



Appeal Decision

Inquiry held on 24 to 27 September, 21 28 and 30 October 2024

Site visit made on 26 September 2024

by Diane Lewis BA(Hons) MCD MA LL.M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

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

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr P Brown, PJ Brown (Civil Engineering) Ltd against an enforcement notice issued by Mid Sussex District Council.
- The notice was issued on 28 February 2023.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 1. The material change of use of the Land from agriculture to a mixed use of:
 - i. the importation, processing, storage and export of waste material upon the Land;
 - ii. the deposition of waste material upon the Land;
 - iii. the storage of building materials upon the Land;
 - iv. the storage of plant, machinery and containers upon the Land;
 2. Operational development comprising the laying and construction of hardstanding upon the Land.
- The requirements of the notice are to:
 - 1) Cease the use of the Land for the importation, processing and export of waste material.
 - 2) Cease the use of the Land for the deposition of waste material.
 - 3) Cease the use of the Land for the storage of waste and building materials.
 - 4) Cease the use of the Land for the storage of plant, machinery and containers.
 - 5) Remove from the Land all plant, machinery, equipment, containers and vehicles.
 - 6) Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the Unauthorised Development.
 - 7) Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked 'A' on the Plan
 - 8) Remove from the Land the portacabin sited in the approximate position marked 'A' on the Plan.
 - 9) Remove from the Land the containers sited in the approximate position marked 'B' on the Plan.
 - 10) Remove from the Land the hardstanding marked outlined in blue on the Plan.
 - 11) Remove from the Land to an authorised place of disposal all debris and materials as a result of compliance with step 10 above.
 - 12) Reinstate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land.
- The periods for compliance with the requirements are:
 - a. 7 days for requirements 1), 2) and 3).
 - b. 14 days for requirements 4), 5), 7), 8) and 9).
 - c. 28 days for requirements 6), 10) and 11).
 - d. 3 months for requirement 12.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has

been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary matter

1. At the inquiry all evidence on the legal grounds of appeal was given under solemn affirmation.
2. After the close of the inquiry, the appellant and the Council had the opportunity to make written representations, or ask for the inquiry to be re-opened, primarily in relation to the use of the land in the period leading up to the issue of the enforcement notice in February 2023. The question in my mind was whether there was a single primary waste use taking place on the land, as opposed to a mixed waste and storage use. The responses confirmed that both the appellant and the Council considered the land was in a mixed use when the notice was issued. In view of the agreement between the parties on this matter re-opening the inquiry was not necessary.

REASONS

The Land and its surroundings

3. The Land is an irregular shaped area comprising the main operational compound with a narrow land parcel extending to the south (the site) and the access road connecting the compound with the A23. The site is within the Bolney Park Farm landholding, an arable farm with equestrian use. Dan Tree Farm, a dwelling and adjacent field, lies to the west of the compound and north of the access road. To the south of the road is land related to Park Farm Cottage, where an equine rehabilitation centre has been developed.
4. The planning history specific to the site includes an application for a lawful development certificate dated 30 September 2019 by PJ Brown (Construction) Ltd. A certificate was sought for an existing use described as 'Importation, deposit, re-use and recycling of waste material and use of land for storage purposes.' Information submitted to support the application forms part of the evidence in the current appeal. The application was refused by West Sussex County Council on 10 January 2020.
5. An enforcement notice was issued on 27 January 2020 by the County Council that related to most of the site and the access road. The description of the alleged breach of planning control was "Without planning permission, the making of a material change of use of the land from agriculture to sui generis waste use for importation, processing, and export of waste, and deposition of waste to the Land along with ancillary storage." An appeal was made against the notice by PJ Brown (Construction) Ltd. The notice was withdrawn on 10 March 2021, the opening day of the inquiry. I will return to this notice when considering the time limits applicable to the current enforcement notice and section 171B(4)(b) of the 1990 Act.
6. The planning history associated with Bolney Park Farm includes permissions in 2001 for ground and reclamation works (ref. BK/01/01232/AGRDET) and a hardcore farm track (ref. BK/01/01613/AGRDET). The site boundary of the ground works application extended up to the boundary with Dan Tree Farm. The original contractor for the ground works was South East Tipping but the

firm went into administration around 2004. The appellant took over and completed the works. There is no dispute the appellant's presence at Bolney Park Farm dated back to 2004. There is dispute when the reclamation works were completed. The appellant says 2007, the Council says sometime between June 2013 and April 2015.

7. The planning history associated with Park Farm Cottage includes a planning permission granted in June 2012 for an equine rehabilitation and physiotherapy centre, related facilities and a bund adjacent to the A23 (ref. WSCC/077/11/BK). Development works to implement the permission were carried out between 2013 and 2018 and according to the Council they were undertaken by PJ Brown (Construction) Ltd. Site inspections by the planning authority and interested agencies form part of the evidence for this appeal.

Appeal on ground (b): *that the matters stated in the alleged breach of planning control have not occurred*

8. In summary the matters raised by the appellant are: (i) there is no permanent deposit of waste on the land, (ii) the Plan attached to the notice should exclude the lawful access road, and (iii) the Council has recognised the 'from' use of the land was storage rather than agriculture.

Description of the unauthorised development

9. The alleged mixed use described in the notice is broken down into four components. At the inquiry the Council confirmed the use being enforced against is a mixed waste and storage use. The primary storage use includes the storage of building materials and containers on site. The primary waste use includes the importation, processing, storage and export of waste materials, and as a distinct and separate element the deposition of waste materials. The Council noted that the appellant described the use as including the deposit of waste in their application for a certificate of lawfulness in 2019. The Council identified the area of deposited waste material on plan as being sited along the northern boundary of the site, where a bund was formed. When enforcement action was authorised by the County Council in January 2020 deposited waste was identified as being in the form of bunds along the eastern and northern boundary. The deposit of waste to form bunds was ruled out as an engineering operation because 'it served no purpose other than the disposal of waste and avoidance of waste disposal fees.'
10. The appellant agreed a mixed waste and storage use is carried out but maintained any deposition of waste material is only temporary, for the purpose of recycling. This point was made in the response to a planning Contravention Notice (PCN), which stated any material was deposited for storage and processing to be reused and recycled or sold. The appellant accepted recycled aggregate material was used to create the bund and the hardstanding.
11. I consider the deposition of waste materials set out in the notice and identified by the Council applies to 'one-off' works to create a bund and hardstanding as part of an engineering operation, rather than being part of an ongoing use of the land for a waste-related operation. Deposition of waste occurs in the early stages of the overall waste management process but does not need to be specifically identified in the alleged breach. The deletion of the phrase from the description of the waste component would focus the description and avoid any

ambiguity. No prejudice would be caused to either party. The creation of the hardstanding is a separate breach of control identified in the notice and removal of the bund would be secured by the restoration requirement, if necessary and not excessive.

The Land

12. The appellant considered the access road is a planning unit separate from the rest of the appeal site and can be used lawfully unconditionally. A concern is that the requirements could interfere with the lawful use and physical condition of the access road.
13. An enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise¹. The enforcement notice in section 2 describes "the Land" as lying to the east of Dan Tree Farm and outlines the area in red on the plan attached to the notice. The Land includes the access road connecting the A23 to the main operational site. The Council explained the red line boundaries were drawn to reflect the full extent of the planning unit, the land upon which the unauthorised development is taking place and the land ownership in respect of the western boundary of the site.
14. At the western (A23) end of the road is an access into Dan Tree Farm to the north and a gated access into the agricultural land to the south. The road extends eastwards for about 220 metres to the entrance to the compound and then bends to head southwards along the edge of the southern part of the compound and beyond. The Council confirmed the road was granted planning permission retrospectively in 2012 (ref. WSCC/077/11/BK) and is in different ownership to the operational site.
15. The matters which appear to constitute the breach of planning control are all described as taking place upon the Land. All the requirements reference the Land. However, the use of the road is solely to facilitate vehicle movement between the A23 and the operational site. The road continues to serve the adjoining properties. There is no evidence of the road being used for overspill storage or waste processing. The Council confirmed the unauthorised hardstanding (the alleged operational development) is confined to the area outlined in blue on the plan, within the operational compound.
16. My conclusion is that the area where the alleged unauthorised development takes place is misdescribed. The Land should exclude the access road and the plan attached to the enforcement notice will be corrected accordingly.

Previous use

17. The enforcement notice describes the previous use of the land as agriculture. The Council report seeking authorisation for enforcement action referred to the land being used for ad-hoc storage and storage related to developments on adjacent land in the immediate period following 2007. The appellant interpreted this as acceptance that storage was the last lawful use, an argument the Council described as misconceived.
18. Having regard to case law on the statutory enforcement action scheme, the notice must tell the person to whom it is addressed in reasonably clear terms

¹ Regulation 4 The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

what it is alleged has been done wrong. Where the allegation is a material change of use it is sufficient to state the use alleged to constitute the breach. The allegation does not have to recite the previous use. The appellant's concern is more appropriately considered in the appeals on ground (d) and (f).

Conclusion

19. The appeal succeeds on ground (b) in respect of the description of the alleged unauthorised use and the extent of the Land. To correct the notice in these two respects will not cause injustice to either the appellant or the local planning authority.

Appeal on ground (d)

Time limits for immunity from enforcement action

20. In this ground of appeal the onus is on the appellant to show on the balance of probability that at the date the notice was issued no enforcement action could be taken in respect of the breach of planning control. In terms of the material change of use no enforcement action may be taken after the period of ten years beginning with the date of the breach. For the operational development no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
21. In this case the question that arises is whether the period of immunity is related to 28 February 2023, the date when the enforcement notice was issued or whether section 171B(4)(b) applies. This section of the 1990 Act provides for taking further enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken within the relevant time limit but has later proved to be defective, so that a further notice may be issued even though the normal time limit for such action has since expired. This is commonly known as the second bite provision.
22. When considering whether the unauthorised development was immune from enforcement action, the Authorisation report² stated the second bite provision applies. This is not reflected in the notice that was issued. The Reasons refer to the material change of use having occurred within the last ten years and the operational development having occurred within the last four years. There is no reference to the second bite provision or to the enforcement notice issued on 27 January 2020 by West Sussex County Council and withdrawn on 10 March 2021. There is no specific reference to the second bite provision in the Council's statement of case, where immunity from enforcement action is related to 28 February 2023. Latterly the Council confirmed their primary case is that the second bite provision applies to this case. However, the issue was considered not necessarily determinative in the ground (d) appeal and their case remained the required immunity has still not been achieved.
23. The *Jarmain* judgement³ sets out the correct approach to section 171B(4)(b), which is to look at the enforcement notice the local planning authority relies on (in this case the 2023 notice), ascertain the breach of planning control in that enforcement notice, then look at the earlier enforcement notice (the 2020

² The Council provided a copy of the report as an appeal document on 24 July 2024

³ *Jarmain v Secretary of State for the Environment, Transport and the Regions* [2000] PLR 126

notice) and ask whether the local planning authority had in that first notice taken or purported to take action in respect of "that breach". The judgement by the Court of Appeal confirmed the sub-section cannot be used to cover two different physical developments or two different changes of use, but it can be used to cover the same actual breach of development control which is described in different ways.

24. The approach laid down in *Jarmain* was considered in *Fidler*⁴, where the Court concluded it is necessary to focus not on the council's broad intention but on the terms of the enforcement notices themselves and in particular on the actual breach or breaches of planning control alleged in them. The Court found in *Fidler* that the later notice was wider in substance than the earlier notices and was directed at additional facts. It did not simply describe more accurately what was misdescribed in the earlier notices; it went further than the earlier notices. That took the case outside the scope of the reasoning in *Jarmain*. Whilst the Court accepted the *Jarmain* reasoning is capable of applying in principle where a single second bite notice covers breaches alleged in a number of earlier notices, it does not apply where the breach alleged in the new notice goes wider in substance than the totality of breaches alleged in the earlier notices. This reasoning was not the subject of further consideration in the Court of Appeal judgement⁵.
25. The earlier enforcement notice issued on 27 January 2020 also related to land east of Dan Tree Farm. To recap, the alleged breach of planning control in 2020 was "Without planning permission the making of a material change of use of the land from agriculture to a sui generis waste use for importation, processing, and export of waste, and deposition of waste to the Land along with ancillary storage." The red line boundary of the Land excluded the wooded area at the site entrance and did not encompass land to the north of the access road.
26. The District Council say the reason the notice was withdrawn at the inquiry was because the appointed inspector, following receipt of a letter from the appellant dated 4 March 2021, indicated the use should be described as a mixed waste and storage use. Such a change had consequences for which local authority had jurisdiction to issue the notice. The appellant, relying on the Costs decision, maintains the notice was withdrawn because it did not require the waste use to cease. For purposes of the second bite consideration, it has been established there was no examination of any evidence about the use at the 2021 inquiry, the appellant disputed the description of the alleged use as a sui generis use as opposed to a mixed use and the Council accepted the notice was defective.
27. After the withdrawal of the first notice the Council verified as a matter of fact a mixed use was taking place on site through site visits and investigations, including the service of a planning contravention notice. Storage of concrete piping, plastic ducting, metal tracks and pipes and other materials were reported. The evidence led to the conclusion that storage use was a primary component of the mixed use. In early 2023 similar types of storage were found to be taking place.

⁴ *Fidler v First Secretary of State & Reigate and Banstead Borough Council* [2003] EWHC 2003 Admin

⁵ *Fidler v First Secretary of State & Reigate and Banstead Borough Council* [2004] EWCA Civ 1245

28. The evidence demonstrates it is the description of the breach that has changed, not the actual storage use on the land. The substance of the waste component of the mixed use also is essentially the same. The amended description responds to an error identified previously, initially by the appellant. The amendments to the red line boundaries of the Land are minor. The statutory wording does not require deceitful or devious behaviour, found in the *Jarmain* case, for the second bite provision to apply. For these reasons section 171B(4)(b) applies to the alleged material change of use.
29. I have considered whether the inclusion of the alleged operational development, the laying and construction of hardstanding, within the overall Unauthorised Development, widens the substance of the alleged breach. The Council accepted the 2023 notice contains a separate allegation and confirmed they do not claim section 171B(4)(b) applies to this separate, independent allegation. The Council submitted to artificially separate one notice into different notices to avoid the disapplication of section 171B(4)(b) would be to return to 'arid technicalities'.
30. There is no statutory requirement to issue a different enforcement notice in respect of each alleged breach of planning control. Furthermore, an allegation as to material change of use and an allegation as to operational development can be included in the same enforcement notice. The matter is one for the local planning authority. The 2023 notice makes a clear distinction between the different types of alleged unauthorised development in the description of the breach. The inclusion of the hardstanding in the notice does not widen the substance of the alleged breach comprising the material change of use. The second bite provision does not apply to this alleged breach. It is subject to a different timescale for immunity.
31. It is the case that the 2023 enforcement notice is not explicit in referencing section 171B(4), which the Council acknowledged, but there is no requirement to do so. The appellant was fully aware of the background to the issuing of the 2023 notice and that the Council was seeking to address the earlier misdescription. As a matter of fact the notice was issued under section 171B(4)(b) in respect of the use and enforcement action was authorised on that basis. The Council confirmed the position in February 2024. The appellant had opportunity to take this into account, if necessary, in preparing and presenting their case. In fact, the appellant's evidence traces the history of the land from 2001 and the appellant's closing submissions confirmed their case is the material change of use took place in the latter part of 2007.
32. In conclusion the period of immunity is related to 27 January 2020 for the material change of use and 28 February 2023 for the operational development.

Main issue

33. The main issue is whether on the balance of probability (i) the material change of use took place before 27 January 2010 and thereafter continued substantially uninterrupted for a period of 10 years, and (ii) the laying of the hardstanding was substantially completed by 28 February 2019.
34. The burden of proof is on the appellant. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council does not have evidence of its own or from others to contradict or

otherwise make the appellant's version of events less than probable there would be no good reason to dismiss the ground (d) appeal, provided the appellant's evidence is sufficiently precise and unambiguous to demonstrate lawfulness on the balance of probability.

35. When assessing the cases presented I have taken into account the submissions of the main parties on the quality and reliability of the personal and documentary evidence. The appellant highlighted the Council's failure to call a witness of fact. The Council cautioned taking the evidence from the appellant's factual witnesses at face value, with reference to the principles set out in the *Gestamin* judgement⁶ regarding evidence based on recollection.

Material change of use

Planning unit and mixed use

36. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change. In *Burdle*, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
37. A mixed use is where two or more primary uses are carried out within the same planning unit, one is not incidental to the other and there is no physical separation. Some fluctuation in the level of use between the different components may occur without constituting development, until the point is reached when it may be said that there has been a material change in the use of the whole unit. There may be incidental uses associated with each primary use where the test is one of functional relationship rather than extent.
38. The appellant has not produced any plan showing an area of occupation that has formed part of an agreement with the landowner. Arrangements were agreed verbally after the original written contract. Nevertheless, by reference to activities on the ground the existing unit of occupation is the area shown on the plan attached to the notice, minus the access road. The area is physically contained by the surrounding access road and tracks, together with the tree belt to the east. The business operation functions across the area.
39. The appellant explained PJ Brown is a recycling company and nothing goes to landfill. The material is from demolition and redevelopment sites, working with small builders through to national construction companies. The waste use involves the screening of mixed construction waste and the crushing of brick and hardcore. Waste materials are moved by an excavator or front loader to the crusher. The screener filters and cleans the products for sale. The storage use has been decreasing but continues, functionally separate from the waste use. The storage component relates to a wide range of materials and goods including shipping containers, skips, drainage materials, road planings, other construction materials and recycled aggregates. The intensity of the use has varied over time. With the current operation, vehicles come and go from the site from 0700 to 1700 hours, stockpiles are probably a maximum height of 5 metres.

⁶ *Gestamin SGPS v Credit Suisse* [2013] EWHC 3560

40. The waste operation is now controlled by an Environmental permit that was issued on 20 October 2020 for land at Bolney Park Farm Recycling Facility. The permit is subject to the standard rules for inert and excavation waste treatment (SR2008 No11). The total quantity of waste that can be accepted at the site under these rules must be less than 75,000 tonnes a year. The permitted activities must not extend beyond the site, being the land shown edged in green on the site plan attached to the permit. This area is slightly more extensive than the hardstanding area outlined in blue on the plan attached to the notice.
41. There is common ground between the Council and the appellant that the compound area, which I have concluded is the relevant planning unit, is in a mixed waste and storage use. The disagreement between the parties is when the material change took place and whether the mixed use is lawful through the passage of time. A change of use can only be material by bringing about a definable change in the character of the use made of the land. In other words, for a material change of use to have occurred, there must have been some significant difference in the character of the activities from what had gone on previously as a matter of fact and degree.

Establishment of the site

42. The evidence of PJB is that the appellant's involvement with the site dates back to 2004 when the company took over from another contractor to complete reclamation works on the neighbouring Bolney Farm land to the east. Agreement with the landowner was reached around May 2007 to establish a permanent yard there. An invoice dated 2 May 2007 regarding storage of planings, aggregate and machinery is produced as supporting documentation. Later in the year the company began using the yard for storage and then for inert physical recycling works (such as crushing, screening). Around 2011/12 the operation became more intensive, comparable to the level today, as a result of the sale of the recycling yard at Holmbush and relocation of the full operation to Bolney.
43. DR confirmed Browns were contracted to import materials for the land reclamation works. The incomplete licence document of 2001 was 'for tipping soil at Bolney Park Farm' and is of little assistance in determining whether the mixed use is lawful. DR also confirmed Browns took over from South East Tipping and progressed the reclamation works to practical completion by 2007. Under the terms of an agreement the use of the yard was to be solely for storage but later it was agreed they could expand their activities. DR's understanding was that in late 2007 Browns started to import, screen and process inert construction waste for export as recycled material and that the operation has continued for these purposes since. The yard was established wholly separate to Bolney Park Farm and the adjoining properties.
44. JL remembered creating the hardstanding one Saturday in 2007 in order that the site could be ready to receive materials and equipment the following Monday. JL explained the operation became mainly based at Bolney around 2010 with the scaling down of their Holmbush base and the permanent stationing of some of the processing plant at Bolney. In the early days waste was delivered and stockpiled until there was enough for processing to saleable aggregates. Recycled aggregates were supplied to local developments over the years from 2008. The undated photograph of a tipper lorry parked next to a

stockpile of materials (comprised of hardcore, concrete, demolition waste) on the site was dated by JL to before early 2012/2013 (when the lorry was sold). Even if this timescale is accepted, very little of the yard is shown in the photograph and the lorry appeared to be parked near the site entrance. When explored further through cross examination JL was uncertain over the origin of the photo and inconsistencies in the dates of sale of the lorry were not explained. The photo has little weight. JL did not dispute the appearance of site in March and August 2012 as shown on the aerial photographs.

45. The response dated May 2022 to the PCN dated 28 April 2022 (the PCN response) stated that a material change of use of the site took place towards the end of 2007/beginning of 2008. At this point in time the stated use of the site was primarily a mixed or composite use for storage and waste recycling (principally for the crushing and recycling of concrete for use in construction works). By May 2010 the proposed uses would have been well established and the aerial photographs dating from March 2012 (and before) show that this use has been gradually developed and ongoing at the site.
46. The answers specific to the PCN questions explained the land was occupied since 2001/2. The smaller operation increased over the period to about 2007, when activity increased to include the treatment of waste and materials (crushing and screening) in addition to on-site storage of materials and plant pursuant to the operation of the business in general. In 2012 the quantum of imported materials peaked and continued through to the present day. The tonnage of waste imported to the land was up to 75,000 tonnes per annum. The amount grew significantly between 2007 and 2012 because PJ Brown had an alternative facility in place at that time. I note at this point the claim on the level of use since 2012 is surprising.
47. The evidence of BW was not based on direct, first hand knowledge and to a large extent summarised the appellant's case. In doing so planning judgement would have been exercised when describing the use of the site. BW explained initially the appellant was occupying the yard in association with permitted works. In mid-2007 the appellant company first began formally using the land (by way of a tenancy agreement), for the storage of plantings, aggregates and machinery. This was within a relatively concise area and was wholly independent of any other activities occurring on the wider land, or neighbouring properties. Later in 2007, the appellant began using the site for its current mixed purpose, importing waste material until there was sufficient quantity to be screened, processed, and exported from the site. From 2010 their activities began winding down at their Holmbush base of operations, where housing development was due to commence. The appeal site was used more intensely and from 2010 to the present day has been in a mixed use for storage of equipment, plant, machinery and building materials, and the importation, storage/temporary deposit, processing and export of waste material. This date is significant and will be examined further through the other forms of evidence.
48. The Council maintained the compound was initially formed as part of the lawfully undertaken works to implement the reclamation of the land to the east at Bolney Park Farm. The permission allowed for the import and deposit of material on the land for the purposes of the approved infilling and levelling, including the compound within the appeal site. Earth moving and screening plant was used in association with these works. To the extent there may have

been deposit of waste or treatment of imported material (by screening) within the compound this would have been part of the approved works or ancillary to it. The reclamation works continued until at least June 2013 and were completed by April 2015.

49. A very significant matter of dispute is when the permitted land reclamation works at Bolney Park Farm were finished. My initial view is that the testimony of the appellant, the landowner and associated witness regarding the date cannot be put aside lightly. Further evidence needs to be explored to inform the actual use of the planning unit over time.

Appellant's evidence on use of the site

50. Aerial photographs. In the series of aerial photographs submitted by the appellant the site (as defined in the notice) is outlined on the images. The images sourced from Google Earth are reproduced in the Council's evidence and there is no dispute over their authenticity and dates⁷. There are no images for the period 2005 to 2012, during which time the appellant says the yard became operational with a mixed waste and storage use.
51. In 2001 the operational site was not in existence and the land was within a much larger field. In 2005 a small parcel of land, adjacent to a bend in the access road, was cleared of vegetation. The land appeared to be used as a small compound, probably in connection with the restoration works taking place on land to the east.
52. By March 2012 a significantly larger yard had been established, contained by the tree belt to the west, agricultural land to the north, the access road to the south and possibly a fence or bund forming a boundary with the field to the east. Containers or similar units were sited along both sides of a central yard. The annotation states "storage was clearly present whilst evidence of "waste" use not present." At the inquiry the appellant maintained a pile of concrete, a screener and possibly a crusher could be seen on the site but I am unable to distinguish such features. A similar picture is presented in August 2012.
53. In the image dated 6 June 2013 the size and layout of the yard remained similar and storage appeared as the probable dominant use. The coverage of land was less intense along the western boundary. Materials possibly were being stored near the north west boundary. The annotation notes some evidence of waste use (western periphery) and in oral evidence PJB identified 2 screeners and crushed material but no excavators or front loaders. In my view the plant is not identifiable as such and evidence of a waste use is questionable.
54. The image dated April 2015 indicates piles of materials in the north west corner and on the western boundary, with similar storage units as before along the eastern boundary. A central circulation area remained. The image dated 10 September 2015 is sharper. Piles of materials were more extensive on the western side of the site and processing activity may have been taking place. Storage units and stored items were prominent along the northern and eastern boundaries of the yard. In both images the developed area was starting to encroach onto adjacent land to the north and west.

⁷ In some instances the given month does not fit with the appearance and greenery of the vegetation.

55. The image of 6 August 2018 shows that the developed area was enclosed by a track on the northern and eastern boundaries, storage had extended further southwards onto the narrower strip of land adjacent to the access road, the waste activity was present on the eastern side of the site, with storage units confined largely to the strip adjacent to the eastern boundary. A few months later in October 2018 ground levels appear to have been raised to form a bund along the northern boundary and further erosion of vegetation had occurred along the western boundary. The waste activity again appears as the dominant use. When viewed together the images suggest that works might have taken place to the surface of the yard and affecting ground levels, requiring storage to be moved to the periphery. The appellant identified a screener, loading shovel and excavator and possibly a crusher, plus piles of raw and processed materials. The storage was described as decreasing but still there.
56. The image of 23 April 2020 shows the waste use occupying most of the site. Storage units appear to be confined to near the entrance and the southern tip. Vegetation was beginning to grow on the bund at the northern end. The not very clear image of 9 August 2020 shows limited change apart from storage units sited on the northern boundary. In the final image dated March 2022 the operational waste use occupies nearly all the site, with a few storage units on the northern boundary and in the southern tip of the site.
57. A commentary on the series of aerial photographs was included with the May 2022 reply to the Planning Contravention Notice. The image dated March 2012 was identified as the earliest photographic evidence showing well established activities on the site. The June 2013 photo was said to show a change in the type of storage from containers to the inclusion of a number of skips and road plantings. Waste activity, alongside storage, was found to be first evident in April 2015. The description for the May and August 2018 photos referenced the quite extensive use of the site for importation, deposit and processing of waste alongside the storage use. The final comment related to October 2018 which referred to the move of storage further south due to waste recycling taking place in the northern most area. These observations are generally consistent with my interpretation of the photographic evidence. The commentary for March 2012 and May/August 2018 is of particular note.
58. The appellant also submitted a series of aerial images over the period 2001 to 2022 to show a wider area that included the areas of land to the east and the south where planning permissions were implemented for land reclamation and a bund along the A23. The images were presented to show the operation of the mixed use site independent of the works on adjoining lands. Works compounds, on the development sites, were identified.
59. An additional aerial image dated 13 April 2007 formed part of the Council's evidence. The compound area was small, confined to the corner and edge of the adjacent field, with a narrow extension to the south adjacent to the access road. A limited amount of storage appeared to be present on rough unsurfaced ground. This image does not contradict the timeline of events described by the appellant but it highlights that a major expansion of the site would have had to have occurred at the end of 2007. The Council considered the photo dated 14 May 2018 for the first time appeared to show waste activities on the compound site. There was acknowledgement that the earlier photos of 12 April 2015 and 10 September 2015 indicated stockpiled waste materials on the site.

60. Conclusions. The size of the yard in 2012 was very significantly larger to that in 2005 but even so the compound did not occupy all of the appeal site. There then followed the gradual expansion of the commercial operation over nearly all the defined area at the eastern end of the access road. The April 2015 image but more particularly the September 2015 image is the first indication of a possible waste activity. In the following years the yard appeared to change from being largely used for storage to use mainly for waste and recycling activities. In 2018 the developed area expanded and around mid-2018 operational works were carried out to form bunds along the northern boundary. Over the remaining period the scale of the waste activity significantly increased and storage significantly reduced.

Statutory declarations confirmed under affirmation at inquiry

61. MW recalled that he grazed his sheep at Bolney Park Farm through to 2011. After completion of the land reclamation work in 2007, he was fully aware of the PJ Brown operations on the site ('you could not miss the lorries'), which involved the use of large machinery described to him as crushers. When presented with aerial photographs MW thought the land looked like the 2005 image, although he remembered more of a hardstanding and it was more developed by the time he left. He recalled a crusher under the trees and a welfare unit (which was a converted container) but no other containers. He had no recollection of the land looking like the August 2012 aerial photograph. MW related the dates of 2007-2011 to the birth of his son and so the dates probably are correct. However, the evidence is not precise and is somewhat inconsistent and accordingly provides very little support for the appeal site being in a mixed waste and storage use between 2007 and 2011.
62. MR is a long serving employee of the company who has been responsible for the day to day maintenance of all the plant, machinery and HGV vehicles. MR confirmed the company have operated at the appeal site since 2007 after finishing the restoration works. In oral evidence MR stated the recycling operation started at the Bolney site in the summer of 2007 and referred to a crusher, a loader shovel and a screener being on site, although time to time they moved to different sites. MR confirmed he did not keep records of visits to sites and his job was to fix things. He occasionally went to site but was not involved in establishing the yard at Bolney. When presented the aerial photographs for the two 2012 dates MR agreed there appeared to be no waste recycling taking place on the land then. MR's evidence was not based on regular visits to the site over an extended time period. His knowledge was directed towards the type of machinery and the nature of the fault rather than their siting or use. MR's evidence does not provide the detail to support a material change of use of the appeal site to a mixed waste recycling and storage use in 2007 or any later date.
63. DF is General Manager of the company, whose role entails routing the lorries on a day to day basis. DF linked the development at Bolney to a notice in 2008 to close the Holmbush site and confirmed "the site has been in use as currently for a period far exceeding 10 years, since 2007". However, the aerial photographs demonstrate this statement cannot be accurate, not least because of the expansion of the compound area and the absence of large scale operational plant on the land in the earlier years. DF agreed in his oral evidence there were no despatch notes or records of numbers of lorries. He couldn't say how many HGV movements there were per day in the period

2008-2010, although the number would have been less than the current level of around 120 two way lorry movements a day. DF's evidence did not come across as being fully reliable.

64. The evidence of JL is covered across various sections of the reasoning.

Statutory declarations from employees, dated 19 and 21 August 2024

65. SC confirmed that operations at the Bolney site have been continuous since at least 2011, when the full changeover from the Holmbush facility commenced. MC confirmed Browns have been operating in the same form as now since 2012, when he was first assigned operator duties at the yard. Before then he had clear memories of the yard being used to store materials. The declarations do not describe the operation and generally lack detail and precision. JB confirmed he had undertaken work as a shovel driver and had observed and taken part in crushing and screening activities. The declaration lacked precision and omitted a key date in the final paragraph. PC confirmed Browns have been operating at the appeal site since around 2007 after finishing the reinstatement works. This declaration lacks detail and precision.

Statutory declarations from non-employees, August 2024

66. GP was aware of Browns using the yard for storage purposes since 2007 and actively recycling materials since at least 2010. However, his main interest was related to the adjacent farm where he rehearsed stunts. The declaration is unclear about when the site was last observed and various matters relating to the level of use and type of activities are uncertain.
67. CI's declaration includes a single very short paragraph on the use of the site, to the effect that Browns have been operating in their current form and scale since 2010. There is no detail on the expansion of the site and change in location of activities on the land and overall the declaration lacks precision.
68. CE states her awareness of the appellant operating from the site since at least 2010, the year she purchased adjoining land. No further substantive information is provided about the appeal site. The main observation made by MM is that throughout the period 2007 to 2012 she was fully aware of PJ Brown operations, including the use of crushing machinery in the site area.
69. Summary. The main points emerging from the statutory declarations are that reclamation works at Bolney Park Farm were completed in 2007, the appellant operated a yard at the eastern end of the access road from at least 2007 and the establishment of the business at Bolney was linked to the move from Holmbush. The detail on the type and extent of activities is very thin and there are inconsistencies in dates. Consequently, it is not possible from this evidence to conclude when the waste/recycling activity became a primary use and when a material change of use on the land to the alleged mixed use may have occurred.

Site visits

70. The Council submitted a set of Inspection reports and photographs related to site inspections carried out in February and March 2014, January and July 2015 and October 2018. The notes were written up very shortly after the visits and were not agreed with the other attendees, including the representative of PJ Brown. Nevertheless, the probability is that the notes provide a good record

of what was observed at the time because they were written up promptly after the event. The photographs not reproduced for the appeal probably related to the adjoining lands, which were the focus of the visits and as such they would have little relevance.

71. The first recorded visit was on 18 February 2014. The main purpose of the inspection, and that in 2015, was to monitor compliance with the 2012 planning permission for development on the land to the south of the access road, which allowed the importation of some 76,500 cubic metres of inert waste to create a bund along the A23. Nevertheless, observations on the appeal site (referred to as the hard core area) were included in the inspection report. The site was described as littered with old portable office accommodation, drainage pipes, fuel containers and yard skips. At the far end of the site was a considerable pile of construction and demolition waste, some of which extended out into the field. The PJ Brown representative thought but was not sure the material was for constructing tracks within the planning permission area. In conversation the PJ Brown representative was reported as saying the importing and processing of waste was continuing at the Holmbush site even though the operation there should have ceased.
72. Within the selected photographs the following points were highlighted by the Council – the screener stored behind a portacabin at the site entrance and the lack of any sign of waste processing. The March 2014 photographs also showed similar types of storage and piles of materials, with materials appearing to have been spread over parts of the surface of the site.
73. The site visit in March 2014 was followed up by an email to the District Planning Authority advising that the PJ Brown representative described the site as a construction compound used to store materials which 'come and go' as business dictated. The identified area was described by the officer as being used as a storage compound for PJ Brown's contracting business.
74. On a visit on 22 January 2015 stockpiles of materials were noted in the compound area, which were to be used for tracks within the development area to the south. The remaining items appeared to have not moved from the position seen in 2014. The site inspection photographs taken on 17 July 2015 show the same portacabin by the entrance, building materials, skips, containers and piles of waste materials. The appearance is of a site used for storage rather than processing of waste materials.
75. The site visit report for 8 October 2018 ranged over several alleged breaches of planning control and included notes on the compound area forming the appeal site. Various items of plant, empty skips and storage containers, a stockpile of crushed brick and another of crushed aggregate were reported. The PJ Brown representative advised that the crusher and screener previously stored on the site had been moved elsewhere and that a bund forming the northern boundary of the compound probably had been created from imported screened material. The site was described as a working yard and no waste processing was described. It was thought likely that the bund along the northern boundary (identified in relation to the ground (b) appeal) had been created from imported screened material.
76. Observations, supported by photographs, on the use of the appeal site by a County Council officer were recorded following a visit to Dan Tree Farm on 3 January 2019. On the land were screening plants, stockpiles of waste and

screened materials, containers and skips containing waste materials. The bund along the eastern boundary was topped with skips and nearby were pipes and other items. The description is consistent with a waste and storage use.

77. The County Council report setting out justification for the enforcement action taken in 2020 included a commentary of the site visits. The 2014 and 2015 site visits led to conclusions that the compound was used as a storage depot (a District matter) and no waste processing was evident. By the October 2018 visit the officer noted a considerable change in the intervening period with very little equipment and storage of plant evident but instead large stockpiles of materials.
78. The two main points to draw from this evidence are the County Council did not consider a waste processing use was taking place in the period before October 2018. This point has particular relevance because it was held in *Thurrock*⁸ a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. Secondly there was significant change in the activities and storage taking place on the site in October 2018 and January 2019 compared to the period in 2014 and 2015.

Additional documentary evidence

79. The waste return information provided to the Environment Agency dates from 2021. The data shows a significant increase in total tonnes of waste from 33,813 in 2021 to 76,383 in 2023 and confirms a waste recycling operation as a primary use on the site certainly from 2021. The first issue of a waste permit was in October 2020, which probably explains the absence of returns prior to this date.
80. The appellant stated the appeal site was used for storage and crushing of road planings, and storage of equipment involved in works undertaken by Carillion on the A23. The submitted invoices with dates in July, August, September, October 2012 were for deliveries of hardcore. The invoices dated March 2013 refer to removal of concrete and tarmac. The documents contain minimal information and reference payment to PJ Brown (Construction) Ltd, acknowledged by the appellant to be a different company. The documents are insufficient to show probable use of the appeal site in the engineering project or the operation of a mixed use on site. However, they need to read in conjunction with JL's evidence, who refers to the use of the yard as part of the A23 widening works 2012-2014, in part because it was local to the project. JL stated he was stationed at Bolney for night and day shifts. The compound supplied recycled materials and received road planings. The aerial photographs for this period are not entirely consistent with the narrative and raise doubts over the continuity and scale of any waste operation.
81. The PCN response attached evidence of use. The documents included information from companies (Pirtek and Stallion) providing services to PJ Brown. The Director of Pirtek confirmed they had been continuously carrying out onsite repairs of plant and auxiliary equipment for the last 10 years. Worksheets from 2014 to 2017 and a list of jobs 2014 to 2018 were submitted

⁸ *Thurrock BC v Secretary of State for the Environment Transport and the Regions and Holding* [2002] EWCA Civ 226

as supporting information. The information lacks precision, such as in the site address and gives little assistance on the use of the land.

82. The Stallion Plant Services letter is a very generalised and says nothing more than equipment and plant examinations were carried out for PJ Browns at Bolney Park Farm during 2008 to the present day. The Finning daily service reports for dates in 2004 add very little to understanding the use of the land.
83. The PCN response cited a statement by an officer of the Environment Agency who visited the site over the period 2013 to 2018. The quote referred to various pieces of plant and equipment stored in the area (including hand skips, storage tanks, pallets of brick, general construction equipment, old portacabins and a broken soil screening machine). No reference was made to waste processing being carried out. The response also stated the site was used for the storage and transfer of waste and earth in the development of the land to the south that included the construction of a bund along the A23.

Evidence of interested parties

84. Three residents gave evidence at the inquiry.
85. MH, who has lived on the other side of the valley since 2012, spoke of seeing and hearing new activities at the site occurring around 2018 and an intensification of activities thereafter. Excavators were seen piling up large quantities of materials and smoke from large bonfires was experienced in 2018 and the summer of 2019. Previously from 2014/15 some kind of storage was noticeable and the site was not unduly noisy. Photographs of the site between March 2022 to September 2024 show a waste use taking place across the main body of the site with large piles of materials (varying in composition, height and location), plant, equipment and vehicles.
86. RW has lived 700m or so north of the site since 2004. He explained they were not aware of noise from the direction of the site in 2014/2015, when they spent a lot of time outdoors. From about 2015 they were aware of fire, smoke and smell from the direction of the site which intensified in 2017/2018. From 2018 noise became the major concern and waste processing activities started on site. From 2018 to date the intensity of operations on site has increased, including at weekends and bank holidays.
87. SG confirmed his statutory declaration was done independently and that he had lived in his house since 2008. He also owned land near the appeal site. Up until 2018 noise from the A23 was the only background noise. During 2018 this changed and intrusive noise from the appeal site has continued all year round. Often materials are burnt resulting in smell and smoke.
88. Written representations on the appeal from a number of residents make similar points about disturbance and intrusion and how the activity on-site has changed since 2018. The appellant was categorical that no fires had taken place on the land. However, a planning officer visiting in January 2019 noted a skip on site had been used for the burning of waste.
89. The evidence of these residents regarding a change in activity in 2018, and the start of waste processing on a significant scale, is consistent with the Council's case and is supported by the evidence from aerial photographs. The photos, taken from the west, date from the period March 2022 to September 2024 and show the large stockpiles of materials, the plant and vehicles in use

and remnants of the storage use. The appearance of the site is very different compared to the picture ten years or so before in June 2013, and earlier.

Conclusions

90. In coming to the following conclusions, I have taken full account of the planning unit and the general features of a sui generis mixed use, where fluctuations may occur in the level of use of the component primary uses (the ebb and flow referred to by the appellant).
91. Drawing all the evidence together, in the period since October 2018 there is no doubt the waste use has been a primary use on the site, linked to the physical expansion of the compound and the grant of an environmental permit to carry out waste operations at Bolney Park Farm Recycling Centre. The permit has enabled the expansion of the recycling operation to reach the permitted 75,000 tonnes annual capacity. In turn this on-site activity of an industrial nature would have resulted in a noisy working environment and generated heavy vehicle traffic, in the order of up to 120 movements per day on the appellant's evidence. Storage, which was not functionally related to the waste use, remained present and was limited in extent. Nearly all the land was devoid of vegetation, the exception being the treed space close to the site entrance and the development made almost maximum use of the site. The ground levels had undergone alteration, notably with the formation of bunds to the northern and eastern boundaries. The character of the land use and its extent was very different compared to the position in late 2007 and into 2008.
92. The narrative by the appellant and their witnesses was generally consistent on such matters as the dates of the completion of the land reclamation, establishment of the yard, the commencement of the independent storage use shortly followed by the introduction of waste activity to give a mixed use, the closure of Holmbush and increase in intensity of the waste use to present day levels by 2012. There is limited documentary evidence to back up the sequence of events and provide detail to the occurrence and scale of the waste use. The descriptions and timing of the commencement of mixed use and its continued operation are not consistent with evidence from the aerial photographs and the site visits over the relevant period. The unsubstantiated claims that the waste use reached current levels by 2012 conflict with other sources of documented evidence and the experience of residents.
93. There may have been short periods of time when waste processing took place in the early days of site development. There is also the stated use of the site during the A23 improvement works. However, as a matter of fact and degree there is not the evidence to demonstrate the two primary uses were taking place as a mixed use until at least 2015, and more probably in 2018.
94. There are two particular areas which weigh strongly against the appellant's case. The planning unit has not been of a consistent size – the expansion was most clearly seen in the periods 2005 to 2012 and again 2015 to 2018. Secondly there is the lack of continuity of use and ability or reason to take enforcement action. I go back to the very relevant evidence from site visits and the conclusions of officers that no waste processing was taking place. The presence of recycling plant and equipment and piles of materials could reasonably be associated with storage and not an active waste recycling use.

95. Even if a material change of use took place in 2010, as referenced in BW's evidence, there is not the precise evidence to show the change predated 27 January 2010. In addition, continuity of use has not been demonstrated thereafter.
96. On the balance of probability the material change of use of the land to a mixed storage and waste use did not take place before 27 January 2010 and continue thereafter substantially uninterrupted for a period of 10 years. The mixed use has not become lawful through the passage of time. The conclusion would be the same even if the second bite provision did not apply and the relevant date was 28 February 2013.
97. The appeal on ground (d) in relation to the material change of use does not succeed.
98. The lawfulness of a storage use was raised by the appellant, prompted by the Council's enforcement authorisation report and the alleged description of the former use as storage, not agriculture. For storage to be the last lawful use of the planning unit a continuous period of 10 years would have to be demonstrated on the balance of probability. That has not been done. The evidence, which throughout has been directed at a mixed use, is not sufficiently precise to define an area with a lawful storage use.

Hardstanding

99. The laying and construction of hardstanding on the site is expressed in the allegation as a separate breach of planning control to the material change of use. The Reasons for issuing the notice state a four year time limit for taking action as opposed to the 10 year time limit given for the material change of use. Accordingly for the purposes of planning control the Council does not allege the hardstanding was integral to or facilitated the change of use. The Council confirmed the *Murfitt* principle is not relied on to secure its removal.
100. To be immune from enforcement action the appellant must show on the balance of probability that the works were substantially completed by 28 February 2019. The plan attached to the notice shows the extent of the alleged unauthorised hardstanding by outlining the area in blue. The defined area is somewhat irregular in shape and covers much of the main compound. Land along the western boundary is excluded.
101. In terms of the early establishment of the compound JL explained hardcore material from the recycling facility at Holmbush was taken to Bolney. He was tasked with using this material to create the hardstanding surface of the compound area. The hardstanding was completed relatively quickly in 2007 using hardcore material that was levelled out. Topsoil was taken off and aggregate applied. The surface was patched and maintained since. DR affirmed the hardstanding has been in situ since the agreement in 2007 that allowed Browns to establish a yard at Bolney. Specific to the ground (d) case on the hardstanding, the appellant relied primarily on photographic evidence to support their case, although without any detailed commentary on the images taken on site visits by officers in 2014, 2015 and 2019 and the sequence of aerial images.
102. In contrast, the Council believed the hardstanding necessary for the operation of the unauthorised waste use was not present in 2019 and was laid within 4

years of the notice being issued. Reference was made to photographs dated 2018 to support that opinion⁹.

103. The images from the March 2014 site visit show most of the site. The ground surface appeared to be covered by black road planings or aggregate. The series of photographs dated 22 January 2015 are mainly of stockpiles of materials and of containers and skips. Where the yard is exposed the surface material was light coloured, poorly drained and churned up by vehicles. The surface looked different to the covering of black road planings in 2014. The site visit photos taken on 3 January 2019 indicate a similar surface to 2015, with a muddy wet surface possibly with a hardcore base below. The series of aerial images provide little detail but do show the expansion of the yard northwards and eastward in the October 2018 and April 2020 images.
104. By comparison, the aerial photograph dated 2018 (no month) submitted by the Council appears to be similar to the 10 October 2018 aerial image. A compacted hardsurface looks to have been present up the boundaries of the compound, although piles of materials obscure the ground surface over most of the operational site. The site visit photo dated 8 October 2018 was directed north east across the site. The Council described "the land stripped bare but with no hardstanding present." The presence of construction and earth moving plant suggest that engineering work was taking place. Other relevant factors are the extent of the area clear of materials and storage and the similar appearance of the materials forming the compound surface and the bunds. The probability is the work related to the surfacing of the compound and perhaps the formation of the bunds.
105. Hardstanding generally means a hard surface for parking vehicles and in some cases storing materials or siting a container or portacabin. The construction and top surface material can vary. Repairs and maintenance to an existing hardstanding would not necessarily amount to development, depending on the scale and scope of the works. Neither party has explained in any detail their understanding of the term as applied to the appeal site or the nature of the work carried out, changes to ground levels or the materials used. A reference to such matters was the brief description of the initial work in 2007 that covered part of the blue outlined area.
106. Based on the balance of probability, the available evidence indicates a hardstanding was created using hardcore and aggregate materials when the yard was established. Around 2014/2015 the surface material may have been renewed. In early October 2018 work was undertaken that may have involved excavation/removal of materials and the laying of a new hardstanding over much of the site. The photographic evidence indicates the work was substantially completed within the month. There is no evidence to show subsequent works were carried out to the hardstanding.
107. In conclusion on the balance of probability the laying and construction of hardstanding (as shown outlined in blue on the notice plan) were substantially completed by 28 February 2019. The development is immune from enforcement action. The appeal on ground (d) succeeds in respect of the hardstanding. The notice will be corrected by the deletion of the operational development from the description of the breach of planning control.

⁹ Proof of evidence of AC paragraphs 9.4, 9.5 and 9.6

Appeal on ground (a), deemed planning application

108. This ground of appeal is seeking planning permission for the matters constituting the breach of planning control. As a result of the outcomes of the ground (b) and (d) appeals the development at issue is the material change of use of the site to a mixed waste and storage use comprising the importation, processing, storage and export of waste materials, and the storage of building materials, plant, machinery and containers. In assessing the acceptability of the mixed use the lawful hardstanding is a consideration.
109. The appellant indicated that if the ground (d) appeal was not successful a temporary planning permission for four years was sought in light of highway objections. This position was later amended and a permanent permission was thought appropriate. Above all the appellant was seeking finality one way or the other. My starting point is to assess whether a permanent permission should be granted for the development.
110. The main issues are:
- The effect of the development on the landscape and scenic beauty of the High Weald National Landscape (HWNL).
 - The effect on the safety and operation of the strategic highway network.
 - The need for the development, its contribution to the sustainable management of waste and the local economy and whether alternative suitable sites are available.
111. In assessing the main issues, consideration will be given to whether the use of planning conditions would adequately mitigate any identified harm. The National Planning Policy Framework (the Framework) states planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
112. The Council withdrew its objections on risk to land and water contamination and harm to adjacent ancient woodland and biodiversity.
113. The relevant development plan documents are the Mid Sussex District Plan 2014-2031 adopted March 2018 and the West Sussex Waste Local Plan 2014-2031 adopted April 2014 (the WLP). The reference to the Ansty, Staplefield and Brook Neighbourhood Plan in the reasons for issuing the notice was in error. The site is within the area covered by the Bolney Neighbourhood Plan but no policies were drawn to my attention by either party.

High Weald National Landscape

114. I have a duty in determining the application to further the statutory purposes of the National Landscape, namely conserving and enhancing the natural beauty of the area of outstanding natural beauty. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in the National Landscapes which have the highest status of protection in relation to these issues. For the purposes of applying national and development plan policy the material change to a mixed use is a major development, by reason of the characteristics of the use, the size of the site of around 1.25ha and the potential adverse impact on the designated area. The

Council and the appellant agreed the 'major' categorisation applied. Policy directs permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated the development is in the public interest.

115. The High Weald is an area of ancient countryside and is one of the best surviving medieval landscapes in north west Europe. The natural beauty of the High Weald is derived from the essentially rural and small-scale landscape character rich in wildlife and cultural features¹⁰. The rolling ridges and the valleys are covered by a patchwork of irregularly shaped fields and woods bounded by hedgerows, trees and woodlands. Centuries old routeways and sunken lanes allow access to the more remote areas. The dispersed historic settlement pattern and farmsteads display a strong vernacular architecture with use of traditional building materials. Tranquillity and a sense of timelessness survive and the dark skies are a valued quality and a core character component of the area's natural beauty. The erosion of rurality and tranquillity through urbanising development is a top 5 issue affecting the aesthetic and perceptual qualities of the High Weald.
116. The site is on elevated ground and the appellant acknowledges high quality landscape lies to the east, an undulating rural and predominantly agricultural landscape. Before development took place the land was towards the western end of a field, where the boundary vegetation and ancient woodland to the north (Seven Acre Hanger) were strong features. The A23 which traverses north-south through the western side of the HWNL, lies a short distance to the west of the site. The route is characterised by high volumes of traffic, noise and artificial lighting, the associated infrastructure and the nearby commercial development and London Road to the west, which is a sharp contrast to the valued characteristics of the HWNL.
117. Nevertheless, the operational site is separated from the A23 by some 220m and the intervening uses of land and the trees and vegetation reflect the rural scene. In my view the scale of the operation should not be assessed against the landscape detractors of the A23 corridor and land uses to the west. Since the establishment of a small yard around 2004, the developed area has expanded significantly to encroach onto agricultural land and to abut the trees on the western boundary. An indication of the evolution of the site is shown by aerial photographs over the period 2001 to 2018¹¹. The unlawful operation is not an accepted element within the landscape baseline condition, contrary to the view taken by the appellant. Having considered the differing judgements of the landscape witnesses, my view is the local landscape is of a high sensitivity, rather than the medium sensitivity assessed by the appellant.
118. The mixed use is of a very different character to the residential, agricultural and equestrian uses at the nearby properties Bolney Park Farm, Park Farm Cottage and Dan Tree Farm. The main compound does not lie within the developed A23 corridor and the access has made use of a farm road. The spoil heaps, large vehicles and plant, outdoor and container storage of construction materials and equipment and the portacabins used for site facilities are of a much larger scale and very different appearance to the characteristic domestic, human scale of the traditional settlement in the HWNL and the small mixed farming enterprises. The mixed use does not foster land-based

¹⁰ The High Weald AONB Management Plan 2024-2029 Statement of Significance page 16

¹¹ CD 3.9 Figure 1

economic activities and is not compatible with the local rural landscape character. Development has not protected or enhanced field patterns.

119. The landscape character impact at local level was assessed by the appellant as having a low to medium adverse impact (before mitigation). However, I agree with the Council that the significance of the impact is increased by the high sensitivity of the landscape.

Visual impact

120. The main views of the site are from the immediate surroundings, which is private land where in this case receptors are likely to be less sensitive. The landscape and visual impact assessment (LVIA) identified places where glimpses of operational activity, notably the working of the stockpiles, were possible but overall the site is visually well contained. The appeal site visit confirmed that the site and operation have a negligible visual impact from the identified viewpoints on public rights of way and residential properties to the south and east of the site. This is due largely to the topography as well as woodland and vegetation. To this extent the development does not impinge on people's perception of greenness and rurality and enjoyment of natural beauty. The impact of lighting on dark skies was not assessed, although planning conditions are proposed to limit hours of operation and illumination to before 1700 hours.
121. Interestingly the evidence from residents emphasised the increase in noise from the site from 2018, rather than visual intrusion.

Mitigation

122. The landscape strategy proposes new raised earthworks and native planting to be an enhanced buffer, primarily to the east of the site. The stated purposes of the proposals are to soften, screen and obscure the recycling operation in the few rare medium to long distance views in winter, to provide a buffer for the wider more remote and tranquil HWNL to the east and to enhance local biodiversity.
123. In the location of the proposed landscaping the existing ground slopes gently down towards the access road to the north. The earthworks would increase the height by up to 4m in places, significantly changing the topography and requiring the import/deposit of a lot of earth or spoil material. In the Council's estimate the landfill would extend over 1.2ha of farmland.
124. The change in local landform and the importation of materials and soils to do so, would not be consistent with actions identified in the HWNL Management Plan. In terms of regulation for planning purposes the works would be off-site, outside the defined Land in the enforcement notice and on land in a different ownership to the appellant. In these circumstances the proposed landscaping condition would not be reasonable or enforceable. I also agree with the Council that the scale of the engineering works would not fall within the scope of the deemed planning application and a separate planning application would be required. Therefore, no reliance can be placed on the landscape strategy and the appellant's assessment of 'not significant' impact after planting establishment (15 years) is not accepted.
125. The only fallback is the lawful hardstanding. The hard surface is not in keeping with the natural soils, fields and vegetation but the adverse effect on

local landscape character is small and the visual impact is very minor. The operational development does not change my assessments regarding the effects on landscape character and visual impact from the material change of use.

Conclusions

126. The development, which is not a small scale, fails to conserve and enhance the natural beauty of the HWNL and to pay sufficient regard to the area's character, local distinctiveness and sense of place. Accordingly, there is non-compliance with Policy DP16 and Policy W11. Support is not provided by Policy DP12 because of the failure to maintain landscape character. There also is conflict with Policy DP26 and Policy W12 because the development has taken place without adequate consideration of the need to achieve good design and sensitivity to the countryside. My consideration of need will inform the conclusion in respect of Policy W13, specific to waste proposals in Protected Landscapes.

Safety and operation of the strategic highway network

127. The A23 is an all-purpose trunk road that forms part of the strategic road network. The A23 also forms part of West Sussex's County strategic road and primary route networks. Adjacent to the site access, the A23 main carriageway is a Dual all-purpose three lane carriageway (DAP3) which has street lighting and is subject to the national speed limit. There is a lay-by to the north of the access. A DAP3 road is designed to accommodate high traffic volumes while providing access to both local and longer distance destinations.
128. Referring to the development plan, Policy DP21 requires a development proposal to protect the safety of road users and pedestrians. Policy W18(c)(iii) requires proposals for waste development to have a safe and adequate means of access to the highway network, such that vehicle movements associated with the development will not have an adverse impact on the safety of all road users. The Framework states that in assessing sites for development it should be ensured that safe and suitable access to the site can be achieved for all users. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.
129. Access to the mixed use development is via a priority junction with the A23 that operates as a left in/left out. The appellant stated the traffic generated by the development is 30 to 60 HGV arrivals per day (plus 30 to 60 departures). The access has existed for a number of years and probably dates back to when the A23 was improved. At that time the access was to serve a dwelling and farmland, expected to generate a low level of traffic. Its geometric layout predates and does not meet the current design standards outlined in the Design Manual for Roads and Bridges (DMRB), a document that embodies collective experience and is the result of research and practical experience. The current DMRB design document (CD 123 version 2.1.0) states that a priority junction should not be used on a dual three lane carriageway. A direct access¹² is also inappropriate for a DAP3 road. These principles are a

¹² CD 123 version 2.1.0 Terms and definitions. Direct access is a connection to an all-purpose trunk road providing access to a single field, a single dwelling, and a single use public utilities site or single use highway maintenance site, where access is needed for maintenance of that specific site only, where there would be less than 50 vehicle movements per week.

reasonable indicator that the development is not served by an appropriate means of access, given that the A23 is for high-speed, high-volume traffic.

130. The Transport Statement describes the existing site access primarily by an aerial photograph and provides no detailed appraisal of its layout, engineering standards or visibility. The access lacks typical safety features, which National Highways identified as appropriately designed merge and diverge tapers, traffic islands with associated hatched markings and potentially visibility splays. The access road is insufficiently wide enough to accommodate two-way movements that could lead to an exiting vehicle obstructing access for an incoming vehicle. The Council referred to the potential for rear end shunt accidents due to vehicles slowing to turn left and to conflict due to the slow entry speed of exiting vehicles joining the main carriageway. The appellant's transport witness disputed the existing access does not meet the standards given in DMRB but this was not a consistent position throughout their highway evidence. The appellant's final position is that the access does not technically comply with the current DMRB standards and emphasis was placed on the fact the junction is existing whereas DMRB addresses new junctions.
131. The safety record of the access has been investigated. In the five year period 1 July 2017 to 30 June 2022 a total of 3 Personal Injury Collisions (PIC) were recorded. None involved a vehicle using the junction and none of the incidents were identified as having a contributory factor related to the access. Over an extended period 2002-2022 there were nine PICs on the southbound carriageway of the A23 within 295m of the site access. There is no evidence to suggest any of the accidents were related to the operation of the site.
132. National Highways considered the data suggests the access has not posed a significant safety risk, despite not meeting DMRB standards, probably because of the current level of use. Having regard to the fact the access is pre-existing and mindful of policy in the Framework and Circular 1/2022¹³, National Highways considered an objection to the continued use of the access to serve the development would be unsustainable and decided on a conditions-led approach. National Highways is a statutory consultee and in exercising that function in the planning system they must have regard to the safety of road users¹⁴.
133. However, advice to National Highways did recognise that whilst the historical data suggested that access has not yet caused safety issues, it may pose a latent safety risk, particularly if the use of the access was to intensify. With the benefit of the evidence submitted for the ground (d) appeal, it is important to keep in mind that the use of the site probably has not generated consistently the same level of traffic movement over the years. The 2017-2022 period also partly coincided with COVID and significantly lower volumes of traffic on the A23. I am cautious about relying solely on the accident record. It does not follow that the access continues to be acceptable for a more intensive level of use by the development that requires planning permission and which in all probability generates a greater number of vehicles, most of which are HGVs, compared to the historic use. The accident record needs to be considered alongside additional evidence.

¹³ Department for Transport Circular 01/2022 Strategic road network and the delivery of sustainable development

¹⁴ Planning for the future – a guide to working with National Highways on planning matters October 2023.

134. The access has been subject to various reports and assessment in conjunction with development proposals on adjacent lands. A common theme is the substandard nature of the access and concern over the level of traffic movements that could be accommodated safely. In relation to the 2012 permission for an equine rehabilitation centre (ref. WSCC/077/11/BK) the then Highways Agency recommended conditions were attached to the permission to prevent vehicles, particularly slow moving horse boxes, from using the access to enter and leave the A23 Trunk Road to ensure the effectiveness and safety of the major route.
135. The appellant's Transport Statement dated August 2024 provides limited information and is very short on detail. Also, no details have been provided of a proposal to amend the junction to a standard priority junction or other improvements such as road marking or signage¹⁵.
136. In the absence of an acceptable Transport Assessment, National Highways requested that should I (as the Inspector) be minded to grant a temporary planning permission as sought by the appellant the permission should be subject to two conditions. The first condition requires submission and approval of an Operational Management Plan (to include consideration of traffic generation, proposed measures to monitor traffic flows, routing of vehicles). A second condition requires a restriction on the number of traffic movements generated by the development.
137. Significantly the advice is directed towards the grant of a temporary planning permission. The stated aim is to secure planning conditions to address the deficiencies identified and to allow the monitoring of traffic use. However, where a proposed development will generate significant amounts of movement the Framework requires the application to be supported by a vision-led transport statement or transport assessment so that the likely impacts of the proposal can be assessed and monitored. I am concerned about leaving deficiencies to be addressed until after a permission has been granted particularly where matters of highway safety are involved and where a significant length of time may elapse to secure approvals of proposals, as reflected in the timescales allowed in the appellant's proposed condition.
138. The National Highways condition to control the number of traffic movements is dependent on the forecast in the Operational Management Plan (the OMP) and hence the figure is uncertain prior to a grant of permission. The appellant indicated a daily maximum of 80 movements (40 in and 40 out). This proposal was not accompanied by an indication as to how traffic movements would be monitored (a matter for the OMP) or how this figure would affect the volume of materials and capacity of the site. Without this information the condition has not been shown to be reasonable and enforceable and the policy tests are not met.
139. Two additional conditions were proposed by the appellant whereby all vehicles associated with the use (i) shall be restricted to rigid vehicles that are no greater than 10m in length, and (ii) shall be restricted to 56mph by physical speed governor. However, in the absence of information on proposed monitoring arrangements, the first restriction would be difficult to enforce. The second could not reasonably apply to all vehicles and would be an unnecessary duplication of regulation.

¹⁵ Highways Statement of common ground dated 27 August 2024 box 7

140. The aim of the submitted Travel Plan is to maximise the accessibility of the site by alternative modes of transport to the private car. However, the rural location of the site remote from public transport, footways and cycleways, the components of the mixed use and the small number of people based on site severely limit the ability of a Travel Plan to promote a genuine choice of travel modes and limit the need to travel. A Travel Plan is not a measure to address the primary concerns about the substandard access and the daily number of HGV movements.

Conclusions

141. The site is well located in so far as it is just off the A23, which is part of the strategic road network. There is no concern about the impact the development would have on the capacity of the highway network. The primary consideration is highway safety, especially as the existing access with the A23 does not comply with national standards in DMRB.
142. The deemed planning application has not been supported by an adequate Transport Statement. This matter should be resolved before a permission, including for a temporary period, is granted. There is not the evidence to demonstrate that (i) safe and suitable access to the site can be achieved for all users, and (ii) any significant impacts from the development on highway safety can be cost effectively mitigated to an acceptable degree through a vision-led approach.
143. The development fails to comply with the applicable access requirements of Policy DP21 and Policy W18 and policy in the Framework.

Need for the development and alternative sites

144. There is no development plan policy specific to this mixed waste and storage use and all the evidence on need was focused on the waste/recycling component.
145. The policy requirement to demonstrate a need for the development relates to the justification for a site within the HWNL (the Framework paragraph 190 and Policy W13(c)). Of more general application to proposals on unallocated sites for the recycling of inert waste, Policy W1(c) requires a demonstration that there is a market need, consistent with the principle of self-sufficiency. This supports a key strategic objective of the WLP to maintain net self-sufficiency in managing the transfer, recycling, and treatment of waste generated within West Sussex. The WLP makes clear the onus is on the applicant to provide the information to demonstrate need, and which should consist of 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 within the plan or catchment area and the potential shortfall in capacity or market need that the proposal seeks to address¹⁶.
146. The operation carried out on site consists of the processing of construction and demolition waste to enable the export of recovered materials. An aggregate is produced suitable for use in construction. The appellant identified 13 projects between 2008 to 2022 related to housing and infrastructure, where it had supplied in excess of 200,000 tons of recycled aggregates in total. The annual returns confirm the small quantities of waste removed from

¹⁶ Waste Local Plan paragraph 6.2.10

site after processing. The facility is consistent with the objectives in the WLP to achieve a more sustainable approach to dealing with waste in the County, given the decline in the reliance on disposal to land and the aspiration to achieve 'zero waste to landfill' by 2031.

147. The appellant's evidence was directed primarily towards the availability of alternative sites for the appellant's operation and the actual records of waste processed at the site¹⁷. In summary, the appellant argued the site is operating to capacity (75,000 tpa), the Council has not demonstrated either the allocated sites in Policy W10 have capacity to take on this volume of waste or there are alternative sites available where the waste could be taken, and the Council has not identified an alternative site for the appellant's operation.
148. The appellant has not produced the evidence to adequately address the considerations identified in paragraph 190 or Policies W13(c) and W1(c). The operation at the site is not placed in a context and the annual returns were not accompanied by an explanation or commentary. The returns show the site capacity was reached and exceeded in 2023 (76,383 tpa) but there is not the evidence to show this capacity figure is a sustained trend. The amount of material processed was below capacity in 2021 (33,813 tpa) and 2022 (56,724) and the half year total for 2024 was 27,039 tonnes. Furthermore, with the appeal site in mixed use, there is no consideration how the storage component may affect the capacity to receive and process waste in the future.
149. The appellant stated their area of works is generally along the A23/M23 corridor from Brighton to London. The annual returns show the highest total of waste received came from West Sussex but there were also considerable amounts of waste from Surrey, East Sussex and Greater London, with a small proportion from Kent. The waste removed from site went mainly to Surrey and Greater London, with one return citing West Sussex.
150. This information suggests the waste operation is not fully in accordance with the self-sufficiency principle promoted in the WLP. Planning Practice Guidance explains there is no expectation that each planning authority should deal solely with its own waste to meet the self-sufficiency and proximity principles. However, the catchment appears to be wider than counties adjoining West Sussex and there is no evidence on waste facility capacities or shortfalls in these other authority areas.
151. To support their case, the Council relies on the annual monitoring reports (AMR), which assess how policies in the WLP are performing against their indicators, report on trends and review the effect of policies in practice. The 2022/23 AMR showed in terms of aggregate recycling there is 230,000tpa of 'headroom' capacity at 'operational' sites, taking into account existing capacity and estimated aggregate production. Construction Demolition and Excavation (CD&E) waste arisings were anticipated to be higher in 2031 than originally forecast. This was not considered a significant issue as previous monitoring has shown that sufficient sites for recycling and recovery have come forward to meet demand, for example on construction sites and as part of the restoration of mineral sites. In the period from 2013 to 2022/2023 the number of permissions granted for inert recycling (under Policy W4) totalled 16, an indicator suitable sites are found and are available for such operations. The omission of the appeal site from the list of CD&E sites is not surprising given

¹⁷ Inquiry Document 5

that the site does not have the benefit of planning permission or a confirmed lawful use.

152. The considerations related to need for the development and identified by the Framework includes national considerations and the impact of permitting or refusing the development upon the local economy. The Written Ministerial Statement on 12 December 2024 reaffirmed the Government's commitment to delivering 1.5 million new homes this Parliament and the scale of new infrastructure needed to support growth. Making full and effective use of previously developed land was identified as a means of ensuring building takes place in the right locations.
153. I would expect the effect of the planning reforms on the need for additional capacity and waste recycling sites in West Sussex would be a matter for consideration in the AMR. A high growth scenario was used in the 2022/2023 AMR when updating the anticipated CD&E and other waste streams in 2031 and the AMR concluded at that time the WLP has sufficient sites and flexibility to respond to any potential increase in arisings.
154. Referring to the appellant's stated involvement in projects related to housing and infrastructure, the business has contributed to enabling development but appellant's claim¹⁸ the operation of the appeal site is "a vital component" in the delivery of Government objectives is an over-statement. The reference to the expansion at Gatwick Airport is not supported by any timescale, commitment or known involvement by the firm in the project and as such this consideration does not have significant weight. Similarly, involvement in the Northern Arc project has not been confirmed. To conclude, the WMS is a factor favourable to the appellant's case but other matters are relevant in considering its effect on establishing a need for the waste/recycling use on the appeal site.
155. P J Brown (Civil Engineering) Ltd is described as a small business operating in the South East, with their main base of operations at Charlwood near Crawley in West Sussex. The business employs 120 employees in total, the recycling element was stated to employ some 60 people. The local economic effect of permitting or refusing the development is primarily for the appellant to demonstrate as they have the knowledge of their business, the numbers of people employed, the levels of economic investment and turnover, future business plans and so on. The claimed "significant impacts" is of a general and unquantified nature and is of little assistance to an assessment. The Council drew attention to the appellant's additional companies related to construction, engineering and haulage, which appear to have contributed more significantly to overall profits than the waste operation.

Alternative sites

156. The Council submitted that because there is no need for the waste site it is not necessary to consider alternatives. Nevertheless, the appellant's business is contributing to waste management and provides valuable employment. The availability of acceptable and suitable alternative sites is a relevant consideration.

¹⁸ Inquiry Document 12 paragraph 141

157. The appellant tried to secure a temporary concrete crushing and recycling facility at Kilmarnock Farm, Ifield, West Sussex but the proposal was dismissed on appeal in June 2023 for various environmental and highway reasons. The stated implication of that decision was that the appellant's base at Burlands Farm could not be relied on as an alternative, due to access constraints.
158. The appellant ruled out all operational sites within a 15 mile radius of the appeal site, on the basis they are run by their competitors and offer no capacity. Allocated sites in the WLP were considered unsuitable too, together with a number of other sites included within strategic housing and economic land availability assessments. Attention was drawn to constraints related to achieving water neutrality and access requirements. Nevertheless, as explained above, acceptable sites have come forward over the last 10 years or so. There is also merit in the Council's evidence that attention should be directed towards sites with complementary activities, such as landfill and existing mineral extraction sites, as provided for in Policy W4.

Other considerations

159. Policy W3 sets out criteria that proposals for built waste management facilities, on unallocated sites, must meet to be acceptable. The development cannot comply with this policy because the site is not in the Areas of Search along the coast and in the north and east of the County and it is not a small scale facility by reason of the capacity being well in excess of the guideline capacity of no more than 50,000 tpa.

Conclusions

160. The waste recycling component of the mixed use contributes to minimising waste and promoting resource efficiency. The business makes a positive contribution to the management of waste, provides a service to and supplies materials for a range of developments and overall assists the delivery of development.
161. The development does not perform so well when placed within the policy context and tested against the applicable policy criteria. In summary, the development is contrary to Policy W1(c) because a market need has not been demonstrated, consistent with the principle of net self-sufficiency. In addition, compliance with Policy W3(a)(iii) is not achieved because the operation is not a small-scale facility to serve a local need. The development fails to comply with Policy W4, inert waste recycling, because it fails to meet the locational criteria. The criteria for major waste development within a protected landscape are not met and on that basis Policy W13 states the development should not be permitted.

Other matters

162. The Council in the reasons for issuing the notice stated the use, siting and scale of the development causes harm to the adjacent ancient woodland and biodiversity. The Council later withdrew this objection.
163. The development over the years has encroached closer to the ancient woodland lying to the north. The waste/recycling operation has remained outside the 15m protection zone but storage on the northern boundary

appears to have encroached within this area¹⁹. The appellant in their statement of case did not dispute the storage use may fall within 15m of the ancient woodland. However, there is no evidence of harm being caused, whether by loss or deterioration of the habitat. With reference to the Framework paragraph 193(c) there are no grounds to refuse permission based on this consideration but the proximity of the storage use is of concern. Ensuring maintenance of an adequate buffer could be dealt with through a planning condition.

Planning balance and conclusion

164. The policy requirements derived from the development's location in the HWNL have not been met. The development fails to conserve and enhance the natural beauty of the HWNL. The exceptional circumstances and economic need have not been demonstrated to gain support from national and development plan policy for this major development. Even then, adverse impacts on landscape character would not be satisfactorily mitigated. There is conflict with Policy W13. In addition, the development is not supported by Policies DP12, DP16 and W11 that protect local distinctiveness. The good design sought by Policy DP26 and W12 is not achieved.
165. The development is served by an inadequate junction onto the A23, a strategic road which has fast moving and a high volume of traffic. The appellant has not demonstrated that the access is safe and suitable for the traffic generated by the development. Safety would be placed at significant risk without an approved Operational Management Plan in place. The access requirements of Policy DP21 and Policy W18 are not met.
166. The contribution of the waste recycling component of the mixed use to waste management is compatible with objectives to minimise waste and promote resource efficiency. The business offers employment and has a role in delivery of development. Looking at the broader County picture of waste management facilities, capacity and ability to respond to growth, a need for the appeal site has not been demonstrated. There is not support from Policies W1(c), W3(a)(iii) and W4. To date an acceptable, suitable alternative site has not been secured and so failure in this appeal could put jobs at risk.
167. The harmful impacts associated with the development have very substantial weight. The development is not justified by exceptional circumstances and when all matters are considered the mixed waste and storage use has not been shown to be in the public interest. The factors supporting the use are of insufficient weight to overcome the identified harms. The use of planning conditions would not satisfactorily mitigate the harm.
168. In conclusion, the development is not in accordance with the development plan as a whole. Material considerations, including relevant policies in the Framework, do not indicate a decision other than in accordance with the development plan.

Temporary planning permission

169. One of the circumstances where a temporary permission may be appropriate is where it is expected that the planning circumstances will change in a particular way at the end of that period.

¹⁹ CD8.40 Figure 6 Landscape designations plan and Inset A page 14

170. In the grounds of appeal dated 29 March 2023 a temporary permission was requested, related to the failure of the access to conform with the DMRB. A period of four years was proposed to allow the appellant time to explore other possibilities, including potential improvements to the site access on the A23 by provision of improved acceleration and deceleration lanes within the highway boundary. With reference to National Highways' Schedule of Engagement, no progress appears to have been made, nor has a departure from standards application been submitted by the appellant. There is little to suggest that at the end of a four year period circumstances on an improvement to the access would have changed.
171. A temporary permission would allow time for the appellant to find an alternative site for the operation and, importantly, safeguard employment. Weighed against this approach are the identified harms. There would be the prospect of the landscape harm being for a time limited period but the HWNL has the highest status of protection. The proposed remodelling and planting would involve substantial work and to require works on this scale for a temporary period would be unreasonable, even if they were acceptable and could be secured through the deemed planning application. No mitigation would be possible and the better integration of the operation into the landscape claimed by the appellant would not be achieved. Public safety is a fundamental responsibility and use of the access onto the A23, with the resultant risk to safety, for a temporary period is not acceptable.
172. The planning balance continues to weigh against the development on the basis of a temporary permission for a four year period.
173. In conclusion, the appeal on ground (a) fails.

Appeal on ground (f)

174. The issue is whether the requirements of the enforcement notice are excessive having regard to the purpose of the notice.
175. The notice aims to remedy the breaches of planning control in order to secure compliance with development plan and national policy. The notice alleges a mixed use and to be consistent with the breach (as corrected) it is the mixed use that should be required to cease. This correction also addresses the issue of a lawful storage use raised by the appellant.
176. I have concluded that it was too late to take enforcement action against the operational development, comprising the laying and construction of hardstanding. Therefore, the requirements for its removal and the disposal of resultant debris should be deleted. It follows that to require reinstatement of the land to its former condition and topography is excessive.
177. Case law has established an enforcement notice cannot take away legally permitted rights, any notice must be construed so as to retain any such legally permitted rights and when such rights are contained in statute it is not necessary to refer to them in the notice. Therefore, the appellant's request to include the right in section 57(4) of the 1990 Act to revert to the previous lawful use is not necessary.
178. The remaining relevant requirements will be expressed in a more compact form, as set out in the Decision below.

179. The appeal on ground (f) succeeds to this limited extent.

Appeal on ground (g)

180. The issue is whether the compliance periods are reasonable.

181. The appellant has asked for at least 24 months because no other premises are available and the implications for employees and the business would be serious.

182. Planning Practice Guidance explains that effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area, to maintain the integrity of the decision-making process and to help ensure that public acceptance of the decision-making process is maintained.

183. Within this context, a compliance period should not normally exceed one year. In this case the length of time necessary to carry out the remedial steps and the economic and human effects of ceasing the mixed use have to be balanced against the public interest, where the high level of protection given to the HWNL and the highway safety concerns are very relevant. During a compliance period the operation would not be subject to any controls by condition.

184. I conclude a compliance period of nine months is reasonable. The appeal on ground (g) succeeds to this extent.

Conclusion

185. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed planning application.

DECISION

186. It is directed that the enforcement notice be corrected by:

- a. In paragraph 2 the deletion of the words 'shown edged red' and the substitution of the words 'shown edged and hatched black'.
- b. The deletion of the content of paragraph 3 and the substitution of:
Without planning permission, the material change of use of the Land to a mixed waste and storage use comprising the importation, processing, storage and export of waste materials, and the storage of building materials, plant, machinery and containers (the Unauthorised Development).
- c. The substitution of the plan attached to this Decision for the plan attached to the notice.
- d. The deletion of paragraph 4.2 and the renumbering of the subsequent paragraphs in section 4.

187. It is directed that the enforcement notice is corrected and varied in paragraph 5 by the deletion of requirements 5.1 to 5.12 inclusive and the substitution of:

- i. Cease the use of the Land for a mixed waste and storage use, comprising the importation, processing, storage and export of waste

materials, and the storage of building materials, plant, machinery and containers.

- ii. Disconnect from all services (water, electricity, foul sewerage) the portacabin in the approximate position marked 'A' on the Plan and remove the portacabin from the Land.
- iii. Remove from the Land the containers sited in the approximate position marked 'B' on the Plan.
- iv. Remove from the Land all plant, machinery, equipment, containers, vehicles, stored materials and goods associated with the Unauthorised Development, including all imported and stored waste materials.

188. It is directed the enforcement notice is varied in paragraph 6 by the deletion of paragraphs 6.1, 6.2, 6.3 and 6.4 and the substitution of the wording 'The time for compliance with requirements 5(i), 5(ii), 5(iii) and 5(iv) is 9 (nine) months after this Notice takes effect.'

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Jonathan Clay	Instructed by Brian Woods
Witnesses called	
Mark Wickens	Sheep farmer
Mark Robinson	Plant and Transport Manager PJ Brown (Civil Engineering) Ltd
Dave Fleming	General Manager at PJ Brown (Civil Engineering) Ltd
Dane Rawlins	Land owner
Peter Brown	Director of PJ Brown (Civil Engineering) Ltd
James Legate	General Foreman at PJ Brown (Civil Engineering) Ltd
Brian Woods BA MRTPI	Managing Director WS Planning & Architecture
Taon Chau BEng Hons MSc	Director of Cora IHT Ltd
Nick Harper BA(Hons) DipLA(Hons) CMLI	Partner of Harper Landscape Architecture Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Anjoli Foster	Instructed by the Solicitor to Mid Sussex District Council
Witnesses called	
Andrew Clarke BSc(Econ) PGDip	Senior Planning Officer, Mid Sussex District Council
Andrew Sierakowski BSc Hons MSc GDL LLM MRTPI	Acting County Planning Manager, West Sussex County Council
David Ellis BA DipLArch, DipUD(Dist) MIEEnvSci CMLI	WSP Regional Director for Landscape & Urban Design
Rupert Lyons BSc MSc	Director of Transport Planning Associates Limited

INTERESTED PARTIES:

Mr Michael Hurley	Resident
Robert Wild	Resident
Stephen Gatley	Resident

DOCUMENTS submitted at the inquiry

- 1 Statutory Declaration by Michael Hurley
- 2 Statutory Declaration by Robert Wild
- 3 Statutory Declaration by Stephen Gatley
- 4 Representation submitted by Calibro
- 5 EA permit Waste Returns
- 6 Opening statement of behalf of the local planning authority
- 7 Highways Statement of Common Ground
- 8 Letter from National Highways dated 12 February 2024
- 9 Appellant's list of planning conditions
- 10 Email re conditions dated 21 October 2024 with Appeal Decision attached
- 11 Closing statement of the Councils
- 12 Closing submissions on behalf of the Appellant



Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 31 March 2025

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Reference: APP/D3830/C/23/3319435

The Plan is inserted on the following page.

