

**WITNESS STATEMENT OF JOE KILLOUGHERY**

**In the matter of Appeal reference APP/G5180/C/22/3312256: Land at Lower Hockenden  
Farm, BR8 7QH**

**Inquiry dates 25 and 26 September 2024**

I, Joe Killoughery, am the director of the landowner Killoughery Properties Ltd. ('the Company') and make the following Witness Statement, with the consent of Bournewood Sand and Gravel Ltd, which is true to the best of my knowledge and belief.

## **Background**

1.1 The Company acquired Lower Hockenden Farm ('the farm') in 2016. The farm comprises of 240 acres of land, bounded by the A20, Bourne Wood, Pauls Cray park, Star Lane travellers site and Orpington Golf Club. Pauls Cray Park and Star Lane travellers site are owned by London Borough of Bromley. Pauls Cray Park was historically an illegal access point on the farm, whereas Bourne Wood is still an illegal access point onto the farm.

### Ownership and occupation of Lower Hockenden Farm

1.2 Killoughery Properties Ltd have an agreement in place to allow Bournewood Sand and Gravel Ltd to occupy the entire farm as outlined in map JK exhibit 1. Bournewood Sand and Gravel Ltd have in turn an agreement in place to allow Mr Robin Moxon, tenant farmer, to manage the farm, again as set out in map JK exhibit 1. Under the terms of the agreement between Mr Moxon and Bournewood Sand and Gravel Ltd, Mr. Moxon has been granted a rent-free period of five years from 2020-2025 allowing him to invest in the farm security and infrastructure to deter motorbikes, trespassers, and other forms of antisocial behaviour while continuing his daily farming operations.

### Lower Hockenden Farm

1.3 Mr Moxon operates a pastoral farm whereby he rears cattle. The fields have been sown with diverse sward species/herbal lay. This particular mixture of grasses and herbs are ideal for productivity in the local climate. These farming activities are considered as regenerative practices as no artificial fertiliser are used because the sward produces its own nitrogen from their roots. Manure is required as it produces further natural nutrients. The manure application also increases carbon sequestration. The farm currently has 120 cattle mainly comprising of the rear breed traditional Red Pole cattle, the above sward is part of their feedstock.

1.4 I am aware that Mr Moxon also has a separate independent retail business.

### Trespass/Anti-social behaviour

1.4 It became apparent since the acquisition of the farm in 2016 that there has been a significant historic problem with trespass, damage and antisocial behaviour across the entire farm.

1.5 I began to engage in regular communication with local residents, councillors and both the Metropolitan and Kent Police to understand the concerns and work together to take measures

to reduce the issues. It is my understanding that there had been numerous public meets with local residents in regards to the historic trespass issues. My first encounter was in 2016. A number of meetings were then held over the course of five plus years.

1.6 I recall a public meeting with local residents and Police in Brocken Hurst on 18/11/2016, where police showed their footage of the farm which they obtained from a police helicopter the week prior. This footage showed upwards of 40 motor bikers rallying across the farm and taunting police. These bikers were of varying ages with some as young as 5 years of age being driven around the farm at high speed on the handlebars with no helmet.

1.7 These regular activities were adversely affecting the amenity of local residents. They created considerable noise from the motorbikes/quad bikes and stolen cars. Further, multiple cars parked along the narrow road of Hockenden Lane created traffic issues. Litter including gas cylinders and other drug paraphernalia was discarded along Hockenden Lane and footpaths/rights of way within the farm boundaries, and local residents unfortunately received verbal abuse and physical threats from these lawless individuals. By way of example see attached crime reference log and associated photographs. JK exhibit 2 and 3.

1.8 After having attended these meetings and engaged in communications, I began to understand the severity of the issues affecting the local residents, general public and the farm itself. I began working together with the Police, Bromley Council's Rights of Way team, local residents and Robin Moxon, the tenant farmer, to take measures to significantly reduce problems/trespass. This was, and continues to be, a considerable investment of time, money, manpower and goodwill.

1.9 On a number of occasions during this time, residents expressed their disappointment with Bromley Council in failing to address the situation. One example of this is in an email 27/02/2016 from a local resident JK exhibit 4. There were various other examples of this expressed verbally during the various public meetings.

1.10 The police were powerless to stop the bikers as they could not chase the bikers when they rode around without helmets.

### **Construction of the bunds**

2.1 The Council was made aware of bunding works proposed to be completed on the farm. By email of 29 October 2018, Donna McBride notified the Council's Rights of Way Team of the proposed works. These works referred to bunds at all other access points from Star Lane /

Hockenden Lane onto the land. The reply from the Council's Street Enforcement Manager authorised the works by email on 29/10/2018 JK exhibit 5, these works refer to bunding on a number of locations on the farm.

"Thank you for your assistance.

I confirm that I am happy for you to proceed with the proposed actions / work to be undertaken.

I would be grateful if you could let me know when you intend to start the work.

Many thanks

T.G. Smith

Street Enforcement Manager

London Borough of Bromley."

2.2 In approximately December 2018, I attempted to reuse the temporary fencing on the farm, to block the access points used by the illegal trespassers, stolen cars and motorbikes. This was a quick measure taken in an attempt to minimise access until security bunding was in place. Some of these access points were from Pauls Cray Park and Star Lane travellers' site, both of which are owned by Bromley Council. I reused the wooden pallets and Harris fencing which was historically on the farm. These efforts were not successful.

2.3 In order to seek to address the abovementioned issues of trespass and damage, and to secure the agricultural holding, in 2020 Mr. Moxon, tenant farmer, constructed over 10km of fencing. The placement of soils and mulch on the farm resulting from this construction work was used in the creation of security bunding as discussed with Bromley Council. I am aware that this fencing was installed at a significant expense to the farmer. The works were done with the Company's consent, and I have significant first-hand knowledge of what took place. I was present for the majority of the works, this was due to the threats of physical harm to the workforce by illegal trespassers. I would not place any operatives in this situation alone.

2.4 The large quantities of excess soils and mulch generated from this project were utilised within the wider farm unit in the construction of the security bund to attempt to further discourage motorbike use and other antisocial behaviour. The security bunds were needed across the southern boundary of the farm as this was a key access point where illegal trespassers would regularly gain access to the farm.

2.5 The construction of the fencing and some of the security bunding works were completed over a period of 2 years, approximately between March 2020 to March 2022.

These works were completed by a team of contractors with the assistance of the farm workers and owner. They included:

- Use of a 360 excavator to remove felled trees, branches, shrubbery, roots and to excavate excess soils.
- Temporary fencing for the duration of works comprising of pallets and Harris fencing.
- Mulching and wood chipping equipment
- Forklift to facilitate the off loading and movement of fencing materials
- Tracked and manual fence post driver, fence wire tensioners and fastening equipment.
- Use of a tractor and trailer to move excess soil within the farm.
- Use of an excavator to place this same excess soil for the creation of security bunds.

I provide a selection of invoices and photographs to support the work that has been done JK exhibit 6 and 7.

- 2.6 Some of the earth works specifically involved the creation of reverse bunds. A reverse bund creates a sheer drop from high ground therefore making it difficult to gain illegal access by motorised vehicle. The inspector will be able to see during the site visit areas that have been lowered within the agricultural holding.
- 2.7 Illegal motorised vehicle access was a particular historic problem from Paul Cray Park and Star Lane travellers site (owned by Bromley Council). The reverse bunds were completed at various points across the farmland, dependant on illegal access point locations, to intercept regularly worn paths made by motorbikers and quad bikes, and to allow for regularised straight-line fencing/boundary fencing. The large quantities of excess soils arising from these works was reused within the farm unit farm for security bunding. It is possible that the excavated soils had small elements of waste including plastic, metal, brick, tile or ceramics.
- 2.8 This potential small element of waste could have come from the boundary of the farmland adjoining Pauls Cray Park and Star Lane travellers site. Similar elements of potential waste as mentioned above, are visible on these boundaries. There is also a possibility that small elements of waste have been generated from historic farming activities. This could include baling twine, baling wrap, farm feed containers and packaging materials.
- 2.9 Another element of the earth works carried out during this period, was the clearance of 2km of drainage ditches. Whereby the excavator dug out the silt and vegetation build up in turn allowing the drainage ditches to operate more effectively. These arisings were also used within the farm unit to form the security bund. It is possible that these arisings may have contained small elements of discarded waste including plastic bottles, metal cans and windblown light fractions.
- 2.10 When the excavation earth works including the reverse bunds had been completed, the fencing contractor could properly align the fence on the now more regularised ground level. The fence installation equipment requires level ground to operate effectively and safely. This new fence was then installed tight to the line of the reverse bunds, other boundaries and fence line areas.
- 2.11 Although I am not a farmer, I am aware that maintaining boundaries, trees, and shrubbery is standard practice for farms across the length and breadth of the UK. Where possible mulch can then be used to enhance the farmland and felled trees/branches can be used to block access points. This farming activity is not a waste activity.
- 2.12 I can confirm that the area enforced against by the Council (shaded in yellow on the plan attached to the enforcement notice) is part of a larger agricultural unit managed by the tenant farmer Mr Robin Moxon, who has an agreement to farm the entire unit as marked on the map JK exhibit 1. The area in question remains part of the whole agricultural unit as previously explained above.
- 2.13 As referred to above, under the terms of the agreement between Mr Moxon and Bournewood Sand and Gravel Ltd, Mr. Moxon has been granted a rent-free period of five years

from 2020 -2025 allowing him to invest in the farm security and infrastructure to deter motorbikes, trespassers, and other forms of antisocial behaviour while continuing his daily farming operations.

- 2.14 As a result, I cannot see how it can be said that there has been a “material change of use” from agriculture. The excess soils and farm-derived materials generated from the fencing installation remain within the farm unit. I cannot see how they can be considered waste. These materials have been used to create an enclosure via a security bund. They have not been discarded nor were they ever intended to be discarded
- 2.15 Waste has been brought onto the farm (including the area being enforced upon) by the illegal trespassers, this has been a historic problem.
- 2.16 This fly tripped waste is clearly visible in the Windmill Wood, which is a Site of Importance for Nature Conservation (SINC), and the wider area including the enforcement area, this is an ongoing issue. The waste includes plastic, metal (nitrous oxide canisters), medical waste (syringes), discarded clothing, remnants of crashed vehicles pieces, remnants of burnt out vehicles the remains of illegal fires such as melted plastic and ash.
- 2.17 As stated above there is also a potential that the excavated soils and drainage arisings have had small elements of plastic, metal, brick, tile or ceramics. Another potential source of small elements of waste may have been generated from historic farming activities. This could logically include baling twin, bailing wrap, farm feed containers and packaging materials
- 2.18 The construction of security bunds was undertaken to create an enclosure around the remaining heavily blighted section of the farm, aimed at deterring unauthorised trespass and to allow agricultural activities to take place. While additional work is needed to properly profile the bunds, progress has been halted due to the service of the Enforcement Notice (the subject of this Inquiry) and the subsequent Appeal.
- 2.19 The security bunding requires additional work and although the bunding has been effective to a significant degree, it has not completely prevented trespass. The security bunding work has unfortunately not been completed due to a breakdown in communication with the Bromley Council’s Planning Department, which appears to me to be influenced by the Environment Agency. However, communication with Bromley Council’s Right of Way Team has been positive. This team has expressed concerns about the aggressive actions taken against Bournemouth Sand and Gravel and the farm, and fears that removing the security bunding would lead to an increase in antisocial behaviour and would be a disaster for the local community and farm. Further, this would send a signal that the antisocial behaviour has been accepted and the landlord and the Police attempts to deter the activities and secure the farm have been a complete failure. This is a worrying prospect for me.
- 2.20 Unfortunately, and much more seriously, we have now witnessed the loss of a young motorbiker’s life in summer of 2020 on the farm, whilst he was illegally trespassing. This is something I do not wish to have repeated as it has mentally affected me and the farm business.

2.21 More recently I have witnessed a group of Duke of Edinburgh candidates being harassed by bikers as they rode their motor bikes at speed through the group of young girls and boys as they attempted to walk along the footpath/right of way.

### **Future plans**

3.1 The security bunding will be no higher than 2 metres upon completion. There are plans to fence inside the security bund to further enhance farm protection, subject to finances and goodwill. Should this additional fencing be vandalized, as has occurred to the new fencing across the farm, the security bunding will be adequate to keep livestock within the farm boundaries.

3.2 To profile the bunds it is likely that they may require screening. Any material such as stone or brick that may be recovered from the soil screening operation, is required and will be used without delay in the maintenance of farm tracks and hardstanding areas, weather permitting.

3.3 Whilst we have been able to minimise unlawful access on the northern side of the farm unit, this in turn has had a detrimental impact on the southern side of the farm. The southern area always had illegal trespass but it has now heightened pressure due to a higher concentration of motorbikers in a smaller area. I believe that when the works to the security bunds have been completed, we will all but have eliminated this historical problem.

### **Need for bunds to remain**

4.1 The erection of perimeter security bunding is essential for facilitating further agricultural use in this area of the farm. This necessity arises from the dangers posed to both people and livestock, as well as the damage caused to arable land from trespassing, particularly by motorcycles and quad bikes.

4.2 The security bund also significantly protects Windmill Wood, which is a Site of Importance for Nature Conservation (SINC), from further vandalism caused by motorbikes/quadbikes and antisocial behaviour. The motorbikes/quadbike have, and still are, causing significant damage to the tree roots and bark as a result of the bike trails and tracks they have created which are clearly visible. Furthermore, unauthorised regular fires take place within Windmill Wood consisting of burning of plastic, litter and the woods itself. This is also confirmed by the Atkins report "discarded litter including metal cans and evidence of burning waste within the Central field may be related to the trespassers"

4.3 I also believe that any unnecessary removal of the security bunds will result in significant environmental harm. Transporting the soils off the farm would lead to increased HGV traffic on surrounding roads, contribute to higher traffic volumes, and cause climate change impacts due to transportation emissions.

- 4.4 Any potential removal of these farm materials is not beneficial; rather, it would be detrimental to the farm, the SINC of Windmill Wood, and will endanger the public on the footpaths through a significant increase in anti-social behaviour.
- 4.5 Furthermore, Mr. Moxon would have no option but to close his farming operations. This individual has put his farm operatives' personal safety at risk to continue to deliver a daily functioning farm. I am thankful to Mr Moxon for his continued efforts to operate the farm under this unbelievable situation.
- 4.6 I firmly believe that removal of the security bunding will not benefit the environment, the farmland, farm livestock, farm workers or the public. On the contrary, it would be detrimental and not in the public interest, as removing the bunding would lead to a significant increase in antisocial behaviour, lawlessness, and threats to public safety.
- 4.7 I am also deeply disappointed by the complete breakdown in communication with Bromley Council's Planning and Enforcement departments. This lack of communication has undermined the goodwill we had established with other parts of Bromley Council. This is evident in the letter dated 19/04/2023 sent from planning consultant Adrian Lynham to Bromley Council representatives David Bord, John Stephenson, Marion Payne and Paul Courtine, to which we have yet to receive a response. This unnecessary and heavy-handed enforcement process has negatively impacted farm productivity and wasted valuable public funds, which I believe could be used more effectively within Bromley Council and the borough which are under significant financial strain.

#### **Comments in relation to Atkins and Environment Agency reports**

- 5.1 Having seen the Atkins Report and other points made by the Environment Agency, I would wish to make a few comments.
- 5.2 It appears to me that Bromley Council Enforcement team either do not understand the nature of the problems at the farm or the fact that the materials are not waste and have never been waste, or are mischaracterising the issues. I do not see any reference or acknowledgment in reports from Atkins or the letter from the Environment Agency to the positive works that have been carried out across the entire farm unit.
- 5.3 Their position is entirely contrary to that of the Bromley Council Rights of Ways team, local residents, the Metropolitan Police and Kent Police. I also think that the positive works carried out at the farm will become clear from the Inspector's site view.
- 5.4 I am disappointed that Mr Bennett (Installations Team Leader of the Environment Agency) detailed information of land which is owned by my company and which is completely unrelated to this Enforcement Notice and Appeal. The letter provided by Mr Bennett 23/01/2023 is, in my view, misleading and inaccurate.
- 5.5 By way of example, Mr Bennett states the following in relation to the Waste Exemptions:



*“The following four waste exemptions, all with an ordnance survey grid reference located within the centre of Bournewood Quarry / landfill have been registered”*

This is not true. All these exemptions, which are registered with Mr Bennett’s own Agency, are located on the farm unit and are not registered on the un-related quarry.

5.6 These exemptions were registered as a fall back position in the event they would ever be needed. If it was suggested that the farm derived material could be alluded to as waste and required an exemption. For the avoidance of doubt we do not, and have never, classified this farm-derived material which was not discarded, as waste. Notwithstanding this, the material used in the bunds is far greater than that which any waste exemption would allow, so we could not possibly have considered use of the exemptions as a way to deal with waste, if this is what Mr Bennett is suggesting. Waste exemptions are only required for the use or storage of waste – the materials in question here are not waste. For clarification, and to reiterate this point, the materials were farm-derived, from the farm, they were never discarded, and they have been re-used on the same farm from which they were excavated.

5.7 I would also note that:

- 27/09/2021 Bromley Council issued an Enforcement Notice for the creation of earth bunds, this was subsequently withdrawn on 04/10/2021 with no reason given nor conversation.
- 27/10/2022 some 12 months later Bromley Council issued a new Enforcement Notice for the alleged change of use of the land from agriculture to the deposit of waste.
- Prior to both Enforcement Notices the Environment Agency attended the farm area in question 14/07/2021.
- If, as seems likely, the Environment Agency were in contact with the Council before the first (withdrawn) Enforcement Notice was issued, why was ‘waste’ not mentioned at this point?
- If there was a concern about security bunding on the farm at the time when the first (withdrawn) Enforcement Notice was issued, why did the Council not approach us?
- If there were genuine concerns of the alleged “deposit of waste” why did it take another 12 months to issue new allegations?
- Why at no stage after their visit on 14/7/2021, did the Environment Agency approach the farmer to raise their concerns?

5.8 With regards to the Atkins report:

The Atkins report dated 25/07/2022 is inaccurate and misleading. By way of example:

- Page 1 states “land is registered under Killoughery Waste Management Ltd”
- It also states that this company owns the unrelated quarry.
- The report further states that “Killoughery Waste Management LTD; offer aggregates both primary and recycled including 6f5, Type1, 6f4, 6f3, A1, Shingles, Hogging, Sharp Sand and Topsoil.....”

These statements are inaccurate and misleading.

5.9 A further example and inaccuracy of the Akin reports is the picture on page 5. This is date, time and location stamped “13 Leewood Place Kent England”. This does not relate to Hockenden farm Bromley, and is in fact a location somewhere else in Kent.

5.10 Further there are a total of 11 pictures in this report. Why would the above mentioned picture (and one other) have date, time and locations stamped when the others produced in the report do not?

5.11 Further observations in the Atkins reports;

(1) The data analysis is based in LIDAR modelling, specifically using Digital Surface Model (DSM). DSM modelling represents the elevation of the tallest surfaces at a particular point. This includes trees, shrubs, vegetation, growth, bales of hay and stockpiles of manure.

(2) Page 10 of Atkins report states “indicative volume balances only due to the inherent limitations of performing these calculations on the available LIDAR data – these calculations include all changes in elevation regardless of the cause; changes in vegetation height (both growth and removal) and anomalous data points within the LIDAR data itself”

(3) Furthermore the Atkins report states that they did not calculate their volumes based on the entire site but rather they were “undertaken on specific zones to give indicative volume balances for these zones”.

I can only stress that we need to look at, not only the entire area being enforced upon but also the entire farm unit. Calculating “indicative” volumes in a narrow farm area, which will have been heavily distorted due to vegetation and growth, will provide a misleading and unfair picture.

(4) Atkins have also noted that “increases in elevation in both West and Central Fields could potentially be due to vegetation growth”. Furthermore they state, “the South Bunds have been subject to changes in vegetation presence and the existence of tracks within the area, which both would have an impact on the volume calculations”.

5.12 It is clear from the Atkins site walkover report, page 4 photograph, that there is significant vegetation and growth across the bunds and fields. I question how any reliable volumes can be calculated from the farmland using this form of LIDAR. As Atkins themselves clearly state that some of the limitations of LIDAR are that it includes all elevation changes including vegetation and growth

This highlights some of the inaccuracies of the Atkins report which has presented misleading information and volumes.

5.13 With regard to the Atkins Report references to the “west field/west bund”, the excess soils arising from the installation of over 10kms of fencing was initially stockpiled in the “west field” prior to being placed in the “west bund”. The area in question here was a high breach area for the stolen cars and motorbikes. The stockpiling of the excess farm derived soils allowed for a more rapid creation of the security bund. This was required due to threats of physical abuse. I do not agree with the volumes stated in the Atkins report.

5.14 Notwithstanding that I do not agree with the Atkins report volumes “indicative change in landform volume”, if the volumes alleged on the west field were to be put to an alternative use, this farm derived material could be spread across the entire 240 acres, this would increase all 240 acres by approximately 1mm.

5.15 Change of land levels can occur within farms due to standard farming practices. For example manure, mulch and silt from drainage ditches is stored in fields and then spread on the land. This acts as a natural fertiliser, enhancing growth and moisture content. Manure is quite bulky in nature as it is comprised of animal faeces and livestock bedding. I am aware that the farmer often stockpiles animal manure and spreads it for the benefit of the land. This could be a reason behind misleading lidar volumes.

## **Summary**

6.1 These substantial works have been effective and can be completed once this Public Inquiry has been settled. The harassment problem has been largely curtailed into this one area. The bunding is difficult for the bikers to navigate and once the bunding works have been complete it will act as an immense deterrent. The fencing across the farm has definitely been beneficial, however different sections are continually being cut or uprooted resulting in livestock accessing the public highway, we have found the bunding to be more effective. JK exhibit 8 shows some images of damaged sustained to fencing and gates by the illegal trespasses

6.2 I finally reiterate the point that the materials in question are not waste and there has been no material change of use. It remains in agricultural use as a farm.