



**Proof of Evidence: Andrew Sierakowski BSc
(Econ)Hons, MSc, GDL, LL.M, MRTPI**

Acting County Planning Manager, West Sussex County Council

Appeal by PJ Brown (Civil Engineering) Ltd.

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

PINS Ref: APP/D3830/C/23/3319435

MSDC Ref: AP/23/0042

August 2024

Contents

Page

1. Introduction..... 7

3. Scope of Evidence.....12

4. The Key Issues in this Appeal14

5. Site and Surroundings16

6. Background17

7. The County Council’s Response to the Grounds for Appeal21

8. Summary and Conclusions43

Appendices – West Sussex County Council Core Documents

Appendix No.	Document Number	Document	Date
1.	WSCD001	Land East of Dan Tree Farm - Chronology	Undated
2.	WSCD001A	Enforcement Notice served by Mid Sussex District Council on PJ Brown (Civil Engineering) Ltd on 28th February 2023.	28/02/2023
3.	WSCD002	Enforcement Notice served by West Sussex County Council on PJ Brown (Construction) Ltd on 27th January 2020.	27/01/2020
4.	WSCD003	Enforcement Notice Planning Enforcement Report signed on 7 th January 2020.	07/01/2020
5.	WSCD004	Mid Sussex District Council Agricultural Prior Determination Ref. 01/01232/AGDET Decision Notice and Red Line Boundary Plan.	17/07/2001
6.	WSCD005	Mid Sussex District Council Agricultural Prior Determination Ref. 01/01232/AGDET Application.	20/06/2001
7.	WSCD006	Mid Sussex District Council Agricultural Prior Determination Ref. 01/01613/AGDET Decision Notice and Red Line Boundary Plan.	11/09/2001
8.	WSCD007	Mid Sussex District Council Agricultural Prior Determination Ref. 01/01613/AGDET Application.	15/08/2001
9.	WSCD007A	Licence for Tipping at Bolney Park Farm	2001
10.	WSCD008	Google Earth Historical Aerial Photograph.	01/01/2001
11.	WSCD009	Daily Service Reports and Field Service Basic Risk Assessment Reports by Finning (UK) Ltd. submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	09/02/2004 and 20/02/2004
12.	WSCD010	Google Earth Historical Aerial Photograph.	01/01/2005
13.	WSCD011	Aerial Photograph submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	30/04/2007

14.	WSCD012	Invoice from Bolney Park Farm submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown on 30th September 2019.	02/05/2007
15.	WSCD013	Google Earth Historical Aerial Photograph.	28/03/2012
16.	WSCD014	West Sussex County Council Planning Permission Ref. WSCC/077/11/BK Decision Notice.	11/06/2012
17.	WSCD015	West Sussex County Council Planning Permission Ref. WSCC/077/11/BK Officer Delegated Report.	31/05/2012
18.	WSCD016	West Sussex County Council Planning Permission Ref. WSCC/077/11/BK Officer Application Key Documents.	25/10/2011
19.	WSCD017	Aerial Photograph submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	13/09/2012
20.	WSCD018	Google Earth Historical Aerial Photograph.	31/08/2012
21.	WSCD018A	Invoices from Carillion dated July 2012 to March 2013.	2012-2013
22.	WSCD019	Google Earth Historical Aerial Photograph.	06/06/2013
23.	WSCD020	Work Orders from Pirtek Crawley submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	28/05/2014- 27/03/2017
24.	WSCD021	Google Earth Historical Aerial Photograph.	12/04/2015
25.	WSCD022	Google Earth Historical Aerial Photograph.	10/09/2015
26.	WSCD023	Aerial Photograph submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	14/05/2018
27.	WSCD024	Google Earth Historical Aerial Photograph.	06/08/2018
28.	WSCD025	Google Earth Aerial Photograph.	10/10/2018

29.	WSCD026	Planning Contravention Notice (PCN) served on PJ Brown by WSCC.	21/11/2018
30.	WSCD027	Planning Contravention Notice (PCN) served on Dane Rawlins by WSCC.	21/11/2018
31.	WSCD028	Planning Contravention Notice (PCN) served on KDS Environmental Services Ltd by WSCC.	21/11/2018
32.	WSCD029	Response by Mr Dane Rawlins to the Planning Contravention Notice served by WSCC on 21 st November 2018, including Signed Statement by Mr Dane Rawlins.	05/12/2018
33.	WSCD030	Email from Fining UK & Ireland Ltd submitted as evidence with the Certificate of Lawfulness to West Sussex County Council by the agent for PJ Brown (Construction) Ltd on 30th September 2019.	11/12/2018
34.	WSCD031	Response by PJ Brown (Construction) Ltd to the Planning Contravention Notice served by WSCC on 21 st November 2018.	13/12/2018
35.	WSCD032	Planning Contravention Notice (PCN) served on PJ Brown (Construction) Ltd by WSCC.	18/02/2019
36.	WSCD033	Planning Contravention Notice (PCN) served on Dane Rawlins by WSCC.	18/02/2019
37.	WSCD034	Response by PJ Brown (Construction) Ltd to the Planning Contravention Notice served by WSCC on 18 th February 2019.	25/03/2019
38.	WSCD035	Certificate of Lawfulness Application Ref. WSCC/070/19 Application.	07/10/2019
39.	WSCD036	Certificate of Lawfulness Application Ref. WSCC/070/19 Decision Notice.	10/01/2020
40.	WSCD037	Certificate of Lawfulness Application Ref. WSCC/070/19 Officer Committee Report	07/01/2020
41.	WSCD038	Amended Enforcement Notice Plan.	01/10/2020
42.	WSCD039	Accounts for PJ Brown (Construction) Ltd for the financial year 2018.	25/09/2019
43.	WSCD040	WSCC Site Inspection Report including Photographs.	18/02/2014
44.	WSCD041	WSCC Site Inspection Photographs.	04/03/2014

45.	WSCD042	WSCC Site Inspection Report including Photographs.	22/01/2015
46.	WSCD043	WSCC Site Inspection Report including Photographs.	17/07/2015
47.	WSCD044	WSCC Site Inspection Report including Photographs.	08/10/2018
48.	WSCD045	WSCC Site Inspection Report including Photographs.	03/01/2019
49.	WSCD046	Letter to Ms S. Wright dated 15 th December 2020 with a copy of the Enforcement Notice issued Enforcement Notice served by West Sussex County Council on PJ Brown (Construction) Ltd on 27th January 2020.	15/12/2020
50.	WSCD047	West Sussex Joint Minerals Local Plan, West Sussex Waste Local Plan, Monitoring Report 2018/19.	
51.	WSCD048	West Sussex Joint Minerals Local Plan, West Sussex Waste Local Plan, Monitoring Report 2019/20.	
52.	WSCD049	West Sussex Joint Minerals Local Plan, West Sussex Waste Local Plan, Monitoring Report 2020/21.	
53.	WSCD050	West Sussex Joint Minerals Local Plan, West Sussex Waste Local Plan, Monitoring Report 2021/22.	
54.	WSCD051	West Sussex Joint Minerals Local Plan, West Sussex Waste Local Plan, Monitoring Report 2022/23.	

1. Introduction

- 1.1 My name is Andrew Sierakowski. I have been employed by West Sussex County Council (WSSCC) ("the County Council") in the County Planning Team since July 2020 as the Acting County Planning Manager.
- 1.2 I am the Director of 3rE Planning Limited which is a planning and environmental consultancy specialising in planning and EIA support for the waste, minerals, and renewables industries and also Local Planning Authorities. Before starting work as a consultant in 2004 I worked for 15 years for Local Authorities in England, Wales and Scotland. During this time, I was head of development control for Shetland Islands Council, head of the monitoring and enforcement team at Gloucestershire County Council, and then Chief Officer and Head of Planning and Building Control for Rhondda Cynon Tâf Council. I subsequently worked as the head of waste planning for two of the UK's leading multidisciplinary consultancies, Golder Associates (UK) Limited and Aecom.
- 1.3 In 2013 I set up my own minerals and waste planning consultancy, 3rE Planning Limited. I have also been a part-time tutor in Environmental Law, specializing in waste management law and environmental impact assessment law at Leicester De Montfort Law School, at De Montfort University.
- 1.4 I have a Bachelor of Science Degree in Economics from the London School of Economics (University of London), Master of Science Degree in Urban and Regional Planning from the University of Strathclyde, and a Graduate Diploma of Law and Master of Laws Degree in Environmental Law from De Montford University.
- 1.5 I am a Licentiate member of the Royal Town Planning Institute, with over 35 years' UK planning experience in both the public and private sectors.
- 1.6 I have prepared this Proof of Evidence on behalf of WSSCC to support the service of an Enforcement Notice by Mid Sussex District Council on PJ Brown (Civil Engineering) Ltd, relating to land east of Dan Tree Farm, adjacent to the A23 at Bolney in West Sussex, for the unauthorized:

Material change of use of the land from agriculture to a mixed use of:

- the importation, processing, storage and export of waste materials upon the Land;
- the deposition of waste material upon the Land;
- the storage of building materials upon the Land;
- the storage of plant, machinery, and containers upon the Land;

and

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

- 1.7 My evidence is summarised in the Summary and Conclusions section at the end of this Proof.

- 1.8 I understand my duty to the inquiry. I confirm that the evidence which I have prepared is true and that the opinions expressed are my true and professional opinions.

Core Documents

- 1.9 The plans and documents referred to in this Proof are included in the list of Appendices listed on Page 3. These include all the documents referred to in Appendix 1 to MSDC's previously submitted Appeal Statement. Copies of all the Appendices are attached with this Proof. To assist the Inspector, documents are referenced by a number in the format WSCD00X, e.g. "WSCD001". For ease the reference number is used as the file name for the pdf versions of all accompanying documents submitted with this Proof.

2. The Breach of Planning Control and the Appellants Grounds for Appeal

The Breach of Planning Control

- 2.1 This Proof of Evidence has been prepared in advance of the Inquiry relating to an appeal by PJ Brown (Civil Engineering) Ltd ("the Appellant") against an Enforcement Notice ("the Notice") (WSCD001A) served by Mid Sussex District Council ("the Council") on PJ Brown (Civil Engineering) Ltd on 28th February 2023. It sets out the response of West Sussex County Council ("the County Council") to the Appellant's stated grounds for appeal.
- 2.2 The Enforcement Notice relates to land east of Dan Tree Farm, adjacent to the A23 at Bolney in West Sussex ("the Appeal Site") which is referred to in the Notice as "the Land").
- 2.3 The Enforcement Notice was issued in respect of the breach of planning control stated in Section 3 of the Enforcement Notice.
- 2.4 The matters which appear to the Council to constitute the breach of planning control are stated as being the following:
- 2.5 *"Without planning permission:*
- 3.1 the material change of use of the land from agriculture to a mixed use of:*
- 3.1.1 the importation, processing, storage and export of waste materials upon the Land;*
- 3.1.2 the deposition of waste material upon the Land;*
- 3.1.3 the storage of building materials upon the Land;*
- 3.1.4 the storage of plant, machinery, and containers upon the Land;*
- 3.2 operational development comprising of the laying and construction of hardstanding upon the land".*
- 2.6 These are matters are referred to as "the Appeal Proposal" in the rest of this Proof.
- 2.7 The Council's reasons for issuing the Notice are set out in Section 4 of the Notice.
- 2.8 The steps required to address the breach of planning control stated in Section 3 of the Notice are set out in Section 5 of the Notice and comprise the following:
- "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 Reinststate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land".

2.9 The times for compliance for the steps set out in Section 5 of the Notice are set out in Section as follows:

"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".

The Appellant's Grounds for Appeal

2.10 The appeal by PJ Brown (Civil Engineering) Ltd has been submitted on the basis of the statutory grounds for appeal set out in s.174(2) of the Town and Country Planning Act 1990 (as amended), and specifically grounds (a), (b), (d), (f) and (g).

2.11 Ground (a) is "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”.

- 2.12 Ground (b) is “that those matters have not occurred”.
- 2.13 Ground (d) is “that on 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”.
- 2.14 Ground (f) is “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”.
- 2.15 And Ground (g) is “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

3. Scope of Evidence

- 3.1 This Proof of Evidence supports MSDC's reasons for issuing the Enforcement Notice and the steps and times for compliance with the steps stated in the Notice.
- 3.2 My evidence will set out the waste related evidence and circumstances that led to the Council to deciding to issue the Enforcement Notice. It focuses on the waste related elements of the Ground (a) Appeal and the Ground (d) Appeal. It will consider the contribution of the development to the sustainable management of waste and to the local economy and other considerations including the availability of alternative suitable sites. In relation to Ground (a) it will focus on the planning merits of the Appeal Proposal, having regard to the development plan and other material considerations in accordance with the basic principle when assessing planning applications is set out in Section 38(6) of the Town and Country Planning Compulsory Purchase Act 2004), and in relation to Ground (d) it will focus on the factual evidence of the breach of planning control set out in the Enforcement Notice.
- 3.3 Andrew Clarke, in his evidence for the Council, will present its overall case in relation to Grounds (a), (b), (d), (f) and (g), including the effect of the location of the development in a rural area in a National Landscape, and other considerations, and whether any identified harm may be mitigated by the use of conditions. David Ellis will present evidence in relation to the landscape and visual impact of the Appeal Proposal in response to the Ground (a) Appeal, and Rupert Lyons will present evidence in relation to the effect of the development on the safety and operation of the strategic highway network, also in response to the Ground (a) Appeal.
- 3.4 This Proof supersedes the previously submitted Statement of Case already submitted to the Inspector.
- 3.5 For the avoidance of doubt, where "the Land" or "the Appeal Site" are referred to in this Statement, this should be taken to mean the land edged in red on the Enforcement Notice. "The Appeal Proposal" refers to the unauthorized development (as set out in paragraph 2.5 above) in relation to which the Council's Enforcement Notice was issued.
- 3.6 The Land or Appeal Site comprises an access track, referred to in the rest of this Proof as "the Access Track", running east from the A23 along the northern edge of Field No. 7355 and an operational area referred to in the rest of this Proof and the Appendices as "the Compound". For the avoidance of doubt the Compound excludes a wheel wash that is now redundant but was previously used in association with the operations on the two areas of adjacent land. The Inspector's attention is drawn to the Plan attached to the Enforcement Notice and in particular that the access track which turns 90 degrees to the south at the point at which it reaches the Compound. From that point, there is an additional length of access track to the south of the compound that is also not included in the Appeal Site and the red line on the Plan attached to the Enforcement notice. Therefore, the track south from the 90 degree bend is excluded.

- 3.7 The County Council has set out a detailed chronology (“the Chronology”) (WSCD001) of the events giving rise to the breach of planning control stated in Section 3 of the Enforcement Notice. The Chronology forms a substantive part of the County Council’s response to the Ground (d) appeal and the Inspector is therefore referred to the Chronology as forming a substantive part of the County Council’s case and is referenced where relevant in the evidence I present in the following sections of this Proof.
- 3.8 The following section, Section 4 summarizes the key issues for the Inspector to consider in the determination of the Appeal, Section 5 sets out details of the Appeal Site and the surrounding area, Section 6 provides details of the relevant background that the County Council considers are important for the Inspector to understand, Section 7 addresses the County Council’s response to the waste related matters in relation to the Grounds (a) appeal, and the Ground (d) appeal, and finally Section 8 sets out a summary and conclusions of the evidence in this Proof.

4. The Key Issues in this Appeal

- 4.1 The County Council considers that the key issues in the determination of this appeal are those arising from the Ground (a) appeal, and the Ground (d) appeal.
- 4.2 In relation to the Ground (a) appeal the County Council considers that the development does not comply with the policies of the development plan as it is located in an unsustainable rural area unrelated to the need of agriculture and causes harm to its countryside location 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 and also in paragraph 183 of the National Planning Policy Framework (NPPF) (December 2023) (previously paragraph 177 of the of the July 2021 and September 2023 editions of the NPPF).
- 4.3 The key consideration for the Inspector is whether the development is in accordance with the development plan and if it is not whether there are any material considerations that otherwise justify the grant of planning permission in accordance with Section 38(6) of the Town and Country Planning and Compulsory Purchase Act 2004).
- 4.4 The main matters for the Inspector, in the case of the Ground (d) appeal, are whether on the date when the Notice was issued, no enforcement action could be taken in respect of the breach of planning control stated in the Notice, or to put it more simply, whether the Council was out of time to take enforcement action.
- 4.5 The time limit for enforcement action for a change use, other than to use as a dwellinghouse, set out in s.171B of the Town and Country Planning Act 1990 (as amended) is 10 years.
- 4.6 My primary position is that the 'second bite' provisions in section 171B(4)(b) apply. An Enforcement Notice, dated 27th January 2020 (WSCD002) was initially served by the County Council against the unauthorised development on the Appeal Site, which at the time was considered to be a primary waste use with ancillary storage. This first Enforcement Notice was withdrawn following the opening of the previous inquiry (an appeal against that Enforcement Notice). This was due to the Inspector indicating that it appeared to him that the use of the site was a mixed waste and storage use, rather than primary waste use with ancillary storage. The current Enforcement Notice attacks the same development as the first Enforcement Notice, albeit that the unauthorised development (the Appeal Proposal) is described in a different way. On this basis, it is considered that the 'second bite' provisions apply, and the key question is whether the change of use to the development constituting a breach of planning control took place more than ten years prior to 27th January 2020 (i.e. the date of the first Enforcement Notice), and if so, whether it has existed continuously for a period of ten years. Alternatively, if the Inspector determines that the 'second bite' provisions do not apply, the key question is whether the change of use to the development constituting a breach of planning control took place more than ten years prior to 28th February 2023 (i.e. the date

of the current Enforcement Notice). In either case, whether or not the 'second bite' provisions apply, my view is that the evidence does not demonstrate the required 10 years continuous use.

- 4.7 The issue is primarily one of fact as to what the character of the use is now, and whether this character of use has taken place (a) without planning permission, and (b) whether the change of use to this character of use took place on the Appeal Site by 27th January 2010 or 28th February 2013 and if so, whether this use has been continuous since then. Matters of planning policy including the reference to the statutory development plan and national planning policy are not relevant to the issues to be considered by the Inspector in relation to the Ground (d) appeal, and neither are any amenity or environmental considerations. I have therefore not addressed these in this Proof in relation to Ground (d) issues.
- 4.8 The other grounds for appeal in the County Council's view present secondary issues, albeit that the County Council appreciates that it is open to the Inspector to allow the appeal in full on Ground (e) or otherwise partially in relation to Ground (f) and (g) in the event that he or she determines that the steps to be taken as specified in Section 5 of the Notice, and the timescales for compliance specified in Section 6 should be varied or amended.

5. Site and Surroundings

- 5.1 The Appeal Site comprises an area of approximately 1.5 ha on a larger parcel of land extending to 5.3 hectares located on former farmland to the east of the A23 and to the north of Broxmead Lane, Bolney, and to the immediate south and east of a dwelling and adjoining field at Dan Tree Farm (WSCD001A). Dan Tree Farm is located immediately to the east of the Appeal Site and separates the Compound within the Appeal Site from the A23. The Appeal Site shares an access directly to/from the A23 with Dan Tree Farm. The Compound is situated approximately 220m east of the A23 near to the Bolney junction. Relevant field numbers are shown on the relevant plans and drawings.
- 5.2 The Appeal Site is understood to fall into two landownerships. The Access Track is understood to fall within a landholding that includes the land to the south of the Access Track and is owned by Ms S Wright, of Park Farm Cottage, Park Farm, Bolney and includes an equine rehabilitation centre. The land comprising the Compound, forms part of a larger landholding known as Bolney Park Farm, which is understood to include a substantial area of land to north, east and south of the Compound, but excludes the land to the west of the Compound and the south of the Access Track. Bolney Park Farm is understood to extend to 56.2 ha (WSCD007) and to be in the ownership of Mr Dane Rawlins on Bolney Park Farm. The Enforcement Notice (WSCD002) was in addition to PJ Brown (Civil Engineering) Ltd served on Mr Rawlins as the landowner, on 28th February 2023.
- 5.3 The Appeal Site falls entirely within the High Weald National Landscape (previously the Area of Outstanding Natural Beauty (AONB)). It is not within an area at increased risk of flooding and is not subject to any ecological or historic designations.
- 5.4 To the north of the site is mature, semi natural ancient woodland (Seven Acre Hanger), which is also a Site of Nature Conservation Interest (SNCI).

6. Background

- 6.1 The County Council considers that the background to the appeal in this case is important for the Inspector to understand, particularly in relation to Ground (d) but is also potentially in relation to the Ground (f) and in particular the chronology of events following the acquisition of Bolney Park Farm by the current owner, Mr Dane Rawlins on 28th February 1998 (Document Ref. WSCD029).
- 6.2 It is understood that the farm was in poor condition when Mr Rawlins acquired it and that he commissioned Edward Stenhouse Limited (ESL), Chartered Surveyors to advise on how to improve the viability of the farm and improve agricultural returns from the land (WSCD005). The report by ESL (WSCD005) identified a bomb crater and the steepness of the slopes on the farm, as well as poor drainage and weed growth as significant issues and advised infilling of the bomb crater and works to reduce the gradients of the slopes. Although the report did not detail how this should be achieved or provide a specification for the works, it advised that the works could be undertaken through the submission of an application for an Agricultural Prior Determination. Such an application was subsequently submitted to Mid Sussex District Council (Ref. 01/01232/AGDET) (WSCD005) under the Town and Country Planning (General Permitted Development) Order 1995, Part 6 Agricultural Buildings and Operations. The application was for "the infilling of the bomb crater, levelling and re-seeding of area, easing of the slope of the field, and banking and planting of the lower slope". The application was submitted to Mid Sussex District Council on the 20th June 2001, and the Determination issued on 17th July 2001, and included one condition related to the landscaping of the application site (WSCD004). The application including the supporting documents are attached as Document Ref. WSCD005. The redline boundary (shown as a heavy black line) in the application included part of the Compound within the Appeal Site, but not the Access Track (WSCD004).
- 6.3 An application for a further Agricultural Prior Determination (Ref. Ref. 01/01613/AGDET) (WSCD007) was submitted to Mid Sussex District Council on the 15th August 2001 for the creation of a "new hardcore farm track", for which the determination was issued on 11th September 2001, without any conditions (WSCD006). This related to a narrow strip of land to the east of the current Appeal Site and entirely within the area covered by the Prior Determination issued on 17th July 2001. It did not relate to any of the land within the Appeal Site.
- 6.4 The works approved under the two Agricultural Prior Determinations issued by Mid Sussex District Council, are understood to have commenced sometime after the beginning of 2002, and it is understood that they were undertaken by a contractor, South East Tipping Limited (Document Ref. WSCD029) and involved the importation of materials into the area of land included with the red line boundary of the Agricultural Prior Determination Ref. 01/01232/AGDET (WSCD005). A new access (the Access Track) was constructed into Bolney Park Farm from the A23 to access the land where the works to implement Agricultural Prior Determination Ref. 01/01232/AGDET were located. This was constructed within the Appeal Site, most likely before the involvement of the Appellant, by South East

Tipping Limited, between 2002 and 2004. There has been a redundant wheel wash or wheel spinner on the access track adjacent the southern end of the Compound with its own dedicated line of access, alongside the adjacent access track. This appears, from the available documentary evidence to have been installed at this time (i.e. the period 2002-2004) and there also appears to have been some ground clearance work in the area at the south end of the Compound within the Appeal Site, associated with the construction of the access and wheel wash under Agricultural Prior Determination Ref. 01/01232/AGDET. Other than the construction of the Access Track all the works undertaken at this time, appear from the available evidence to have been located within the area of the works approved under the Agricultural Prior Determination Ref. 01/01232/AGDET.

- 6.5 It is understood that South East Tipping Limited subsequently went into receivership, and as a result, PJ Brown (Construction) Ltd (rather than PJ Civil Engineering, the current Appellant), is understood to have taking over the works at Bolney Park Farm in 2006 (or thereabouts), although it also understood that they had a presence on the site from as early as 2004 (WSCD029). It is understood that Appellant (as PJ Brown (Construction) Ltd) has therefore had a presence at Bolney Park Farm since 2004, and the available documentary evidence appears to the County Council to corroborate this.
- 6.6 The available documentary evidence, primarily consisting of aerial photographs and other documents indicates that the works approved under the Agricultural Prior Determination Ref. 01/01232/AGDET, continued from approximately 2002 and were not completed until after either late 2013 or in 2014. Aerial photographs confirm that the works were still on-going and being completed on the 6th June 2013 (WSCD019) but completed by 12th April 2015 (WSCD021). During this period the Access Track appears to have continued to be used throughout in association with those works and the area of the Compound was extended northwards and began to be used for the storage of containers.
- 6.7 On the 11th June 2012 West Sussex County Council granted Planning Permission Ref. WSCC/077/11/BK (WSCD014) for the "Development of equine rehabilitation and physiology centre comprising treatment block, horse walker, sand school, car park, grass paddocks, exercise track and engineering operation to form a bund adjacent to the A23".
- 6.8 The application was determined as a County Matter rather than a District Matter, because the proposal included the construction of what was described in the application as an acoustic bund, 500m in length (north to south), of between 36m - 55m in width (west to east) and between 1.5m - 9m in height, formed from 76,500 cubic metres (51,000 tonnes) of inert waste that was to be imported into the site (WSCD016).
- 6.9 The red line boundary for the application shows that the area included the land to west of that included in Agricultural Prior Determination Ref. 01/01232/AGDET approved by MSDC on 17th July 2001 although it also includes the Access Track from the A23 around the north-east sides of Field Nos 7355 and 7438, but did not include the Compound. The Applicant is stated as being Ms S Wright, within whose landholding most of the area

within the red line boundary was located. Mr Dane Rawlins of Bolney Park Farm (listed as Park Farm) is also identified as a landowner on Certificate B of the application (WSCD016), although it is not clear what area of land his interest related to.

- 6.10 From the available aerial photographic evidence, it appears that the substantive works to implement Planning Permission Ref. WSCC/077/11/BK commenced in 2013, with the works being undertaken by PJ Brown (Construction) Ltd. It appears that formal notification of the start date was given on 4th March 2013 (WSCD042). It is not apparent from the available evidence whether the works related to the implementation of Agricultural Prior Determination Ref. 01/01232/AGDET were completed before the works started in the implementation of Planning Permission Ref. WSCC/077/11/BK, but it is not of significance to the issues raised in this appeal. The aerial photographic evidence shows that the works were completed by the 6th August 2018 (WSCD024). It is understood that PJ Brown (Construction) Ltd continued to have a presence on the Appeal Site and the adjacent land linked to the implementation of Agricultural Prior Determination Ref. 01/01232/AGDET and Planning Permission Ref. WSCC/077/11/BK from 2004 to right through to the completion of the works associated with Planning Permission Ref. WSCC/077/11/BK. PJ Brown (Construction) Ltd (now PJ Brown Civil Engineering) have remained on the Appeal Site since the completion of the works to implement Planning Permission Ref. WSCC/077/11/BK to the present time.
- 6.11 PJ Brown (Construction) Ltd submitted an application for a Certificate of Lawfulness (WSCD035) to West Sussex County Council on the 30th September 2019 for "the importation, deposit, re-use and recycling of waste material and use of land for storage purposes for a period exceeding 10 years". The application was refused by the County Council on the 10th January 2020 (WSCD036).
- 6.12 On 27th January 2020 West Sussex County Council issued an Enforcement Notice on the landowner and PJ Brown (Construction) Ltd alleging:
- "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".*
- 6.13 Both recipients of the Notice appealed, with the appeal to be determined through the inquiry procedure, with the inquiry scheduled to start on 10th March 2021. Prior to the inquiry the appellant, PJ Brown (Construction) Ltd submitted a letter to the Inspector querying the lawfulness of West Sussex County Council issuing the Enforcement Notice on the basis that the use should have been considered to be a 'mixed use' involving a waste and storage use rather than a 'waste' use (with any storage being ancillary) as alleged by the Enforcement Notice. The Inspector at the Inquiry advised the parties that he considered that it would not be possible to amend the Enforcement Notice without prejudice to the appellant. Consequently, West Sussex County Council withdrew the Notice at the start of the inquiry and prior to the appeal being determined.

- 6.14 Thereafter in May 2022 Mid Sussex District Council issued a number of Planning Contravention Notices (PCNs) on the operators of the Appeal Site to require information about the operations being undertaken on the Land (the Appeal Site). These Notices were thereafter responded to, and information provided in May 2022.
- 6.15 It was thereafter considered that the unauthorised use on the Appeal Site was a 'mixed use' and that as such Mid Sussex District Council were the correct relevant responsible Local Planning Authority to take any enforcement action, working together with West Sussex County Council.
- 6.16 Consequently, on 28th February 2023 Mid Sussex District Council issued the Enforcement Notice that is the subject of this appeal, which was due to come into effect on 31st March 2023. A valid appeal was submitted on 29th March 2023 and the requirements of the Notice have thereafter been held in abeyance.
- 6.17 Also of note is Planning Application Ref. DM/21/3566 submitted to Mid Sussex District Council on 8th October 2021 in relation to a proposed development at Broxmead Farm, Broxmead Lane which lies approximately 800m to the east of the Appeal Site. This application sought permission for "Proposed engineering works and extensive native planting scheme to facilitate the creation of a grass training and exercise arena, together with facilities for an elite show jumping horse breeding program requiring a new barn construction and additional paddocks. The grading works will be completed using 37,833m³ of clean inert soils/materials to the farm. Construction access is proposed via an existing access from the southbound carriageway of the A23". This application, whilst not on the Appeal Site included the vehicular access off the A23 and the access drive and tracks within the red line of the Enforcement Notice as they were being used to facilitate the development. This application was withdrawn in April 2022 without a decision being made.

7. The County Council's Response to the Grounds for Appeal

7.1 The following sections set out the County Council's response to the Ground (a) and Ground (d) appeals.

Ground (a) Appeal

7.2 As set out above the County Council considers that the key issue in the determination of this appeal arising from Ground (a) is whether the development is in accordance with the development plan and if it is not whether there are any material considerations that otherwise justify the grant of planning permission in accordance with Section 38(6) of the Town and Country Planning and Compulsory Purchase Act 2004).

7.3 The Council, for the reasons set out in Section 4, paragraphs 4.3 to 4.5 of the Enforcement Notice considers that the development does not comply with the policies of the development plan and national planning policy set out in the NPPF, as it is located in an unsustainable rural area unrelated to the need of agriculture, causes harm to its countryside location and has an unacceptable impact on safety of the local highway network. It does not consider that there are any material considerations that that would otherwise justify the grant of planning permission.

7.4 Details of the development plan and the status of the development plan documents referred to are set out in Section 4 of the Council's Appeal Statement and are therefore for brevity I have will not restate them.

7.5 The Inspector Issued a first Pre-Inquiry Note, Pre-Inquiry Note 1 on 21st February 2024, that has identified that the main issues as including

- The effect of the location of the development in a rural area in a National Landscape;
- The effect of the development on the safety and operation of the strategic highway network.
- The contribution of the development to the sustainable management of waste and to the local economy; and
- Other considerations including the availability of alternative suitable sites, and whether any identified harm may be mitigated by the use of conditions.

7.6 Andrew Clarke in his evidence sets out the Council's overall case in relation to each of these issues. I now provide evidence, mainly in relation to the third bullet point, i.e. the contribution of the development to the sustainable management of waste and to the local economy. However, because it is relevant development plan and national planning policy in relation to development in the National Landscape that necessitates consideration of the need for the development, and its contribution to the local economy, I will begin my substantive evidence by setting out the relevant policy context, and considering this issue and then come back to the contribution of the Appeal Proposal to sustainable waste management.

Assessment of Need and the Contribution of the Development to Local Economy

The Need for the Development

- 7.7 Taking this issue first, the first aspect of it is concerned with the need for the development.
- 7.8 Applicable policy includes that set out in paragraph 183 of the NPPF, the West Sussex Waste Local Plan, Policy W13 and Mid Sussex District Plan, Policy DP16. Andrew Clarke sets out the full details of these policies in his Proof of Evidence so I will not repeat these. The policies necessitate consideration of the whether the proposal is, for the purposes of the Paragraph 183 and Policies W13 and DP16 "Major Development" or "Small Scale" development. Again, this matter is addressed by Andrew Clarke in his Proof of Evidence, and for the reasons he sets out, the Council's view is that the Appeal Proposal is "Major Development". I do not propose to repeat the discussion of this point and my evidence accordingly is presented on the basis that the Appeal Proposal is Major Development in the National Landscape.
- 7.9 The key point that follows from this is that the NPPF, paragraph 183 makes clear that planning permission for major development in a National Landscape should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. Considerations of such applications is to be assessed on the basis of:
- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
 - c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 7.10 This approach is reflected in development plan policy set out in the West Sussex Waste Local Plan, Policy W13 that similarly makes clear that proposals for waste development within protected landscapes, which are identified as including the High Weald National Landscape, will not be permitted unless, the site is allocated for that purpose in an adopted plan; or the proposal is for a small-scale facility to meet local needs that can be accommodated without undermining the objectives of the designation; or the proposal is for major waste development that accords with Part (c) of the Policy.
- 7.11 Part (c), in line with the NPPF paragraph 183 states that proposals for major waste development within protected landscapes will not be permitted unless there is an overriding need for the development within the designated area; and that need cannot be met in some other way or met outside the designated area; and that any adverse impacts on the environment, landscape, and recreational opportunities can be satisfactorily mitigated.
- 7.12 Relevant development plan policy set out in Mid Sussex District Plan

includes Policy DP16 similarly states that only small scale proposals which support the economy of the AONB that are compatible with its conservation and the enhancement of its natural beauty will be supported.

- 7.13 Essentially then the approach set out in NPPF, Paragraph 183, is reflected in development plan policy, and although worded slightly differently in the Waste Local Plan and the Mid Sussex Local Plan is essentially the same, with the key element of the assessment being set out in sub-paragraph (a) of Paragraph 183, i.e. the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy.
- 7.14 Consideration of this matter essentially raises the question of whether the Appeal proposal is in principle consistent with relevant development plan policy related to the issue of need and the impact on the local economy.
- 7.15 Relevant development plan policy in relation to need, is as detailed above, set out in the West Sussex Waste Local Plan (2014) and includes Policies W1, W3, W4, W8, W9, and (although not reference in the Enforcement Notice) the National Planning Policy for Waste (NPPW), paragraph 7. There is no directly relevant policy relating to need in the Mid Sussex Local Plan, although the Plan does include policies relevant to the two other elements of the assessment to be undertaken in accordance with NPPF paragraph 183, and in particular, paragraph (c), i.e. whether there are any detrimental effects on the environment, and the landscape and recreational opportunities, which are considered by Andrew Clarke in his Proof of Evidence.
- 7.16 The relevant West Sussex Waste Local Plan policies provide the framework for the location of new waste development, which includes mixed use development involving the import, processing, storage and export of waste materials, deposition of waste, and any associated operational development. Because the policies are multiple and relatively complicated, I have in the following paragraphs, to assist the Inspector, broken these down and apply them to the relevant elements of the unauthorised use.
- 7.17 So firstly, Policy W1 of the Waste Local which is concerned with the need for waste management facilities, in sub-paragraph (c) is concerned with proposals on unallocated sites for the recycling of inert waste and states that these will be permitted where it can be demonstrated that there is a market need, consistent with the principle of net-self-sufficiency. Sub-paragraph (f) is also relevant insofar as this is concerned with the deposit of waste, albeit it refers to landfilling. It makes clear that this will only be permitted where it can be demonstrated that the waste cannot be managed through recovery operations.
- 7.18 Policy W4 provides the main relevant policy in relation to inert waste recycling. It makes clear that proposals for the processing and recycling of inert waste will be permitted provided that they are located in accordance with Policy W3. Policy W3, although concerned with built waste management facilities, is relevant in setting out the locational criteria to be applied to inert recycling operations. These on unallocated sites, which the Appeal Site is, are as set out in sub-paragraph (a), that 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 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 if they are located outside the Areas of Search identified on the Key Diagram, they are only small-scale facilities to serve a local need.

- 7.19 Proposals that accord with part (a) must also additionally, under subparagraph (b) be located within built-up areas, or on suitable previously-developed land outside built-up areas; or be located on a site in agricultural use where it involves the treatment of waste for reuse within that unit; or only be located on a greenfield site, if it can be demonstrated that no suitable alternative sites are available; and where transportation by rail or water is not practicable or viable, be well-related to the Lorry Route Network.
- 7.20 Policies W8 and W9 are relevant to the unauthorised deposit of waste on the appeal site.
- 7.21 Policy W8 is concerned with recovery operations involving the depositing of inert waste to land and makes clear that such proposals will only be permitted provided that the proposal results in clear benefits for the site and, where possible, the wider area; 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; 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; the material to be reused is suitable for its intended use; the amount of waste material to be used is no more than is necessary to deliver the identified benefits; there would be no unacceptable impact on natural resources and other environmental constraints; the proposal accords with Policy W13 (on Protected Landscapes); any important mineral reserves would not be sterilised; and restoration of the site to a high quality standard would take place in accordance with Policy W20.
- 7.22 Policy W9 is concerned with the disposal of waste to land and includes a similar set of criteria. It states that proposals for the disposal of non-inert waste on 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. In addition, it must be demonstrated that the waste to be disposed of cannot practicably be reused, recycled or recovered; that there would be no unacceptable impact on natural resources, particularly on groundwater quality, and other environmental constraints; that the proposal would accord with Policy W13 (on Protected Landscapes); that any important mineral reserves would not be sterilised; and that restoration of the site to a high quality standard would take place in accordance with Policy W20.

Policy W1

- 7.23 Taking Policy W1 first, it should firstly be clarified that the Council has not referred to Policy W1 of the West Sussex Waste Local. However, this is nevertheless a relevant policy and in practical terms overlaps with the NPPF, Paragraph 183 is such that consideration of Policy W1 raises similar issues

to those raised in Paragraph 183. It should also be noted that there is no disagreement between the Council (and the County Council) and Appellant that the Appeal Site is an unallocated site for the purposes of Policies W1, W3 and W4, and all three policies envisage that there are circumstances in which planning permission may be granted for recycling of inert waste operations on an unallocated site.

- 7.24 The requirement set out in Policy W1(c) is that there is a market need, consistent with the principle of net-self-sufficiency.
- 7.25 The Appellant has not in fact presented any evidence in relation to market need or whether the proposal is consistent with the net-self-sufficiency principle, but has instead only presented a general statement, in their letter of 28th March 2023 (page 11), that the recycling of inert construction and demolition waste material, and its re-use in new development, is a key component of achieving the Environmental Sustainability objective of the NPPF, in line with the Government's Circular Economy Initiative and 25 Year Environment Plan. They otherwise rely on the argument that that there are no other alternatives sites, with neither their existing site at Burlands Farm, nor the site at Kilmarnock Farm, both near Gatwick Airport being available for use. It is therefore the Appellant's contention that without the Appeal Site, they will not be able to continue to operate (Statement of Case, paragraph 6.26).
- 7.26 The Appellant presents no information at all on the amount of waste that has actually been brought into the Appeal Site. The nearest they come to this is in the Transport Statement submitted with the Appeal which refers "30 to 60 HGV arrivals per day", although they include no evidence to substantiate this figure.
- 7.27 The Appellant does identify that the site operates under a Standard Rules Environmental Permit SR2008 No11. This allows for a total quantity of waste that can be accepted at a site of less than 75,000 tonnes a year. The response to the Planning Contravention Notice (PCN) dated 28th April 2022, issued by the Council (included in response (j) in Appendix 9 of Appellant's Statement of Case Appendices identifies that there were 12,480 inbound HGV movements into the Appeal Site in the twelve months prior to the service of the PCN, which assuming up to 75,000 tonnes of material was delivered to the site, would equate to an average of 6 tonnes per load with 48 inward movements per day on average, assuming a 260 working days in a year.
- 7.28 For the avoidance of doubt the meaning of the principle of net-self-sufficiency is set out in paragraph 6.2.4 of the Waste Local Plan. This defines this as "having sufficient transfer, recycling, recovery and disposal capacity to manage the amount of waste generated within the County [i.e West Sussex], with only minor cross-border waste movements with adjoining authorities". Paragraphs 6.2.9 and 6.2.10 provide further explanation of the information required from applicants to demonstrate the need for a proposal. This includes; the nature and origin of the waste to be managed, the existing or permitted operating capacity within the plan or catchment area; the levels of waste arising with the plan or catchment area; and the potential shortfall in capacity or market need that the proposal seeks to

address. The applicant has not provided any of this information.

- 7.29 This is despite the fact that this information is readily and publicly available and has been published by the County Council. It is available in Chapter 2 of the Waste Local Plan and subsequent the County Council's subsequent Annual Monitoring Reports (AMRs)
- 7.30 Chapter 2 of the Waste Local Plan sets out the waste forecasts and the assessment of existing waste management capacity and shortfalls in waste management capacity in West Sussex over the Waste Local Plan period from 2010/2011 to 2031/2032. Section 2.6 deals with waste forecasts and paragraph 2.6.4 sets out the forecast of waste arisings. This includes a projection for Construction, Demolition and Excavation Waste (C,D & E) (i.e. inert) waste arisings, which are identified as being 0.95 million tonnes per annum (mtpa) and 19.93 million tonnes over the Waste Local Plan period from 2010/2011 to 2031/2032. It assumes that the annual figure remains unchanged over the plan period (paragraph 2.6.5)
- 7.31 Section 2.7 deals with the types of waste management, including inert recycling and inert landfill, and Section 2.8 deals with waste management capacity in West Sussex, including that relating to the recycling and disposal of inert waste. Table 2 includes figures for C,D & E (i.e. inert waste), with there being 0.45 million tonnes recycling capacity in 2010-2011 and 0.28 million tonnes of inert landfill capacity.
- 7.32 Sections 2.9 and 2.10 of the Waste Local Plan deal with imports and exports of waste and waste management capacity shortfalls. These identify that the C,D & E waste stream as having had sufficient recycling capacity for the projected levels of C,D & E waste arisings, at the time that the plan was adopted, and Table 3 in Section 2.11 consequently identifies a need for no additional C,D & E recycling capacity at that time the Plan was adopted. The Plan did recognise that if there was a higher level of growth than projected that there would be a need for an additional 0.003mtpa of C,D & E waste recycling capacity.
- 7.33 The plan anticipates no additional requirement for landfill capacity but as this is not substantive part of the Appellant's case it not necessary for the Inspector to consider the need for disposal capacity.
- 7.34 The key issue for the Inspector is what the current level of assessed need for additional C,D & E (inert) waste recycling capacity is in West Sussex. This has been assessed through the County Council's AMRs. AMRs have been produced for the last five years for "2018-2019 (WSCD047), 2019-2020 (WSCD048), 2020-2021 (WSCD049) , 2020-2022 (WSCD050), and 2022-2023 (WSCD051). These have shown that there is no identified market need to for additional C, D & E (Inert) waste recycling capacity in West Sussex, even despite the recent post-pandemic up-turn in the amount of C,D & E waste arisings. The most recent AMR is that 2022-2023 (WSCD051) states (in a paragraph 5.15) in relation to C,D & E waste arisings that:

"Arisings have increased following a drop in the previous monitoring year which was attributed to reduced levels of construction during the pandemic.

In 2031, it is anticipated that CD&E waste arisings could be 1,331,000 tonnes (high growth scenario) which is 282,000 higher than the original high growth forecast that underpinned the WLP (1,049,000 tonnes) but this is not considered to be a significant issue as previous monitoring has shown that sufficient sites for recycling and recovery have come forward to meet demand”.

- 7.35 Table 10 of the 2022-2023 (WSCD051) summarises current waste management capacity in West Sussex and identifies that there is no current shortfall in C,D & E waste management capacity through to the end of the plan period.
- 7.36 It should be noted that the Appellant, in their letter of 28th March 2023, does not argue that there is a need, other than in the context of being an “economic need for the Appellant’s to continue operations” (Statement of Case, paragraph 6.5) and a general, but unsubstantiated assertion “that there is a shortage nationally and locally for such sites”. The evidence as I have presented clearly shows that there is no current or future anticipated need for additional capacity, as set out in the latest AMR. Consequently, it cannot be said to be correct that there is local shortage of such sites. The argument that there is shortage nationally is simply not a relevant consideration, as C,D & E waste are not managed on a national basis, as they cannot be economically transport round the country for treatment or disposal. In any event it should also be noted that under Policies W3 and W4 (which are considered in detail below), the site can only be considered to be in accordance with the Waste Local Plan, as a small scale facility for local need, rather than because of any national shortfall in capacity.
- 7.37 The position then in relation to the requirement set out in Policy W1 is that the applicant has not presented any evidence to demonstrate market need, that the County Council’s own most up-to-date assessment is that there is no market need for additional C,D & E (inert) waste recycling capacity, and that in the absence of any information having been presented by the applicant, it has not only not been demonstrated that the operation of the site would be consistent with the principle of net self-sufficiency, but it is the case that with the current level of C,D & E (inert) waste capacity in West Sussex, the site simply is not required to provide net self-sufficiency.

The Contribution of the Development to the Local Economy

- 7.38 Coming back to the second aspect of the first issue, i.e. the Assessment of Need and the Contribution of the Development to Local Economy, this concerns the contribution of the Appeal Proposal to the local economy. The County Council’s view of this is relatively straightforward in that if there is no identified need, because there is sufficient capacity to meet the current and projected level of need for the rest of the Waste Local Plan period, the refusal of the Ground (a) Appeal would not result in a constraint on the local economy in terms of the delivery of the required amount of waste management infrastructure.
- 7.39 The Appellant on page 12 of their letter of 28th March 2023, and their Statement of Case, paragraphs 6.23 to 6.33 seeks to present an economic argument which is solely concerned with the lack of available alternative

sites and states that they will detail the lack of success that they have had in securing an alternative site. The case presented says nothing at all about the contribution of the development to the local economy. As such the Appellant has failed to present any evidence in relation to this issue, and therefore has not provided or identified that they intend to provide any evidence in relation to this aspect of the requirements of NPPF, paragraph 183, Waste Local Plan Policy W13 or Mid Sussex District Plan Policy DP16. The Appellant has accordingly failed to provide any evidence to consider the economic contribution of the Appeal Proposal as part of the assessment required in the determination of the Ground (a) Appeal.

The cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way

7.40 Turning to the second element of the assessment under paragraph 183 and Waste Local Plan Policy W13, the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way, this introduces the locational policy requirements set out in Waste Local Plan Policies W3 and W4. This is a particular key aspect of the appeal because the central tenet of the Appellant's case is that they have been unable to obtain planning permission for an alternative site, and that there have been no suitable alternative sites that are available to accommodate the Appellant and their operations.

7.41 It is appropriate to consider the scope for developing outside the designated area, or meeting the need for it in some other way first, as the cost of doing so is likely to depend on this.

The Scope for, Developing Outside the Designated Area, or Meeting the Need for it in Some Other Way

7.42 The scope for developing outside the designated area, or meeting the need for it in some other way, raises the question of what the spatial policy context is for the determination of the Appeal. Insofar as the waste element of the Appeal Proposal is concerned, the key policies are Waste Local Plan Policies W3 and W4.

Policies W3 and W4

7.43 Of the two policies, Policy W4 is the key one insofar as sub-paragraph (a) states that the proposals for the processing and recycling of inert waste will be permitted provided that they are located in accordance with Policy W3. Sub-paragraph (b) of Policy W4 does not apply as this is only concerned with proposals to be located on landfill sites and at mineral workings.

7.44 Policy W3 is concerned with proposals for built waste management facilities, but in accordance with Policy W4 the same tests apply for proposals for inert waste recycling facilities.

7.45 Under Policy W3 there are three primary tests under Part (a):

- (i) That it can be demonstrated that a proposal cannot be delivered on permitted sites for built waste management facilities or on the sites

- allocated for that purpose in Policy W10; and
- (ii) That it is 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) That it is located outside the Areas of Search identified on the Key Diagram it is only a small-scale facility to serve local need.

- 7.46 Of these three, criteria (ii) can be immediately discounted as the site lies within High Weald National Landscape (previously Area of Outstanding Natural Beauty (AONB)), which as the Waste Local Plan Key Diagram shows, is specifically excluded from the Area of Search in the north of the County. Because under the Policy paragraphs (i) and (ii) run together (the requirement is for (i) and (ii), or (iii)), then if the proposal fails on sub-paragraph (ii), then it must also fail on sub-paragraphs (i) and (ii) together. Accordingly, the only applicable paragraph is sub-paragraph (iii), as the site falls outside the Areas of Search. The key issue then for the Inspector is whether the proposed facility is only a small-scale facility to meet local need.
- 7.47 Supporting text on what is meant by small-scale is set out in paragraph 6.4.9 of the Waste Local Plan. Small-scale is identified as meaning facilities with capacity of no more than 50,000 tonnes per annum, although as the text also makes clear whether any proposal is acceptable is dependent on the specific nature of the proposal and its impacts, on the site and surrounding area rather than on its capacity, and proposals within or close to the AONB/National Landscape are also to be judged against the criteria in Policy W13 (Paragraph 6.4.11). In this case the proposal would in terms of scale, fall outside the Local Plan definition of "small-scale", insofar as the site is Permitted to take in up to 75,000 tonnes. In any event if this were not the case, the Council's case is that the nature of Appeal Proposal and its impact on the site and the surrounding area is such that it would not be acceptable (to use the wording in paragraph 6.4.9 of the Waste Local Plan). Andrew Clarke presents the evidence on this in his Proof of Evidence.
- 7.48 Sub-paragraph (iii) also requires consideration of need in relation to which, as I have set out above, the Appellant has presented no evidence at all with no details of the quantity or the source of the incoming inert materials or the area which the facility would serve. As I have set out above, the County Council's most recent AMR makes clear there is no identified need for any additional inert waste recycling capacity in West Sussex. On this basis the County Council contends not only that local need has not been demonstrated, but that it cannot be demonstrated because there is no identified need.
- 7.49 On this basis the Appeal Proposal cannot be considered to be compliant with Policy W3, Part (a) in that it is not small scale, and it has not been demonstrated that it is required to serve any local need.
- 7.50 It should be noted that where Part (a) does apply then the Policy requires consideration of the criteria set out in Part (b). The County Council argues that as the proposal fails on Part (a) it is not necessary for the Inspector to consider the criteria in Part (b).
- 7.51 Notwithstanding that this is the case, for completeness, and in the event

that the Inspector does wish to consider sub-paragraph (b), and because the Appellants case, in fact rests on this, the following sets out the County Council's response in relation to each of the criteria.

- 7.52 The criteria in sub-paragraph (b) are that proposals that accord with Part (a) must:
- (i) Be located within the 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 for re-use in the rest of 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 Route Network.
- 7.53 Taking each of these in turn it is firstly clear that sub-paragraph (i) does not apply as the site clearly is not located within a built-up area, or on previously developed land outside a built-up area. The Appellant does not attempt to argue that this is the case, so this paragraph can be discounted.
- 7.54 In relation to sub-paragraph (ii), the site is located on what was previously agricultural land, and while its development and use has previously developed in relation works on the adjoining land (as set out in details in the Council's response to the Ground (d)), the Appellant has not sought to argue that the continuing operation of the facility is required or needs to be retained to facilitate the treatment of waste for re-use on the rest of the agricultural unit and no new permission for any such activity or use has been consented. It is therefore clear that sub-paragraph (ii) is neither applicable nor being argued by the Appellant.
- 7.55 This only leaves sub-paragraph (iii), and indeed this is the applicable paragraph insofar as the Appellants case, as set out on pages 11 and 12 of their letter of 28th March 2023 and paragraph 6.5 of their Statement of Case, is essentially that there is a lack of alternative sites from which they can continue to operate.
- 7.56 Before considering this further, it should be noted that sub-paragraph (iv) is also relevant insofar as this concerned with the location of the Appeal site in relation to the Lorry Route Network. This is an additional requirement to either sub-paragraphs (i), (ii) or (iii), as is evident from the wording of the Policy, with it applying (i) or (ii) or (iii), and (iv). In terms of location there no disagreement with the Appellant, that the site, being located immediately adjacent to the A23 at Bolney is well related to the Lorry Route Network (as shown on the Key Diagram). It is also accepted that the transport of waste by rail or water for local facility serving a local market is not feasible. It should be noted that this is not intended to imply that the Council considers the proposal to be acceptable in terms of the access on to the A23, which is addressed in more detail by Rupert Lyons in his Proof of Evidence.
- 7.57 To come back to the matter of it being demonstrated that no suitable alternative sites are available, it is the Appellant's contention that there are

no alternative sites available, and that as result of the recent appeal decision at Kilmarnock Farm near Gatwick Airport, both that site and their existing site at Burlands Farm are “incapable of being relied upon as a fallback, or alternative” (Statement of Case Paragraph 6.25). The Appellant accordingly argues (in paragraph 6.26 of their Statement of Case, that they “cannot continue to operate as they do without the appeal site. As such, the consequences of dismissal of this appeal will likely mean administration for the appellant company, and the loss of employment within West Sussex”.

- 7.58 The Appellant’s case rests solely on the decision in the Kilmarnock Farm and does not reference any other evidence in terms of other sites for which planning applications have been submitted. The only other evidence submitted by the Appellant is a list of other local sites included in Appendix 18 of their Statement of Case, which because they are under the control of their competitors, they state are exclusive to their competitors and therefore unavailable. They accordingly have “...opined that no reasonable authority can expect an economy to flourish if they only permit one restaurant to exist in a town. It removes choice and promotes a monopoly. With only one restaurant, you have only one option, and they can demand of you whatever price they see fit”. The County Council considers that this comment presents a completely inaccurate analogy, because as the Appellant’s own evidence clearly demonstrates, that far there being “only one other restaurant in town”, there are fifteen other sites included in the Appellant’s list.
- 7.59 In terms of evidence of the availability of the other sites, I would draw the Inspector’s attention to the latest published details of C,D & E waste recycling facilities in West Sussex, which can be found in Appendix D (pages 61-62 labelled “C & D Recycling”) and the accompanying map (on page 68) included in the 2022-2023 AMR (WSCD051). This shows that there are nine existing identified inert waste recycling sites across West Sussex (including the South Downs National Park Authority), with all but eight of these being located in the eastern half of the County with the Appeal Site located approximately in the middle of the area in which they are located. In other words, there is no shortage of inert waste recycling sites in the eastern half of the County where the Appeal Site is located, and it is certainly not the case that there is “one restaurant...in a town”.
- 7.60 In response to the Appellant’s contention that there are no alternatives, and effectively that planning permission would not be granted on any other site, the County Council would make several points.
- 7.61 Firstly, the Inspector will see from the AMRs that planning permission has been granted for a number of new and extended inert waste recycling facilities in the last five years in West Sussex. If the Inspector examines the five attached AMRs, it can be seen from Appendix F in each AMR that each includes a list of planning applications determined in the period covered by each report. Table 1 below summarises the position. Whilst this shows that there have not been a substantial number of new permissions there have nevertheless been some and clearly therefore it is not the case that planning permission cannot be secured for new or alternative sites providing additional inert waste recycling capacity.

Table 1: Planning Applications for new and extended inert waste recycling facilities in West Sussex

Applicati on No.	Description	Address	Date	Decision
2018-2019				
WSCC/03 5/18/FB	Variation of conditions 2, 13 & 19 of planning permission WSCC/053/13/FB to allow external screening and crushing of inert construction and demolition waste	Unit 9, Polthooks Farm, Clay Lane, Fishbourne, Chichester, PO18 8AH	18/07/2018	Withdrawn
WSCC/00 2/19/CM	Proposed Inert Waste Recycling Facility, with new building, car parking, access track and boundary treatment	Northwood Farm, Burndell Road, Yapton, Arundel, BN18 0HR	12/03/2019	Withdrawn
2019-20				
WSCC/04 1/19	Proposed Concrete Crushing and Soil Recycling Facility	Kilmarnock Farm, Charlwood Road, Ifield, RH11 0JY	05/11/2019	Withdrawn
2020-2021				
WSCC/08 1/19	Proposed Temporary Concrete Crushing and Soil Recycling Facility	Kilmarnock Farm, Charlwood Road, Ifield, RH11 0JY	09/07/2020	Refused
WSCC/03 7/19	Proposed Inert Waste Recycling Facility, with new building, hardstanding, car parking, boundary treatment and re-aligned access to the agricultural unit. Includes variation to approved site landscaping and use of internal spaces within the existing MRF	T J Waste, Burndell Road, Yapton, Arundel, BN18 0HR	06/08/2020	Granted with Conditions
WSCC/00 9/20	Change of use from agricultural land to a construction/demolition/excavation waste recycling facility	Land at Thistleworth Farm, Grinders Lane, Dial Post, Horsham, RH13 8NR	29/10/2020	Granted with conditions
2022-2023				
WSCC/00 7/22	Proposed variation of conditions 2 and 11 of planning permission WSCC/036/14/BE to increase throughput of waste from 30,000 tonnes per annum to 75,000 tonnes per annum and seek approval for minor changes to the site layout	Elbridge Farm, Chichester Road, Bersted, PO21 5EF	09/08/2022	Withdrawn
WSCC/00 7/22	Proposed variation of conditions 2 and 11 of planning permission	Elbridge Farm, Chichester Road,	09/08/2022	Withdrawn

Applicati on No.	Description	Address	Date	Decision
	WSCC/036/14/BE to increase throughput of waste from 30,000 tonnes per annum to 75,000 tonnes per annum and seek approval for minor changes to the site layout	Bersted, PO21 5EF		

- 7.62 A summary of the latest position is set out Appendix G: Waste Local Plan Indicators in the AMR for 2022-2023 (WSCD051), which on page 76 identifies that over the ten years from 2013 to 2023, sixteen planning permissions for inert waste recycling have been approved.
- 7.63 The second point that the Inspector should note from the Appellant's comments is that the alternative sites listed Appendix 18 of their Statement of Case are under the control of their competitors and therefore not available, indicates that the Appellant is attempting to present a case based on consideration of the wrong types of sites. The County would be surprised and does not anticipate that the Appellant's competitors would be likely to make their sites available to Appellant. Instead, the opportunity to bring forward alternative new sites lies in identifying sites with complementary activities, where inert waste recycling could be undertaken, that support and compliment an existing operator's activities, and indeed would assist in the operation and restoration of their existing site or sites. Most notably existing landfill and existing mineral extraction sites.
- 7.64 This is reflected in the accompanying commentary in Appendix G of the AMR for 2022-2023 which notes that "Based on previous experience aggregate recycling operations are likely to continue to come forward on construction sites and as part of the restoration of mineral sites".
- 7.65 As the Inspector will see this is exactly what Policy W4 primarily envisages, other than the development of sites in accordance with the criteria set out in Policy W3. The Inspector will see from the latest AMR for 2022-2023 that Appendices B and D and the accompanying maps list all the existing landfill and mineral extraction sites in West Sussex. Although there is no guarantee that planning permission will be granted on any of these sites, they tend to be inherently good locations of inert recycling operations, and hence they are specifically identified in Policy W4. The applicant has not presented any information in relation to any these sites.
- 7.66 To conclude then, the Appellant's case, it seems to me rests solely on the decision in the Kilmarnock Farm and does not reference any other evidence in terms of other sites for which planning applications have been submitted. They present a list of 15 sites that because they belong to competitors, they say are not available to them. They then, contrary to their own evidence appear to suggest that the economic case in support of their appeal is that there is "only one other restaurant in town". The evidence I have presented clearly demonstrates that this is not the case, and that the County Council's own assessment through its AMR suggests that the Appellant has looked at the wrong type of sites, and has not considered the type of locations that are likely to be most suitable for inert waste (aggregate) recycling operations, i.e. existing quarries and landfill sites, which is what

Policy W4 envisages. Their approach is not only flawed, but their conclusions are simply wrong, insofar as Planning Applications for other new and extended inert waste recycling facilities have been approved in West Sussex.

The Cost of Developing Outside the Designated Area, or Meeting the Need for it in Some Other Way

- 7.67 Turning to the cost of developing outside the designated area, or meeting the need for it in some other way, this similar to the consideration of the contribution of the Appeal Proposal to the local economy, is a matter in relation to which the Appellant has presented no evidence at all.
- 7.68 The Appellant states on page 16 of their letter of the 28th March 2023, that “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” and that “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”. Consequently, they argue that “there is the genuine risk of the employment opportunities and the economic benefits of the business from being forever lost” and they go on to states that there is a “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”.
- 7.69 Despite this, no evidence has been provided of the number of people employed at the site or of the extent to which the viability of the business as a whole depends upon the continuing operation of the Appeal Site.
- 7.70 As such the Appellant has again failed to present any evidence in relation to this issue, and therefore to enable any consideration of the cost of developing outside the designated area, or meeting the need for it in some other way in accordance with the NPPF, paragraph 183 as part of the assessment required in the determination of the Ground (a) Appeal.

The Contribution of the Development to the Sustainable Management of Waste

- 7.71 Finally, to come back to the issues identified by the Inspector in the first Pre-Inquiry Note, Pre-Inquiry Note 1, of 21st February 2024, the other issue to be considered, relating to waste, is the contribution of the development to the sustainable management of waste.
- 7.72 This is a relatively straightforward issue. The Appellant in their letter of 28th March 2023, on page 11 identifies that the recycling of inert C, D & E wastes and their re-use in new development, is a key component of achieving the Environmental Sustainability and that the Government’s Circular Economy Initiative commits to keeping resources in use as long as possible, and

extracting maximum value from them, minimizing waste and promoting resource efficiency. They also refer to Chapter 4 of the 25 Year Environment Plan which sets out how England will work towards achieving these goals. They argue that sites such as the appeal site, where construction and demolition waste material is screened and recycled for use in other developments, are essential in achieving these objectives.

- 7.73 The County Council does not disagree with this analysis and as such does not consider this to be a determining factor in this appeal. This does not however make the development acceptable and does not lead to the conclusion that the Appeal Proposal is acceptable in relation to the matters to be considered in relation to the Ground (a) Appeal. They also do not lead to the conclusion that the Appeal Proposal is sustainable development, particularly taking into account the environmental and highways impact of the proposal, which are considered by Andrew Clarke and Rupert Lyons in their Proofs of Evidence.

Ground (d) Appeal

- 7.74 The key issue in the determination arising from the Ground (d) appeal is whether, on the date when the first Notice was issued on 27 January 2020 (if the 'second bite' provisions apply) or on the date the current Notice was issued on 28 February 2023 (if the 'second bite' provisions do not apply), no enforcement action could be taken in respect of the breach of planning control stated in the Notice.

- 7.75 The breach of planning control stated in Section 3 of the Notice relates to the:

Material change of use of the land from agriculture to a mixed use of:

- the importation, processing, storage and export of waste materials upon the Land;
- the deposition of waste material upon the Land;
- the storage of building materials upon the Land;
- the storage of plant, machinery, and containers upon the Land;

and

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

- 7.76 The time limit for enforcement action for a change use, other than to use as a dwellinghouse, as set out in s.171B of the Town and Country Planning Act 1990 is 10 years beginning from the date of the breach.
- 7.77 The time limit for enforcement action for operational development, as set out in s.171B of the Town and Country Planning Act 1990, was at the time of the service of the Enforcement notice, 4 years from the date on which the operations were substantially completed.
- 7.78 As set out above, the issue is primarily one of fact as to what the character of the use is now, and whether this character of use has taken place (a)

without planning permission, and (b) whether the change of use to this character of use took place on the Appeal Site by 27th January 2010 or 28th February 2013 and if so, has this use been continuous since then.

- 7.79 The evidence relating to the unauthorised operational development comprising of the laying and construction of a hardstanding is addressed by Andrew Clarke in his Proof of Evidence. Because the County Council also considered the matters relating to the construction of the access track from A23, in the course of its service of the previous Enforcement Notice and the evidence it prepared in anticipation of the previous inquiry, I have included reference to this evidence to assist the Inspector.
- 7.80 The key matter in relation to this ground for appeal, insofar as it relates to the unauthorized material change of use of the land is the chronology of events and what the available evidence shows in support of these events. For brevity the Chronology and the County Council's comments in relation to available documents and evidence is set out in the Chronology (WSCD001). The Inspector should take the Chronology as part of the County Council's response to the Ground (d) Appeal, supplemented by the comments set out in this section of this Proof.
- 7.81 In relation to the first question of whether activities were being undertaken without planning permission, the Inspector is referred to the history of Appeal Site and the surrounding land, set about above and the submitted documents referred to in the Chronology.
- 7.82 In summary the County Council's response to the Ground (d) appeal is that the evidence does not demonstrate that the character of the mixed waste and storage use being enforced against has taken place on the Appeal Site for a continuous period of 10 years prior to either 27 January 2020 (if the 'second bite' provisions apply) or 28 February 2023 (if the 'second bite' provisions do not apply).
- 7.83 It appears that the Appellant (as PJ Brown (Construction) Ltd) became associated with the Appeal Site together with wider surrounding land in 2004 or thereabouts, following the commencement of works to implement the Agricultural Prior Determination Ref. 01/01232/AGDET issued by Mid Sussex District Council under the Town and Country Planning (General Permitted Development) Order 1995, Part 6 Agricultural Buildings and Operations, on the 17th July 2001 and the further Agricultural Prior Determination, Ref. Ref. 01/01613/AGDET also issued by Mid Sussex District Council on the 11th September 2001. The Appellant did not initiate these works but took over the operations on the site after the previous contractor, South East Tipping Limited, went into receivership. It is thought that the works to implement to the two Agricultural Prior Determinations may have started as early as late 2001 or early 2002. The activities that took place at this time associated with the Agricultural Prior Determinations are not the mixed waste and storage use now being enforced against.
- 7.84 Works to construct the Access Track were undertaken at this time and appear to have been undertaken without planning permission as there is neither an Agricultural Prior Determination nor a Planning Permission relating to the works to construct the Access Track, with these being located

outside the red line boundary of either Agricultural Prior Determination Ref. 01/01232/AGDET or Agricultural Prior Determination, Ref. 01/01613/AGDET. The works to construct the Access Track were therefore unauthorised, although as will be explained, this was later regularised through Planning Permission Ref. WSCC/077/11/BK which was approved by West Sussex County Council on 11th June 2012.

- 7.85 Evidence relating to the implementation of the works associated with the two Agricultural Prior Determinations consists of aerial photographs and other documents which show that the works were not completed until after either late 2013 or in 2014. Aerial photographs confirm that the works were still on-going on the 6th June 2013 but completed by 12th April 2015. The area of the works included the area of The Compound within the Appeal Site, and insofar as they related to the implementation Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET the County Council considers that they were not undertaken without Planning Permission. These works commenced well before 27th January 2010 and 28th February 2013 and continued until after these dates, i.e. until either late 2013 or 2014.
- 7.86 The Appellant has not submitted any evidence to demonstrate that the activities being undertaken on the Appeal Site on or before 27th January 2010 or 28th February 2013 were anything other than works associated with the implementation of Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET. A number of items of evidence were submitted by the Appellant in support of the Certificate of Lawfulness application (WSCD035) submitted to the County Council on the 30th September 2019. However, there were only three items of evidence submitted by the Appellant with that application that predate the 27th January 2010. These are service/repair logs and a risk assessment by Finning (UK) Ltd relating to repairs for PJ Brown dated the 9th and 20th February 2004 (WSCD009), an aerial photograph of the Appeal Site dated the 30th April 2007 (WSCD011) and an invoice from Bolney Park Farm to PJ Brown for "Storage Advance Payment" dated the 2nd May 2007 (WSCD012).
- 7.87 The Appellant has submitted some additional evidence with the current appeal, that was not submitted with either the previous appeal or the Certificate of Lawfulness application (WSCD035). This includes the Invoices from Carillion Civil Engineering dated 2012-2013, included in Appendix 14 of the Appellant's Statement of Case that Appellant refers to as evidence of the use of the Appeal Site for the storage and crushing of road planings, and storage of equipment involved in those works, and the unsigned Licence for the Tipping of Soil at Bolney Park Farm, dated 2001, included in Appendix 12 of the Appellant's Statement of Case.
- 7.88 As set out in the Chronology, the Daily Service Reports and Field Service Basic Risk Assessment Reports by Finning (UK) Ltd (WSCD009) appear to be service/repair logs and a risk assessment by Finning (UK) Ltd relating to repairs for the Appellant undertaken on the date of the documents. The documents indicate that there was plant on or in the vicinity of the Appeal Site on the date they are dated for, i.e. 9th and 20th February 2004, but they do not provide any evidence of the deposit or treatment of waste on

the Appeal Site. Given the works to implement Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET for the infilling of the bomb crater were likely to have commenced by this date and these do not provide evidence of any activities on or in the immediate vicinity of the Appeal Site at this time, they are most likely therefore on the balance of probability related to the plant that was being used in conjunction with the works on the adjoining land to the east, and even if used within the Compound, this formed part of the area to which Agricultural Prior Determination Ref. 01/01232/AGDET related.

- 7.89 As also set out in the Chronology, the aerial photograph of the Appeal Site dated the 30th April 2007 (WSCD011), was taken at the time that the works to fill the bomb crater approved under Agricultural Prior Determination Ref. 01/01232/AGDET and Agricultural Prior Determination, Ref. 01/01613/AGDET were being undertaken. It shows the Compound has been disturbed and was being used to store material. The photograph does not show the works that were being undertaken over the field to the east of the Appeal Site. These are however visible on the earlier historic Google Earth Image of 1st January 2005 (WSCD010) and the later historic Google Earth Image of 28th March 2012 (WSCD013) from which it appears that the activities within the Compound on the Appeal Site were part of the activities linked with those works. Whilst the photograph shows activities within the Compound on the Appeal Site there is no evidence on the photograph that any waste was being or had been deposited on the site or that there were any waste treatment activities being undertaken on the Appeal Site on the date of the photograph. The photograph does not therefore provide any evidence that the breach of planning control stated in the Enforcement Notice had been commenced on the date the photograph was taken or that there were any activities being undertaken on the site that did not form part of the approved works.
- 7.90 The third item of evidence submitted by the Appellant, as part of their submission for the Certificate of Lawfulness submitted to the County Council in September 2019 is the invoice from Bolney Park Farm to PJ Brown for "Storage Advance Payment" of the 2nd May 2007 (WSCD012). This refers only to payment for "storage" but then also to "Planings, Aggregate and Machinery". The invoice does not suggest or indicate or provide any evidence of the (permanent) deposit of waste or the treatment of waste on the Appeal Site. Furthermore, there is nothing in the invoice to expressly link it to the Appeal Site, as opposed to any other part of Bolney Park Farm. There is therefore nothing in the invoice that can be taken as evidence of that waste was being or had been deposited on the Appeal Site, other than in accordance with Agricultural Prior Determination Ref. 01/01232/AGDET, or that there were any waste treatment activities being undertaken on the Appeal Site on the date of the invoice and on the contrary it appears to be evidence of a storage use. The invoice does not therefore provide any evidence that breach of planning control stated in the Enforcement Notice has been commenced on the date the invoice or that there were any activities being undertaken the site that did not form part of the approved works under Agricultural Prior Determination Ref. 01/01232/AGDET.
- 7.91 The invoices from Carillion Civil Engineering dated from July 2012 to March 2013 (WSCD18A), do not corroborate the claims of the Appellant. The

Appellant's Statement of Case, on pages 26 and 28 identifies the use of the Appeal Site for the storage and crushing of road planings, and storage of equipment as having taken place in 2013 and 2014. The invoices predate this period and are dated July 2012 to March 2013, and refer to delivery on the A23 Handcross to Warninglid, which is a 1.3km to 5.1km north of the Appeal Site, so that there is nothing to link the invoices to the Appeal Site. The aerial photographs of the site show that the works approved under Agricultural Prior Determination Ref. 01/01232/AGDET as continuing at this time.

- 7.92 The Inspector should note that the Appellant has labelled the aerial photographs including in Appendix 10 as showing these works, as "Operations undertaken following completion of 01/01232/AGDET" and states in paragraph 5.41 (and the Table on pages 27 to 29) of their of Statement of Case that "these works came to conclusion in 2007 [and that] The final part of the land involved was then left to settle for just over two years prior to commencing planting of crops". The later aerial photograph of 28th March 2012 (WSCD013), clearly shows that this was not the case across the whole of the area of Agricultural Prior Determination Ref. 01/01232/AGDET and that there was still substantial works going on at that time. It can be seen from the aerial photograph of 31st August 2012 (WSCD018) how much the site had changed over the previous five months and that material still appeared to be imported at that time. The aerial photograph of 6th June 2013, similarly still shows these works continuing, and in fact it is not until the aerial photograph of 12th April 2015 (WSCD021), that there is clear evidence that the works had been completed, although by this time it is also apparent that works to which WSCC Planning Permission Ref. WSCC/077/11/BK, were well under way. It is therefore clear from the evidence that the works undertaken under Agricultural Prior Determination Ref. 01/01232/AGDET and then WSCC Planning Permission Ref. WSCC/077/11/BK continued until well after the 28th February 2013
- 7.93 The Appellant claims that the unsigned Licence for the Tipping of Soil at Bolney Park Farm, dated 2001 (WSCD007A), is evidence of the beginning of occupation of the Appeal Site, but there is nothing in this which indicates that it related to anything other than the approved works being undertaken under Agricultural Prior Determination Ref. 01/01232/AGDET. In any event the Appellant claims that works by at Bolney Park Farm only began in 2004 as part of their contract with South East Tipping. It is unclear whether the license was ever signed and completed.
- 7.94 The Appellant has not provided any explanation to why the work undertaken under Agricultural Prior Determination Ref. 01/01232/AGDET are considered to have been completed in 2007, when clearly they were not, and this was not claimed at the time of the appeal against the County Council's Enforcement Notice in 2020. They have not provided any other substantive evidence that the matters which appear to constitute the breach of planning control relating to the unauthorized change of use stated in Section 3 of the Enforcement Notice, were being undertaken on the Appeal Site on or before 27th January 2010 or 28th February 2013. From the outset the County Council considers that there is simply no basis on the balance of probability for considering that the breach of planning control stated in the Notice has existed for a period of ten years or more.

- 7.95 If the Inspector is satisfied that the items of evidence referred to above do not demonstrate on the balance of probability, as the County Council contends, that breach of planning control stated in Section 3 of the Enforcement Notice existed on the Appeal Site on or before the 27th January 2010 or 28th February 2013, then the Ground (d) appeal should be dismissed and the subsequently available evidence (by date), does not need to be considered, as the breach of planning control cannot be considered on the balance of probability to have been taking place for ten years prior to the date on which the Enforcement Notice was issued.
- 7.96 The County Council's further detailed commentary and the related documents is set out in the Chronology(WSCD001) and the Inspector is referred to this for the County Council's detailed comments on each. As set out in the Chronology there is nothing in the available evidence to lead the County Council to the conclusion that the breach of planning control stated in Section 3 of the Enforcement Notice existed before 14th May 2018 (WSCD023) or alternatively the 6th August 2018. It is the view of the County Council therefore that the breach of planning control has not existed continuously for a period of ten years, going back to either 27th January 2010 or 28th February 2013. The aerial photograph of 14 May 2018, as is stated in the Chronology shows activity on the Appeal Site for the first time, which is, or may be, evidence of waste materials being deposited and/or waste treatment activities being undertaken on the Appeal Site, other than as part of the works to implement Agricultural Prior Determination Ref. 01/01232/AGDET, Agricultural Prior Determination, Ref. 01/01613/AGDET or Planning Permission Ref. WSCC/077/11/BK.
- 7.97 This was not the case on the preceding available aerial photograph dated 10th September 2015 (WSCD022). As such it appears to the County Council that there was no evidence of the breach of planning control stated in Section 3 of the Enforcement Notice until the 14th May 2018 or otherwise no evidence up to at least 10th September 2015. Either way this indicates that the breach of planning control may only have existed for little as one year and four months or otherwise for no more than four years and four months prior to the service of the Enforcement Notices, which is substantially less than the ten years required for the activities to be immune from enforcement action.
- 7.98 Two other points that the Inspector's attention is particularly drawn to is the evidence from the Site Inspection that took place on the 4th March 2014 (WSCD041), the 22nd January 2015 (WSCD042), and the 17th July 2015 (WSCD043). At the time of the inspection on the 4th March 2014 (WSCD041), although there were stockpiles of deposited waste materials that are clearly visible in the photographs taken during the visit (WSCD041), comprising road planings and mixed (i.e. unsorted) demolition materials (largely broken bricks), there was no evidence of any waste processing taking place on the Appeal Site. Furthermore, subsequent Site Inspection Records from the 22nd January 2015 (WSCD042) and 17th July 2015 (WSCD043) make clear that there had little or no change on the site, and again that there was no record of any processing activities being undertaken.

- 7.99 The Appellant up to the time of these Site meetings had not attempted to argue that any of the activities being undertaken on the Appeal Site were those subsequently stated in the Enforcement Notice, and indeed there is no record of any argument being presented by the Appellant that there was any breach of planning control until the meeting on the Appeal Site on 8th October 2018, although the aerial photography indicates that these activities may have been evident before this date and as early as the 14th May 2018.
- 7.100 The County Council's response to the Ground (d) Appeal is therefore that the Access Track was constructed without Planning Permission sometime between late 2001 and 2005, although this was subsequently regularised through the grant of Planning Permission Ref. WSCC/077/11/BK on the 11th June 2012 (WSCD014).
- 7.101 That permission did not propose or require the removal and reinstatement of the track to agricultural land.
- 7.102 In relation to the Compound, the County Council's case is as set above. The County Council's case is that works on the area of the Compound initially formed part of the lawfully undertaken works to implement the Mid Sussex District Council Agricultural Prior Determinations Refs. 01/01232/AGDET and 01/01613/AGDET. These works continued until at least the 6th June 2013 and were completed by 12th April 2015. These Agricultural Prior Determinations allowed for the import and deposit of the material on the land for the purposes of the approved infilling and levelling, including the area of the Compound within the Appeal Site.
- 7.103 The available evidence indicates the storage and deposit of material over a substantial part of the area included within the red line boundary of Agricultural Prior Determinations Refs. 01/01232/AGDET, with aerial photographs showing mounds of new deposited material, spread materials and areas that have been reprofiled. Under Agricultural Prior Determination Refs. 01/01232/AGDET the materials used in the works could quite lawfully have been stored or placed within the area of the Compound on the Appeal Site. The works were initially believed to have been undertaken by South East Tipping Limited, but it is understood that the Appellant company which had an involvement in the area of land covered by the Agricultural Prior Determinations from 2004, became the main contractor from 2006.
- 7.104 The works involved the import, storage and deposit of waste materials over a wide area which includes the Appeal Site and a substantial area to the north, east and south extending to approximately 15ha. From the available evidence it is clear that earth moving and screening plant would have been, and was used, in association with these works. There is no submitted or available evidence to indicate that there was the breach of planning control constituting the mixed waste and storage use stated in the Enforcement Notice throughout the duration of the works. To the extent that there may have been either the deposit of waste within the Compound on the Appeal Site or the treatment of any imported material, for example by screening, then this would have been as part of the approved works or ancillary to it. At no stage during this period did the Appellant claim that the works being undertaken were anything other than works associated the implementation

the works under the Agricultural Prior Determinations. The works were completed well within the ten-year time limit for enforcement action.

- 7.105 Subsequent activities by the Appellant in the vicinity of the Appeal Site related to the implementation of the Planning Permission Ref. WSCC/077/11/BK approved by West Sussex County Council on the 11th June 2012 (WSCD014). Any activities within the Compound on the Appeal Site undertaken in association with the implementation of this permission would not have been lawful and would have amounted to a breach of planning control. There is however no evidence of any such breach, and in any event works for the implementation of the permission did not commence until significantly after either the 27th January 2010 or 28th February 2013 and would therefore be well within the time limit for enforcement action.
- 7.106 As set out above there were three Site Inspections in 2014 and 2015, at which there no observed or recorded evidence of any unauthorised activities being undertaken within the Compound on the Appeal Site, and it was not until the meeting on the Appeal Site on 8th October 2018 that any claim was made by the Appellant that any activities were being undertaken within the Compound on the Appeal Site that constituted a breach of planning control. Other available evidence as set out in the Chronology indicates that there was no breach of Planning Control within the Compound on the Appeal Site until 2018.
- 7.107 The County Council argues that Appellant has not presented any evidence, and there is no other available evidence, to indicate that the activities that constitute the breach of planning control stated in Section 3 of the Enforcement Notice have been ongoing continuously for a period of ten years or more. The County Council submits therefore that it is not the case "that on 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".
- 7.108 The Inspector is therefore respectfully requested to dismiss the Ground (d) Appeal.

8. Summary and Conclusions

- 8.1 The following comprises my summary Proof of Evidence.
- 8.2 My evidence sets out the waste related evidence and circumstances that led to the Council to deciding to issue the Enforcement Notice. It focuses on the waste related elements of the Ground (a) Appeal and the Ground (d) Appeal.
- 8.3 It considers the contribution of the development to the sustainable management of waste and to the local economy and other considerations including the availability of alternative suitable sites. In relation to Ground (a) it focuses on the planning merits of the Appeal Proposal, having regard to the development plan and other material considerations in accordance with the basic principle when assessing planning applications is outlined in Section 38(6) of the Town and Country Planning Compulsory Purchase Act 2004), and in relation to Ground (d) it focuses on the factual evidence of the breach of planning control set out in the Enforcement Notice.
- 8.4 The key point that follows from this is that the NPPF, paragraph 183 makes clear that planning permission for major development in a National Landscape should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. Considerations of such applications is to be assessed inter alia on the basis of need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy and the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way.
- 8.5 In response to this the County Council argues that the applicant has not presented any evidence to demonstrate market need, that the County Council's own most up-to-date assessment is that there is no market need for additional C,D & E (inert) waste recycling capacity, and that in the absence of any information having been presented by the applicant, it is has not only not been demonstrated that the operation of the site would be consistent with the principle of net self-sufficiency, and that with the current level of C,D & E (inert) waste capacity in West Sussex, the site simply is not required to provide net self-sufficiency.
- 8.6 In relation to the contribution of the development to the local economy the County Council's view is that if there is no identified need, because there is sufficient capacity to meet the current and projected level of need for the rest of the Waste Local Plan period, so that the refusal of the Ground (a) Appeal would not result in a constraint on the local economy in terms of the delivery of the required amount of waste management infrastructure.
- 8.7 The Appellant's argument by contrast seeks to present an economic argument which is solely concerned with the lack of available alternative sites and states and their case says nothing at all about the contribution of the development to the local economy.
- 8.8 In relation to the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way the Appellant's case

rests solely on the decision in the Kilmarnock Farm and does not reference any other evidence in terms of other sites for which planning applications have been submitted. They present a list of 15 sites that because they belong to competitors, they say are not available to them. The evidence I have presented clearly demonstrates that this is not the case, and that the County Council's own assessment through its AMR suggests that the Appellant has looked at the wrong type of sites, and has not considered the type of locations that are likely to be most suitable for inert waste (aggregate) recycling operations, i.e. existing quarries and landfill sites, which is what Policy W4 envisages. Their approach is not only flawed, but their conclusions are simply wrong, insofar as Planning Applications for other new and extended inert waste recycling facilities have been approved in West Sussex.

- 8.9 Turning to the cost of developing outside the designated area, or meeting the need for it in some other way, the Appellant has again failed to present any evidence in relation to this issue.
- 8.10 And finally in relation to the Contribution of the Development to the Sustainable Management of Waste the Appellant in their letter of 28th March 2023, on page 11 identifies that the recycling of inert C, D & E wastes and their re-use in new development, is a key component of achieving the Environmental Sustainability and that the Government's Circular Economy Initiative. The County Council does not disagree with this analysis and as such does not consider this to be a determining factor in this appeal.
- 8.11 The County Council's response to the Ground (d) Appeal in relation to the material change of use of the land is that the works on the area of the Compound initially formed part of the lawfully undertaken works to implement the Mid Sussex District Council Agricultural Prior Determinations Refs. 01/01232/AGDET and 01/01613/AGDET. These works continued until at least the 6th June 2013 and were completed by 12th April 2015. These Agricultural Prior Determinations allowed for the import and deposit of the material on the land for the purposes of the approved infilling and levelling, including the area of the Compound within the Appeal Site.
- 8.12 The available evidence indicates the storage and deposit of material over a substantial part of the area included within the red line boundary of Agricultural Prior Determinations Refs. 01/01232/AGDET, with aerial photographs showing mounds of new deposited material, spread materials and areas that have been reprofiled. Under Agricultural Prior Determination Refs. 01/01232/AGDET the materials used in the works could quite lawfully have been stored or placed within the area of the Compound on the Appeal Site.
- 8.13 The works involved the import, storage and deposit of waste materials over a wide area which includes the Appeal Site and a substantial area to the north, east and south extending to approximately 15ha. From the available evidence it is clear that earth moving and screening plant would have been, and was used, in association with these works. There is no submitted or available evidence to indicate that there was the breach of planning control stated in the Enforcement Notice throughout the duration of the works. To the extent that there may have been either the deposit of waste within the

Compound on the Appeal Site or the treatment of any imported material, for example by screening, then this would have been as part of the approved works or ancillary to it. At no stage during this period did the Appellant claim that the works being undertaken were anything other than works associated with the implementation of the works under the Agricultural Prior Determinations. The works were completed well within the ten-year time limit for enforcement action.

- 8.14 Subsequent activities by the Appellant in the vicinity of the Appeal Site related to the implementation of the Planning Permission Ref. WSCC/077/11/BK approved by West Sussex County Council on the 11th June 2012 (WSCD014). Any activities within the Compound on the Appeal Site undertaken in association with the implementation of this permission would not have been lawful and would have amounted to a breach of planning control. There is however no evidence of any such breach, and in any event works for the implementation of the permission did not commence until significantly after the 27th January 2010 and would therefore be well within the initial time limit for enforcement action.
- 8.15 There were three Site Inspections in 2014 and 2015, at which there was no observed or recorded evidence of any unauthorised activities being undertaken within the Compound on the Appeal Site, and it was not until the meeting on the Appeal Site on 8th October 2018 that any claim was made by the Appellant that any activities were being undertaken within the Compound on the Appeal Site that constituted a breach of planning control. Other available evidence as set out in the Chronology indicates that there was no breach of Planning Control within the Compound on the Appeal Site until 2018.
- 8.16 The Council therefore argues that Appellant has not presented any evidence, and there is no other available evidence, to indicate that the activities that constitute the breach of planning control stated in Section 3 of the Enforcement Notice have been ongoing continuously for a period of ten years or more. The Council submits therefore that it is not the case "that on 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".
- 8.17 The County Council, for the reasons set out above, contends that the issuing of the Enforcement Notice is appropriate and relates to breaches of planning control not benefitting from planning permission or in this case, falling within the operations allowed by the Agricultural Prior Determination (Ref. 01/01232/AGDET) determined by Mid Sussex District Council.
- 8.18 The County Council supports MSDC in relation to the other Grounds for Appeal that are addressed by Andrew Clarke in his Proof of Evidence.
- 8.19 It is therefore respectfully requested that the Appeal is dismissed, and the Enforcement Notice, including Ground (a) and Ground (d) upheld.