along with a concise commentary of what the item refers to and how it came to be agreed between the Parties (as applicable).

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Table 2-1 - List of Matters Agreed, Matters Outstanding and Matters Not Agreed

ID	Matter	PJ Brown (Civil Engineering) Ltd. Position	The Councils' Position	National Highways Position	Status	Date
1.	Road Traffic Accidents	<p>There have been no incidents directly related to the use of the access, or the operations of the Appellant. [Pg. 12]¹</p> <p>Agreed. It should be noted that layby is substandard with minimal visibility</p>	<p>MSDC presume that the use of the term “incidents” and the expression “road traffic accidents” refer to personal injury accidents that are reported to the police within 30 days via the STATS19 system. It is therefore not, necessarily, a complete record of all “incidents” and/ or “road traffic accidents”, and it should be noted that the available data does not include ‘damage only’ road traffic collisions or ‘near misses’, as acknowledged by National Highways in its email to MSDC on 22 August 2022.</p>	<p>Evidence from crashmap.co.uk indicates that from 2011 to 2022, there were six road traffic accidents within 295 meters of the development access (the stopping sight distance at 70 mph). One serious accident occurred midway between the lay-by merge taper and the site access diverge taper, with other incidents further north. A fatal incident was recorded within the northern layby. However, there is no evidence to suggest that these accidents are directly related to the development's operation.</p>		01/08/24
2.	Junction Layout	<p>Disagree - The access exceeds the DMRB standards as it is only required to be a priority junction.</p>	<p>MSDC agree that the existing access to the appeal site from the A23 does not meet the standards given in the DMRB.</p>	<p>The current junction arrangement does not meet with the standards set out in the Design Manual for Roads and Bridges [DMRB].</p>		01/08/24
3.	Junction Layout	<p>Disagree – The access exceed the DMRB standards as it is only required to be a priority junction.</p>	<p>MSDC agree that the existing access to the appeal site from the A23 does not meet the standards given in the DMRB.</p>	<p>The development access does not accord with the standards/land use requirements set out in DMRB CD 123, for a ‘Direct Access’</p>		

¹ J004451 WS Planning & Architecture 28 March 2023

ID	Matter	PJ Brown (Civil Engineering) Ltd. Position	The Councils' Position	National Highways Position	Status	Date
4.	Major Road Category	Agreed	<p>MSDC note that the A23 is an all-purpose Trunk Road that forms part of the strategic road network.</p> <p>In the vicinity of the existing access to the appeal site, it is a three-lane dual carriageway road subject to the national speed limit (70mph for cars, and similar vehicles up to 3.05 tonnes maximum unladen weight; 60mph for buses, coaches and goods vehicle exceeding 7.5 tonnes maximum laden weight).</p>	<p>The A23, at the location of the development access, is a three-lane dual carriageway subject to a 70mph speed limit.</p> <p>The route is categorised as a three-lane all-purpose dual carriageway (DAP3)</p>		22/08/24
6.	Stopping Sight Distance (SSD)	Agreed	<p>MSDC agrees that a minimum visibility splay of 'X' = 4.50m by 'Y' = 295m measured between driver's eye heights of 1.05 and 2.00m should be available (to the right) at the access and suggests that the Appellant provides a drawing to demonstrate that can be achieved prior to determination of the appeal.</p>	<p>The desirable minimum stopping sight distance at 70mph (120km/hr) is 295m from a minimum 4.5m setback. Ref: CD 109. Table 2.10 Design Speed Related Parameters.</p>		22/08/24
7.	Access Layout	The improvements proposed is to amend the junction to a standard priority junction.	<p>MSDC consider that any proposed improvement of the access (including for any proposed changes to road markings and road signage) needs to be submitted and approved by National Highways prior to the determination of the appeal.</p>	<p>No improvements to the access can be made without the highway authority's approval to the adoption of departures from standard. Any proposed works to the SRN should be approved prior to determination.</p>		22/08/24

ID	Matter	PJ Brown (Civil Engineering) Ltd. Position	The Councils' Position	National Highways Position	Status	Date
8.	Traffic Generation and Limitations	<p>The access and its suitability for HGVs was previously discussed as part of the WSCC/077/11/BK planning application.</p> <p>Highways England (now National Highways) approved the use of the access, and it was agreed at the time that the access could accommodate up to 450 HGV arrivals.</p>	<p>MSDC considers that any agreed limit on the volume of traffic using the access will need to be secured by an appropriate unilateral planning obligation and be subject to an independent monitoring regime (to be agreed) funded by the Appellant.</p>	<p>Restrictions on the volume of traffic using the access are required to ensure that its use is not further intensified.</p>		22/08/24
9.	Traffic Generation and Limitations	<p>The site has been used by PJ Brown Construction Limited since 2007 for the deposit and transport of inert materials to and from the site.</p> <p>The operation continues to this day and the foreseeable future which ranges between 30 to 60 HGV arrivals per day.</p>	<p>MSDC does not agree that the "current volume of traffic using the access" represents the appropriate baseline against which the impact of the appeal should be judged. The appropriate baseline should be established with reference to the lawful use of the appeal site.</p>	<p>The current volume of traffic using the access requires to be confirmed by the Appellant.</p>		22/08/24
10.	Mitigation of Transport Impacts	<p>A transport statement and travel plan has been provided</p>	<p>MSDC does not recognise the Appellant's 'Transport Statement of Case' (dated July 2023) as the equivalent of a Transport Assessment in accordance with paragraph 004 (reference ID 41-004-20140306) of the planning practice guidance.</p> <p>MSDC agrees that a Transport Assessment, a Travel Plan and any departure application should be submitted by the Appellant and</p>	<p>A Transport Assessment, Travel Plan and Departure from Standards application are required by National Highways prior to determination.</p>		22/08/24

ID	Matter	PJ Brown (Civil Engineering) Ltd. Position	The Councils' Position	National Highways Position	Status	Date
			<p>agreed prior to determination of the appeal.</p> <p>Further, MSDC suggests that the Safety Risk Assessment (in accordance with DMRB GG104) and the Road Safety Audit (in accordance with GG119) requested by National Highways in its letter to MSDC on 12 February 2024, together with any 'Designer's Response' considered relevant should be submitted by the Appellant and agreed prior to determination of the appeal.</p>			
11.	Departure from Standards Application	The improvements proposed is to amend the junction to a standard priority junction, therefore, a departure is not required.	<p>MSDC agree that a departure application should be submitted by the Appellant and approved by National Highways prior to determination of the appeal.</p> <p>MSDC suggests that the extent of the impact of the "intensification of use of a currently substandard access" cannot be determined until the baseline is agreed.</p>	GG 101, para 2.4, outlines the circumstances under which departure applications must be submitted, including where specific requirements are not met, or existing requirements do not cover aspects of a project. The intensification of use of a currently substandard access requires the Appellant to submit a Departures application, which must be considered and approved prior to determination.		22/08/24

Glossary

Abbreviation / Acronym	Definition
AIL	Abnormal Indivisible Loads
DMRB	Design Manual for Roads and Bridges
DAP3	Three Lane Dual All Purpose Road
HGV	Heavy Goods Vehicle
PA 2008	Planning Act 2008
PCUs	Passenger Car Units
PINS	Planning Inspectorate
OCEMP	Outline Construction Environmental Management Plan
OCTMP	Outline Construction Traffic Management Plan
OCWTP	Outline Construction Workers Management Plan
RAP1	Strategic Roads in rural settings with higher speed limits.
SoCG	Statement of Common Ground
SoS	Secretary of State for Transport
SRA	Safety Risk Assessment to GG104
SRN	Strategic Road Network
SSD	Stopping Sight Distance
TA	Transport Assessment
TP	Travel Plan
UK	United Kingdom