

Appellant's comments on the Council's Statement in relation to appeal ground (c) and ground [f]

Bournewood Sand and Gravel Ltd

Change of use of land from agriculture to the deposit of waste

Town and Country Planning Act 1990

**Appeals by Bournewood Sand and Gravel Ltd at Lower Hockenden Farm, Hockenden Lane, Swanley
BR8 7QH**

Appeal reference 33112256

4 August 2023

1.0 The Appellant sets out here its response to the Council's comments on the ground (f) and (c) appeal. For ease of reference, the Council's response has been set out (inset), followed by the Appellant's comments (as appropriate). In what follows, the failure to comment on a point should not be taken as acceptance of the same.

1. The comments contained within this document are made specifically in response to the grounds (c) and (f) appeals set out within the appellant's Statement of Case dated 16 May 2023 ("the appellant's Statement"). This statement is to be considered alongside the Council's previous response dated June 2023 to the appellant's Statement concerning the ground (b) appeal. Following the appellant's confirmation of additional grounds of appeal (i.e., grounds (c) and (f)), the Council was invited by the Planning Inspectorate to submit further comments in respect of those grounds. Those grounds are considered below.

Ground (c) appeal – that legally, that what is alleged in the Enforcement Notice is not a breach of planning control

2. As set out in the Council's response of June 2023, the appellant had previously stated in its grounds of appeal that the material the subject of the Enforcement Notice amounted to topsoil used to "conserve soil moisture, moderate soil temperature and control growth of weeds..." which was the subject of Environment Agency exemption. That the appellant now also wishes to rely on ground (c) represents a step-change in its approach, having now acknowledged the fact that the site does contain waste material, and going on at para 5.13 to provide a breakdown of materials derived from screening operations which it says would be used for farming. This includes materials it defines as "hardcore" and "clean hardcore".

- 1.1 The quotation used is selective and as a result is misleading. The Appellant stated in their original Statement of Case letter dated 30th November, in a discrete section with the title "Agriculture" that *"The farmer on the land is seeking to improve the quality of the soil. This has required the movement of topsoil across the site. In addition, the farmer has an exemption from the Environment Agency to spread mulch across the land to conserve soil moisture, moderate soil temperature and control the growth of weeds. The mulch is simply wood cuts from the site itself and does not involve any importation of material onto site"* (see last paragraph of p.1, emphasis added). The Appellant's previous planning consultant was clearly not arguing that all the material on site and in the bunds were wood cuts and topsoil. These statements are clearly intended to relate to the material which is alleged to have been deposited in the western field. Furthermore, in the Appellant's original Statement of Case, (see bottom of page 1 under the heading "Source of Material") it says that, to the Appellant's knowledge *"...the only material that has been placed on the land is derived from the wider farm holding. This includes earth, manure, and woodchip from various part of the farmland boundaries."* (emphasis added).
- 1.2 The Appellant's Inquiry Statement of Case at paragraph 1.4 makes clear that it *"updates and replaces the Appellant's previous Statement of Case"*. This is because a different planning consultant was engaged who has professional views independent of the previous consultant. However, the approaches between the two Statements of Case (including the facts upon which they rely) are not inconsistent. The current Inquiry Statement of Case merely adds detail and clarification of issues already raised, to assist the Council and the Inquiry in more fully understanding the Appellant's case.
- 1.3 The Council also states that the Appellant has *"now acknowledged that the site does contain waste material."* while appearing to refer to material submitted by the Council (rather than the Appellant) in June 2023, as providing the evidence for this (namely, the Council's Response to the Appellant's Statement of Case dated 16 May 2023). The Appellant assumes this "acknowledgement" refers to the Council's statement in that document at paragraph 8 which says (emphasis added): *"The appellant goes on to make a contingent argument later at para 5.13 that "even if the Inspector*

were to find that these materials are “waste”, the works would still be permitted under Part 6 as they comply with all the conditions in A2(1), and specifically part (c) that the hardcore is all site derived.”” and then concluding that the Appellant was “thereby accepting that the material on site is waste.” However, the Appellant was not accepting that any of the material on site is waste in making that statement, but simply accounting for the contingency that the Inspector might come to a different view, and making the case that if they did, it would not make any material difference because the bunds are Permitted Development.

3. Notwithstanding that the Council maintains its position that the appeal site has been subject to a material change of use from agriculture to the deposit of waste, it will nonetheless address the ground (c) argument now being advanced by the appellant: namely that the materials placed on the land comprise security bunds which form a means of enclosure and constitute permitted development.

1.4 The Appellant’s Inquiry Statement of Case relied on grounds (b) and (f). There was significant ambiguity in what the Council were alleging to be “waste” (and hence what was required to be removed from the site) by the Enforcement Notice, and the Appellant sought to clarify this with the Council since at least 4 April 2023 (including 14 separate attempts to start a constructive dialogue between 4 April 2023 and 19 April 2023), prior to preparing its Inquiry Statement of Case. The Council’s lack of willingness to engage made determining the issues in dispute, and precise grounds of appeal required to address them difficult, and required assumptions to be made. The Council eventually provided the clarification required in an email dated 7 June 2023, but this was too late to consider in the Appellant’s Inquiry Statement of Case, which had to be submitted by 16 May 2023. The Council stated in their response to the Appellant’s Inquiry Statement of Case (paragraph 8) “As to whether the development in question is permitted development, the Council will not address this point in the absence of a ground (c).”, and so the Appellant requested ground (c) be added in order to allow the Council to do this. No updates or amendments were required to the Inquiry Statement of Case submitted by the Appellant, apart from the introduction of the ground (c) to respond to the Council’s contention that without this ground, it could not address the Appellant’s arguments in respect of permitted development rights.

Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO): The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure

4. *As a starting point, it is necessary to consider the provisions of Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Given that the alleged bunds do not form a gate, fence or wall, this case must turn on whether, as a matter of fact and degree, these can be considered to comprise a means of enclosure. The question of what constitutes an enclosure has been the subject of court judgments and other appeal decisions which the Council will submit in its evidence.*

5. *The appellant claims that work on the alleged bunds was stopped due to the service of the Enforcement Notice by the Council. As previously outlined by the Council in its June 2023 response, at no point prior to the appellant’s Statement of 16 May 2023 was it ever suggested that the material on the land constituted security bunds. Irrespective, the material on the site is not considered to resemble a means of enclosure; nor does it bear any resemblance to the engineering operations denoted on drawing numbers BDG-02 and BSG-03 which accompany the appellant’s Statement. As the Council has previously stated, given the coverage, composition and appearance of the material on site, the Council does not accept that it amounts to a security bund.*

6. *Even if were to be accepted by the Inspector that the material on site does constitute part of an on-going engineering operation being undertaken in accordance with drawing numbers BDG-02 and BSG-03, for reasons outlined below the Council does not consider that this would amount to permitted development. It appears that the appellant is seeking*

to introduce a ground (a) appeal by the back door.

7. Even if the appellant's claim that all the material on the land is site-derived is true, it does not make any sense that it would wish to protect the farm in this location with the alleged/proposed bunds. As the Council has previously pointed out, the land immediately to the north of the appeal site which is actively farmed contains timber post and rail fencing which is typical of the sort of enclosure to be found in agricultural settings. It appears that the appellant has now simply introduced a new argument *ex post facto* to justify the waste deposits on the land – and in order to identify a new use for this material, rather than pay for its proper disposal. The appellant's contention regarding the need for such an enclosure appears far-fetched and lacks any credibility. Furthermore, the distribution of the waste deposits across the site further suggests that there was never any intention at the outset for this material to be used as an enclosure.

8. Accepting that an "other means of enclosure" must have some similarity with gates, walls or fences (concept of *eiusdem generis*), it must be a matter of fact and degree as to whether a bund falls within the GPDO definition, including whether it does actually function as an enclosure. As opposed to a fence or wall, which is essentially a narrow linear structure, drawing numbers BDG- 02 and BSG-03 show a structure 5.25m wide and up to 1.9m high which would extend to approximately 1100m along part of the eastern, southern and western site boundaries. It would also contain a gap along its southern side adjacent to a public footpath.

9. In any event, what was present when the Enforcement Notice was served did not comply with paragraph A.1(b) as it exceeded 2m above ground level. Reducing the height to below 2 m in the future could only be achieved through significant ground works, which would not be covered by this permitted development right.

10. Given that the alleged/proposed bund would not replace an existing means of enclosure or enclose active farmland, nor that it would actually enclose any land given its fragmented course, it is unclear what exactly is being enclosed. That the appellant would seek to erect such a complex "means of enclosure" rather than simply rely on existing methods of enclosure indicates that the primary function of the alleged/proposed bund would be a means of depositing the waste on the site. As a matter of fact, what has occurred is not the construction of a means of enclosure as set out in the GPDO.

11. The effectiveness of the alleged/proposed bund within the appeal site also appears to be subject to conflicting opinion between the appellant and the tenant farmer, Robin Moxin. Mr Moxin asserts that the whole farm "was blighted by anti-social behaviour [and that] this has now been narrowed down to the top field on the southern boundary" (presumably, the area of land south of the post and rail fencing): the implication being that the bund has been completed. In contrast, the appellant's Statement states that the bund is incomplete and that anti-social behaviour persists. Reference is also made to a meeting with various public bodies on 12 April 2023 where the matter of persisting anti-social behaviour was discussed.

12. It is further noted that the red-edged line on drawing number BSG-01 denoting the extent of the agricultural unit does not include the full extent of the area of land subject to the Enforcement Notice. However, the extent of the proposed bund denoted on drawing number BSG-02 includes land outside the denoted agricultural unit. The basis for this inconsistency is unclear.

13. In summary, the appellant has failed to demonstrate that the waste material on site constitutes a gate, fence, wall or other means of enclosure.

- 1.5 In respect of paragraph 5, the Appellant will set out evidence in a Proof of Evidence to show why in planning terms the bunds do form a means of enclosure when finished, and in the context of existing fencing and natural topographical features on the site.
- 1.6 As to the point at paragraph 7, the Appellant is engaged in active communication with Bromley in respect of resolving the ongoing issue of antisocial behaviour, and there is dialogue with Bromley

dating from at least 2018 (prior to the erection of either the new fencing, or the security bunds). A full copy of the 2018 email chain will be referred to in evidence (as required), but it is hoped this fact can be agreed in the Statement of Common Ground. The email correspondence with Bromley Council provided written confirmation that the erection of security bunding to resolve issues of trespass at the farm was being considered from at least that time, and was indeed actively supported as a solution by the Council. The Appellant has continued to hold regular ongoing meetings with Council officers, the local police force, and others.

- 1.7 Furthermore, the Appellant's previous planning consultant did refer in their comments on Bromley's appeal statement (dated 6th March 2023) to the material, stating it is *"derived from within the farm holding itself, has been reused across the farm **to improve security around the perimeter and to manage soil quality...**"* (emphasis added (see fourth paragraph of page 2, immediately before the heading "Questionnaire"). The Appellant also made numerous references in its original Statement of Case and in its comments on the Council's Statements, to the antisocial behaviour and the objective of addressing this being a key driver in respect of the security bund construction. For example, in paragraph 1 of the 6th March letter *"...the Appellant is working to protect the living conditions and environment of local residents from the illegal invasion of motorbikes, quadbikes, and other motorized vehicles stolen or otherwise on their farmland. It should not be overlooked that said trespassers have caused various injuries and a fatality in recent years and therefore pose a genuine risk to human health"*. Paragraph 3 of the 6th March letter responding to the Council's Statement of Case continues *"The Appellant has worked tirelessly to try and eradicate the harassment, noise and pollution caused by the trespassers. This is in accordance with Policy 37 (General Design of Development) which states that security and crime prevention measures should be included in the design and layout of buildings and public areas"*.
- 1.8 Furthermore, although the Appellant's previous planning consultant did not expressly refer to the security bunds as "security bunds" in previous appeal submissions, it is clearly implied that they are referring to the security bunds, since this is predominantly what the enforcement notice requires to be removed, and the consultant refers to them in the context of measures to improve security. Their reference to policy 37 as being relevant to their case, suggests they are considering an engineered structure, which serves a function related to *"security and crime prevention"*. They also refer in the penultimate paragraph of their Statement of Case to the fact that *"the operations which have taken place within the site are agricultural in nature, **or are in response to antisocial behaviour**, which the Appellant is working positively with the Council and local Police to resolve."* (emphasis added).
- 1.9 The post and rail fencing on the majority of the farm is fairly effective, because the overall problem with trespass is less severe in these areas. Nevertheless, the fencing is still cut and damaged. The tenant farmer refers to *"numerous occurrences of entire lengths of prestressed/tensioned wire having been cut and fence posts/fence wire having been uprooted and stolen or dragged across fields"*. The Appellant will also provide photographic evidence of damage to the fencing. In the section of land contained by the security bunding, the problem has been much more severe. This parcel of land is adjacent to the underpass and has other access points from Swanley, and has been the focus of the worst historic trespass problems. As a result, the Appellant will argue that fencing alone as used on other parts of the farm would not be effective.
- 1.10 At paragraph 11, the Council allege that *"The effectiveness of the alleged/proposed bund within the appeal site also appears to be subject to conflicting opinion between the appellant and the tenant farmer"*. This uses a selective quotation from the tenant farmer which states that the whole farm *"was blighted by anti-social behaviour [and that] this has now been narrowed down to the top field on the southern boundary"*. Apparently on this basis, the Council state there is an *"implication"* that the tenant farmer is saying the bunding is complete, and from that, the Council attempts to draw

a contrast with the Appellant's position that *"In contrast, the appellant's Statement states that the bund is incomplete and that anti-social behaviour persists."* However, this paragraph selectively quotes from and misrepresents the tenant farmer's statement (which is contained in Appendix C of the Appellant's Inquiry Statement of Case) in order to create a purported difference of opinion which simply does not exist if the full text is read.

- 1.11 What Mr Moxin actually says in respect of trespass is *"The whole farm was blighted by anti-social behaviour however this has now been narrowed down to the top field on the southern boundary. The fencing and bunding has had a huge impact in reducing the trespassing and intimidation. **The problem persists but in a much-reduced scale.**"* (emphasis added). This is entirely consistent with the Appellant's statements that anti-social behaviour has both been a historic problem, and that trespass still occurs.
- 1.12 What Mr Moxin actually says in respect of the effectiveness of the bunds relative to the fencing is that *"Although the fence has been effective to a degree, I have found that the placement of the bunding has had a larger impact. It is more difficult for trespassers to gain access to the farm across the bunded area."* At no point does he *"imply"*, as alleged by the Council, that the bunds are complete for either security or for planning purposes, he just gives his opinion on the current effectiveness of the bunds relative to the fencing as they stand now.
- 1.13 It is also noted that the Appellant included Mr Moxin on their appeal form as an *"other party that may wish to be represented at the Inquiry."* The Council have wrongly listed him as a witness for the Appellant on their appeal form, and then estimated a period of 1.5 hours for his cross-examination. As is clear from the Appellant's form, its current intention for its Inquiry witnesses is that they will be Adrian Lynham, and a representative of Bournewood Sand & Gravel. The Appellant is not aware at this point whether Mr Moxin will even attend the Inquiry, and that if he does, whether he will want to give any evidence. There is certainly no current intention to call him as a witness on behalf of the Appellant.
- 1.14 In respect of the comments at paragraph 12 in relation to plan BSG-01, this was a typographical error with the boundary shown in red, which has now been corrected and as a result is now consistent with plan BSG-02. The Appellant apologises for this oversight, and has attached a revised and correct version as an appendix to these comments.

Class A, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO): The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of— (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit

14. At paragraph 5.11 the appellant's Statement alternatively seeks to rely upon part (b) of Class A of Schedule 2 of the GPDO if the Inspector were to find that the materials are waste. The appellant has not provided any explanation of how erection of the bunds is reasonably necessary for the purposes of agriculture within that unit. The Council does not consider security bunds are reasonably necessary for the purposes of agriculture.

15. In any event, it is important to note that Condition A.2(2) of Class A of Schedule 2 of the GPDO requires that development consisting of (among other things): (a) the erection, extension or alteration of a building; (b) the formation or alteration of a private way; and (c) the carrying out of excavations or the deposit of waste material (where the relevant area, as defined in paragraph D.1(4) of this Part, exceeds 0.5 hectares) will require an application to the local planning authority *"for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be."* No such application has been

received nor granted by the local planning authority. As for the email referenced at paragraph 2.7 of the appellant's Statement (a full email chain has not been provided) this appears to be unrelated to the appeal site, and, in any event, the response presented by the appellant and dated October 2018 did not derive from the LPA.

1.15 The works being undertaken are an engineering operation to construct security bunds which are reasonably necessary for the purposes of agriculture. The land simply cannot be farmed if it is not substantially secure. The bunds do not contain waste for the reasons previously set out in the Appellant's Inquiry Statement of Case. The Appellant argues that it is therefore Permitted Development on this basis. However, the Appellant's fall back position, were the Inspector not to agree with them (the ground f/c appeal), is that even if the bunds contain, or are waste, they are still Permitted Development on the basis the bunds as completed would not be a "deposit of waste", but an engineered structure that would have been constructed from site derived waste materials. Whether or not the structure has been constructed from waste materials, the erection of the bunds would still constitute an engineering operation and therefore the provisions set out above by the Council in respect of Condition A.2(2) and Prior Notification would not apply in either circumstance.

1.16 Furthermore, although the Appellant contends that they form a means of enclosure, in this context the security bunds would not then need to form a "means of enclosure" within the terms of Permitted Development rights. In planning terms, the works can be considered engineering operations to erect structures reasonably necessary for the purposes of agriculture, and which therefore would not be subject to limits on heights or the materials they are constructed from, provided (as is the case) that the materials are site derived from the farm.

16. In paragraphs 5.12 to 5.14 the appellant discusses future plans, none of which are relevant for this appeal.

1.17 The appellant will argue that the security bunds must be considered in terms of the intended completed form, rather than assessed at a point when part completed.

17. Whilst the appellant's Statement at paragraph 2.5 suggests that the waste material on the site derives from 10km of fencing and associated earth works undertaken on the land "for the protection and management of livestock, etc" the location of which is shown on drawing number BSG-01, it goes on to say at paragraph 2.6 that this material was used in the creation of new security bunds. For reasons outlined earlier in this statement in respect of the provisions of Class A, Part 2, Schedule 2 of the GPDO such "engineering operations" (if they are so defined by the appellant) do not constitute permitted development, and it follows that these works cannot be deemed reasonably necessary for the purposes of agriculture.

18. The appellant's Statement fails to satisfactorily account for the origin of the waste material on the site, and the assertion that this material derives from residual fencing material seems improbable; nor has the appellant's Statement demonstrated changes in ground level on the site which it says has resulted from the erection of 10km of fencing. It fails to account for all the sundry materials and changes in land levels and volumes identified by the Atkins Report (included at Appendix 9 of the Council's Statement of Case). In short, the appellant's Statement fails to provide any evidence of the waste material being site derived. The Council considers that the waste material on the site has been imported from outside the site and it will present evidence to support this assertion in its evidence.

19. In summary, in attempting to account for the waste material on the appeal site the appellant has failed to demonstrate any excavation or engineering operations on the site which might be considered reasonably necessary for the purposes of agriculture within that unit.

1.18 The Appellant will set out their evidence for the origin of the material in a Proof of Evidence. This

evidence will include contemporaneous photographs and invoices for the fencing works.

Ground (f) appeal – that the steps required by the Enforcement Notice are excessive

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case, the requirements of the Enforcement Notice are the cessation of further deposits of waste on the land; the cessation of the use of the land for the deposit of waste and removal of all waste material from the land (within 12 months); and the restoration of the land to its condition before the breach of planning control took place (within 18 months).

21. The appellant's Statement presents a "fall-back" position at paragraphs 5.16–5.20. The appellant's arguments presented under ground (f) are muddled and, at best, appear to be a further attempt to present a ground (a) appeal by the back door, as well as a re-run of the arguments presented under ground (c). The appellant provides no practical arguments in support of its assertion that the requirements of the Enforcement Notice are excessive, nor does it suggest alternative "lesser steps" which would address the requirements of the Enforcement Notice.

- 1.19 At the time the Appellant's Inquiry Statement of Case was submitted, for the reasons stated above in paragraph 1.4, the appeal grounds were (b) and (g). The Appellant does not "re-run" any arguments presented under ground (c), because (c) was not one of the grounds at the time the Inquiry Statement of Case was written. Furthermore, the Council did not confirm, until well after the Appellant's Inquiry Statement of Case had to be submitted, what steps it considered the Appellant was required to take to comply with the Notice. As a result, that made it impossible for the Appellant to set out precisely what lesser steps they considered would be necessary to address the requirements of the Enforcement Notice. These will now be set out in a Proof of Evidence.

22. Whilst at paragraph 4.3 the appellant's Statement claims that it is "*unclear which precise materials on the land the Council allege are waste*", as already highlighted the appellant seeks to suggest that the material is site derived (arising from the erection of fencing), that is comprises security bunds, and it goes on to provide a breakdown of materials derived from screening operations, including materials it defines as "hardcore" and "clean hardcore". Accordingly, it is submitted that the appellant must have known exactly what has been deposited on the land – and it would be implausible to suggest otherwise. This demonstrates further inconsistencies in the appellant's Statement.

- 1.20 Paragraph 22 misrepresents paragraph 4.3 of the Appellant's Inquiry Statement of Case in that they were "*unclear which precise materials on the land the Council allege are waste*", and which was a statement correct at the time the Appellant's Inquiry Statement of Case was written, for reasons previously set out.

- 1.21 The full text of paragraph 4.3 reads:

"The original appeal was made on Ground (b). However, despite further attempts to obtain clarification from the Local Planning Authority, it remains unclear which precise materials on the land the Council allege are waste, and therefore exactly what is required to be removed from the area enforced against. This is therefore raised as a further issue."

- 1.22 The Appellant's Inquiry Statement of Case then went on to provide an example of why that was the case in paragraph 4.4:

"It is the Appellant's understanding that the Council agree that soils on the land are not waste, on the basis that the soils are not referred to in the Enforcement Notice itself, nor are they referred to

in paragraph 5.4 of the Council's Statement of Case which lists materials on the land which, it is assumed, are considered to be waste. Finally, soils are not referred to in the Atkins Site Walkover report which identifies the materials on the land that are alleged to be waste and led to the Notice being served. Furthermore, paragraph 5.9 of the Council's Statement of Case appears to accept that the Council intends any movement of site derived soils to fall outside the definition of waste in respect of the scope of the Notice."

- 1.23 And finally in paragraph 4.5, the Appellant then set out the attempts it had made to try to clarify the uncertainty surrounding this with the Council.

"As previously mentioned, the Appellant has made significant efforts to engage in discussion with the Council to clarify these matters and to clarify what would constitute compliance with the Enforcement Notice, but has to date not received co-operation."

- 1.24 When read in its proper context, to reframe that text as suggesting that the Appellant was arguing they did not know what had been deposited on the land, then effectively accusing them of lying about that, and then stating in conclusion that it is an illustration of *"inconsistencies in the appellant's Statement."* is clearly erroneous.

23. In the Council's opinion, there are no lesser steps available which would address the serious breach of planning control which has occurred and the appellant hasn't specified any. The Council considers that it is expedient that all of the waste material is removed from the site. It does not consider that the rearrangement of the waste material in the form of bunds would address the purpose of the Enforcement Notice.

24. The Council appends an email sent to the appellant's agent on 7 June 2023 responding to his proposed arrangements to address the requirements of the Enforcement Notice. As is evident, the Council does not regard these steps as satisfactory.

- 1.25 The Council have provided their email response to a Without Prejudice letter sent by the Appellant, in which the Appellant set out a potential solution to resolve the issues, in an attempt to try to avoid either party (and PINS) spending time and resources in pursuing a contested appeal, if an acceptable resolution could be agreed. The Council's inclusion of the email reply, without the context of the letter it was responding to, and the Council's repeated reference to "waste" in this reply, is highly misleading, unhelpful to the appeal process, and runs contrary to the purpose of without prejudice correspondence, which is to facilitate further attempts to resolve issues in dispute between the parties through agreement and negotiation.

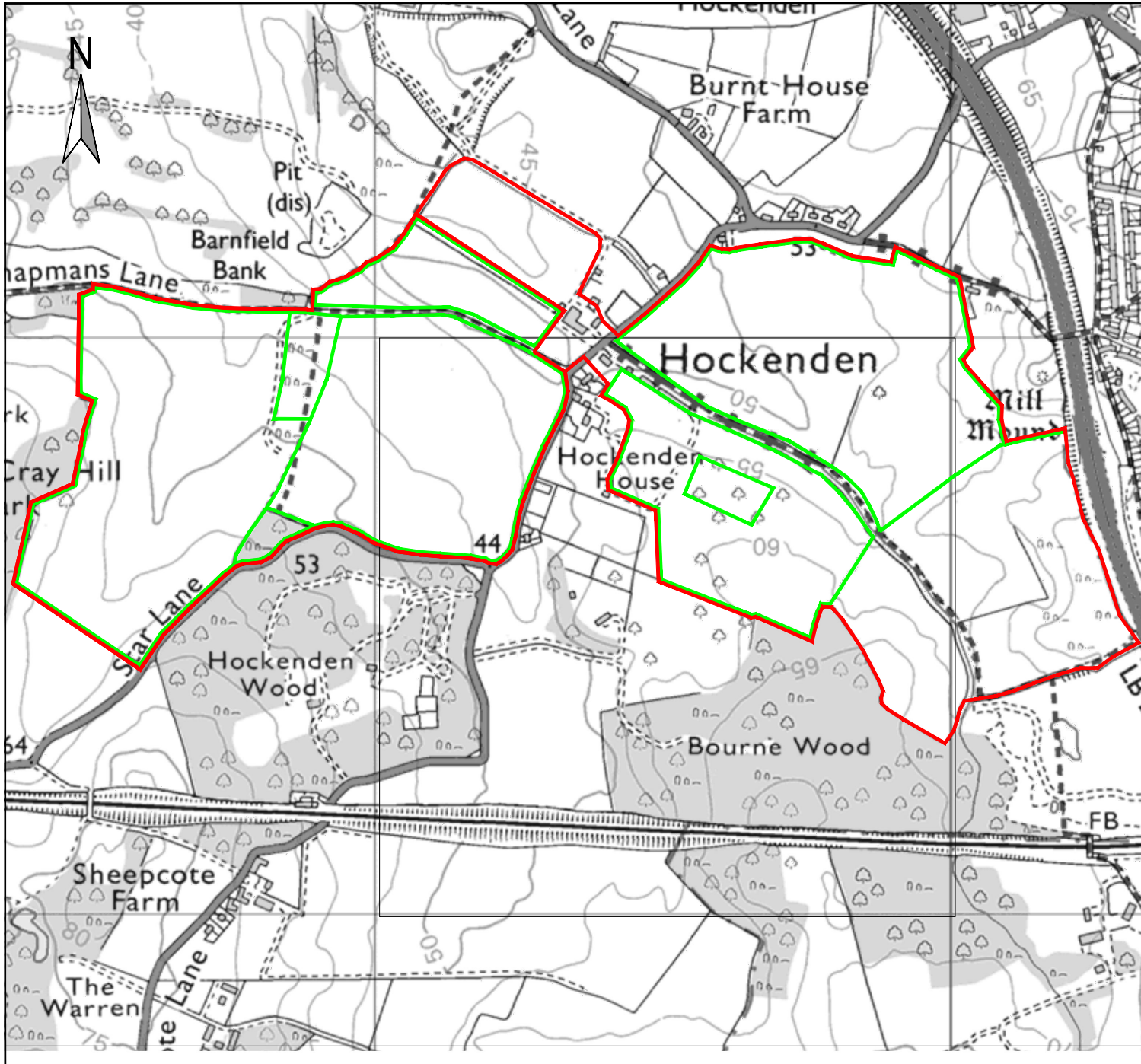
- 1.26 The Appellant is disappointed that the Council have refused their request to withdraw the email from the evidence before the Inquiry. The reason the Council give for their refusal to withdraw the email, that *"The appellant relies on that correspondence to justify adding to the appeal grounds. It is therefore material to the appeal and the Council will not be withdrawing it."* is disingenuous in the light of the fact the Council were provided with the Appellant's first draft of the Inquiry Statement of Common Ground at the same time as that letter, which highlighted several issues of uncertainty which the Council would have known would effect the grounds of appeal the Appellant would need to pursue. The Council could have chosen to clarify them through that process (or indeed through informal dialogue as attempted by the Appellant), rather than by referring to confidential correspondence instead, and then disclosing their response to that to the Inquiry.

- 1.26 For the avoidance of doubt, the Appellant's Without Prejudice letter did not accept that any waste was present on the land (and in fact clearly and unambiguously stated exactly the opposite).



2.0 Storage Appeal - Appeal Number 3315439

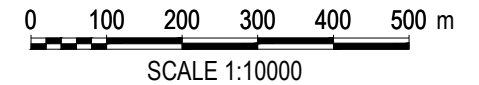
- 2.1 In respect of linked appeal 3315439, the Council emailed the Appellant on 3 August 2023 stating *“Further to your email of 4 July advising the Council that all stored items have been removed from the site (in accordance with the Enforcement Notice 21/00270 ECOFU issued 15 December 2022), I can confirm that the steps contained in the Notice have been complied with and that the Council will pursue no further action. I thank you for your assistance in this matter.”*
- 2.2 As a result the Appellant therefore requests this appeal is now withdrawn.

Appendix 1 – Revised Plan BSG-01



KEY:

-  BOUNDARY - AGRICULTURAL UNIT
-  NEW FENCING



BORNEWOOD SAND AND GRAVEL

LOWER HOCKENDEN FARM APPEAL

AGRICULTURAL UNIT AND NEW FENCING

Drawing Number	Drawn	Date	Approved	Date	Issue	Sheet	Scale @ A4
BSG-01 REV-A	DJE	JUL'23	AL	JUL'23	FINAL	1 OF 1	1:10 000

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