

Proof of Evidence

Planning

Adrian Lynham MRTPI

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

Appeal Reference 33112256

3 September 2024

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1.0 INTRODUCTION

- 1.1 I am Adrian Lynham, Director, of Continuplan. I have a BA (Hons) degree and diploma in town planning with a specialism in Environmental Impact Assessment, and an MSc in town planning, all from Oxford Brookes University. I currently work as a planning consultant, dealing entirely with waste, minerals and renewable energy related work for both public and private sector clients.
- 1.2 I am a chartered town planner with nearly thirty years specialist experience of waste and minerals planning and Environmental Impact Assessment, gained in both the private sector as a consultant, and in the public sector in roles as a development control planner, policy planner and enforcement officer with county councils in the south of England. I have also worked for the Environment Agency providing specialist town planning advice.
- 1.3 I have significant experience of the planning policy and environmental issues associated with minerals and waste planning. I have also worked at a planning authority as a monitoring and enforcement officer, and have local authority Development Management experience.
- 1.4 My evidence concerns a planning appeal submitted by Bournewood Sand and Gravel Ltd. against an Enforcement Notice served by Bromley Council dated 27 October 2022 alleging the change of use of land from agriculture to the deposit of waste.
- 1.5 As stated in the Enforcement Notice, the matters which appear to the Local Planning Authority to constitute a breach of planning control are:

".. the material change of use of the land from agriculture to the deposit of waste."
- 1.6 The Local Planning Authority allege that waste materials have been imported to the land without planning permission such that a material change of use has occurred.
- 1.7 The appeal is under Ground (b), (c), and (f). Through its Ground (b) appeal, the Appellant contends that the matters stated in the notice have not occurred as a matter of fact. The Appellant contends that:
 - (i) The area enforced against forms part of a much larger agricultural unit which is managed by a tenanted farmer. The area enforced against remains functionally related to the whole agricultural unit and forms part of a single planning unit.
 - (ii) What has occurred is the placement of soils and other site derived materials arising from the erection of fencing on the wider farm unit, to form a means of enclosure to deter trespass - in accordance with permitted development rights under the GPDO.
 - (iii) As a result, the Appellant contends that there has been no material change of use to the deposition of waste.
- 1.8 The Ground c) appeal is similar to Ground b) in the sense that the reason the Appellant argues that both legally (c), and therefore factually (b), the breach of control has not occurred, is because the works are Permitted Development under the GPDO.
- 1.9 The Ground f) appeal argues that the steps required by the notice are excessive in making it a requirement to "remove all waste from the land". Whilst making the case that the materials alleged to be wastes are in fact not, the Appellant justifies under the ground f) why even if they were to be wastes, they could be more sustainably managed in other ways.
- 1.10 The Appellant accepts that there is a *de minimis* quantity of waste on the area enforced against, but this has been deposited by trespassers and/or arises from the movement of historic deposits on the wider agricultural unit. This will be removed as part of the ongoing management of the farm, and does not amount to a material change of use.

2.0 SCOPE

- 2.1 My proof of evidence sets out the planning evidence, with a focus on permitted development rights to undertake the development, the issue in respect of material change of use, whether or not the materials deposited should be considered waste, and the planning harm associated with removal of material from the land.
- 2.2 My Proof does not include evidence on the historical facts surrounding the appeal (the erection of the fencing and the part construction of the security bunds). I have no first-hand knowledge of those matters. The factual elements are covered in the witness statement of Joe Killoughery.
- 2.3 I became involved in the appeal process in approximately March 2023, taking over from the previous planning consultants, Icen. At this time I visited the site and received a briefing from the client, but have had only limited discussion with the previous planning consultant and cannot speak for their opinions or approach to the appeal process with which I have had no involvement. However, I can confirm that the approach taken since I became engaged is based upon my professional opinions and advice.
- 2.4 The evidence which I have prepared and provide for this appeal reference 33112256 in this proof of evidence is true, and has been prepared and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

Communication with the Council

- 2.5 Since I became involved with the process on this appeal I have found it difficult to engage the Council in any meaningful discussion or dialogue aimed at trying to resolve the issues in dispute by agreement (for example see my letter in Appendix A dated 19 April 2023), or to agree the scope of the issues in dispute and therefore needing to be resolved through the Inquiry by agreeing a Statement of Common Ground. I prepared an initial version of a Statement of Common Ground dated 16 May 2023 which was shared with Bromley Council, but they have not engaged with this process.

3.0 DEVELOPMENT PLAN POLICIES AND MATERIAL CONSIDERATIONS

Development Plan Policies

- 3.1 The Development Plan is the Bromley Local Plan 2019 and the London Plan 2021. Since no Ground (a) appeal is made, planning policies are not relevant to the issues in dispute.

Material Considerations

Waste Framework Directive (2008)

- 3.2 The Directive is generally relevant, but particularly in respect of the definitions of waste and soils.

4.0 PLANNING AND AGRICULTURAL HISTORY

- 4.1 There is no relevant planning history to the appeal in terms of historic planning applications either on the area enforced against, or on the wider agricultural unit.
- 4.2 The area subject to the Enforcement Notice forms part of a much larger agricultural unit, shown on Plan BSG-01 REV A enclosed with the Appellant's Statement of Case (as updated with comments dated 4 August 2023) contained for ease of reference in Appendix B. The agricultural unit is known as Lower Hockenden Farm, and is being actively managed for farming by a tenant farmer. More detail is contained in the witness statement of Joe Killoughery.
- 4.3 Current and historic problems with trespass and antisocial behaviour have caused issues with farming the unit effectively – particularly in the area where the Enforcement Notice applies. The antisocial behaviour has included but is not limited to: damage to farm equipment property and fencing, fly tipping, drug taking, unsolicited fires, the burning of vehicles, riding motorcycles and quad bikes, and relentless abuse to persons and animals, which has resulted in the loss of the life of a young person and animals being destroyed. The historic trespassing (particularly the use of motorcycles and quad bikes) has degraded the land, particularly on the part of the farm which is the subject of the Enforcement Notice.
- 4.4 The Appellant and tenant farmer have reported these matters to the local police on multiple occasions and have been working with Bromley Council officers, at their own expense, to reduce and prevent further trespass and damage to the land. This has included the stationing of concrete blockades and the construction of security bunds on the site boundaries to prevent vehicles and motorcycles from accessing the land.
- 4.6 Amongst other activities related to the general management and upkeep of the farm, the farmer has recently erected over 10km of fencing throughout the holding for the protection and management of livestock, etc. The locations where fencing has been erected is shown on Plan BSG-01 REV A (Appendix B). In order to erect the fencing, some vegetation, including shrubs and trees, were stripped back. Significant earth works were also carried out to even out ground levels so the fencing could be properly aligned. In some areas this has resulted in level changes of approximately 1 metre, detail of which is included in the evidence of Joe Killoughery.
- 4.7 The material arising from the erection of the fencing was used in creating the new security bunds at the farm, as part of a wider plan to restrict and deter access to the land. The location of the bunds is shown on Plan BSG-02, and the indicative sections (as proposed when complete) are shown on Plan BSG-03 - these were included with the Appellant's Statement of Case but are also included in Appendix B for ease of reference. In some areas where access problems are particularly severe, additional measures involving the placement of tree trunks will be used and these locations are indicated on the plans. It is intended that these measures will be used and adapted as appropriate to maximise their level of effectiveness.
- 4.8 The Appellant is working with Bromley Council Rights of Way team (who were consulted before any work on security bunds commenced) on the trespass and antisocial behaviour issues. The principle of the construction of bunds being an effective security solution was recorded in writing in an email exchange starting the 28 October 2018 when the Team were asked:

“Further to our meetings and telephone calls we would like to start works asap on the below;

- Collect, haul and dispose of 8 of the 10 burnt out vehicles from the land and Pauls Cray Hill Park.

- Relocate the remaining 2 burnt out vehicles to the Star Lane land access point to block access.

- Bund the boundary and inner paths of Pauls Cray woods to prevent vehicle access/traveling in this area.

- Bund all other land access points from Star lane / Hockenden Lane onto our land but not to bund the triangle of land whose owners are unknown.

We hope to have works completed asap however works will be weather dependant.

Can you please confirm you are happy for us to proceed?"

4.9 By email on 29 October 2018, T G Smith (Street Enforcement Manager) responded on behalf of Bromley Council.

"Thank you for you're [sic] your and [sic] 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."

4.10 Although the construction of the bunds and other fencing has significantly reduced the problems, the antisocial behaviour persists. The Appellant continues to work positively and proactively with Bromley Council and the local police to resolve the issue, and make further design changes to the bunds to improve security.

4.11 On 12 April 2023 a meeting regarding the issues and proposed design solutions was held at the farm. Bromley Council planners were asked to attend by the Appellant, but these requests were declined. The reason given was essentially *"Whilst I appreciate your endeavour to establish dialogue with the LPA, this should be planning related and I would respectfully again point out that the matters which you intend to discuss on site on 12 April are unrelated to planning."* More specific detail of the email exchange is provided in Appendix C. The meeting was attended by Sergeant Alex Farmer, Sergeant Stuart Baker (Metropolitan Police), Sean Laws, Jim Raggett (Bromley Council, Rights of Way Team), Robin Moxon (tenant farmer), Donna McBride (Bournewood Sand and Gravel), Joe Killoughery (Killoughery Properties Ltd) and myself.

4.12 During the meeting the Bromley Council officers provided advice in respect of further work that could be undertaken to protect the footpath, and the police provided immediate advice on further measures to secure the wider farm, and offered the services of their Designing Out Crime team to assist with design improvements for the security bunds. The spirit and approach of that meeting was one of coordinated co-operation between those present.

5.0 THE CASE FOR THE APPELLANT

Appeal - Grounds (b) and (c)

The agricultural and planning unit

- 5.1 Lower Hockenden Farm is currently farmed (and has been since 2020) by Mr Moxon as a mix of grassland, and cattle. The farm is bisected by Lower Hockenden Lane, with roughly half of the farm on either side of the lane. The western side of the farm extends up as far as the golf course and country park, and borders Hockenden Wood to the south.
- 5.2 The eastern side of the farm is bounded by Hockenden Lane and Trunks Alley, which have scattered residential properties along their route, and the A20 to the northern side, and by the quarry and Bourne Wood to the southern side.
- 5.3 From visual observation I consider that the farm (the boundary of which is shown on Plan BSG-01 REV A in Appendix B) clearly forms a single agricultural unit of consistent character and use, with clear field boundaries where it borders other land uses. I consider that the planning unit for the farm is the same as the agricultural unit, which is all within a single ownership as evidenced by Joe Killoughery.
- 5.4 The Council allege that the area covered by the Enforcement Notice constitutes a planning unit in its own right. However, in my view this would not make sense from a planning perspective. The Notice area does not have any access other than through Lower Hockenden Farm, and due to its limited size, could not be put to a viable beneficial use as a standalone area. As a separate planning unit, I believe the Notice area would likely become derelict land, and it being part of a planning unit of the whole of Lower Hockenden Farm of which it forms a part is the only rational interpretation of its status.

Material Change of Use

- 5.5 It is accepted that there is a *de minimis* quantity of waste on the land but this has been deposited by trespassers and/or arises from the movement of historic deposits on the wider agricultural unit and this has been/will be removed. However, the remaining materials deposited on the area enforced against are not waste, and do not amount to a material change of use of the land.
- 5.6 What has occurred is the placement of soils and other site derived materials arising from the erection of fencing on the wider farm unit, to form a means of enclosure to deter trespass – in accordance with permitted development rights under the GPDO. As a result, there has been no material change of use to the deposition of waste.
- 5.7 Insofar as the Enforcement Notice refers to the deposit of waste:
- Under s.336(1) of the TCPA 1990:
 - “waste” includes anything that—
 - (a) is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste, [as last amended by Council Regulation (EU) 2017/997] and
 - (b) is not excluded from the scope of that definition by Article 2(1), (2) or (3);
 - Under Directive 2008/98/EC, Art. 3(1) (Definitions):

'waste' means any substance or object which the holder discards or intends or is required to discard;

- 5.8 However, under Art. 2(1)(c) the following is excluded from the definition of waste:
- *'uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated.'*
- 5.9 I understand from the evidence of Joe Killoughery that the soils arose on one part of the farm as a result of works necessary for the purposes of agriculture (the erection of fencing) and have been moved to another part of the farm for works necessary for the purposes of agriculture (the construction of security bunds). These materials are clearly not therefore within the definition of waste. Whilst some of the other site-derived materials present might be waste, in the event that they were, they do not require planning permission to be present on the land. Although I am not a lawyer, on the basis that the soil is uncontaminated and site derived, it is excluded from the definition of waste applying the above provisions. Legal submissions will be made on this issue as necessary.
- 5.10 Furthermore, my view that the soils are not waste is supported (albeit indirectly) by the consultants (Atkins) employed by the Council to investigate and categorise alleged wastes on the land the subject of the Enforcement Notice (Appendix 9 of the Council's Statement of Case).
- 5.11 An initial site visit was carried out by Atkins and the Council on 23 January 2022 and the note of it refers to the materials present, but focusses entirely on non-naturally occurring materials as being potentially waste. The site walkover was again referred to in a more detailed analysis in a report dated 26 September 2022 (Appendix 9 of the Council's Statement of Case). This report summarises the materials on the land which are potentially considered to be waste on pages 3 and 4. The report concludes (on page 12) that *"From the evidence gathered during the site walkover, at least a proportion of the recently deposited materials are likely to be Made Ground of varying composition including sandy gravels with anthropogenic materials such as woodchip, plastics, metals, concrete, bricks, ceramics, etc)".* The lack of the mention of soils by the Council and by Atkins in their reports, soils which form the overwhelming majority of the material in the bunds, is significant, given that the Council now allege they consider the soils to be waste material.
- 5.12 I consider that the materials on the land can be classified in four broad categories (more detail is contained in Appendix D), which are:
- a) Clean Soils (the overwhelming majority of all the material present)
 - b) Clean Natural Wood/Organic material
 - c) Clean Hardcore
 - d) Other material (contamination)
- 5.13 As explained above, the works have involved the construction of security bunds to form a means of enclosure around this part of the farm - to deter unauthorised trespass and access. The area enforced against forms part of the wider agricultural unit and is functionally related to it. There is further work required to properly profile the bunds, but work has currently stopped due to the service of the Notice and the subsequent appeal.
- 5.14 The Appellant has already agreed to remove from the land any materials in category d) ("other material") and which was in any case already present on the farm and not brought onto the land by the Appellant, and to screen and subsequently utilise material in category c) (hardcore) in the maintenance of tracks by agreement and without the need to continue to

have recourse to a planning appeal. The organic materials in category b) are consistent with general farming activity and will be put to agricultural uses as appropriate. The felling and maintenance of trees (and the use of tree trunks and branches in blocking access) forms part of normal agricultural activities on the land, does not constitute unauthorised development, and falls outside the scope of the Enforcement Notice and this appeal. They cannot be considered waste.

- 5.15 As a result, once the limited quantities of the category d) material which is present (and which the evidence of Joe Killoughery demonstrates was already on the farm but had been moved from one part of it to another part of it as a result of the fencing work, or has been fly-tipped) is removed, I consider that the Enforcement Notice as currently drafted would be complied with.
- 5.16 The construction of the bunds from clean site derived soils come within permitted development rights under Parts 2 (Minor operations) and 4 (Temporary buildings and structures) of the GPDO. Even in the event the Inspector considers that the soils on site are waste, which I contend that they are not, the erection of the bunds would still be permitted under Part 6 (agricultural development on units of 5ha or more) of the GPDO. For planning purposes, the bunds need to be considered in their completed form (as shown on Plans BSG-02 and BSG-03, as opposed to their part completed form as a current work in progress.

Construction of Bunds under GPDO Part 2 (and Part 4)

- 5.17 The construction of bunds under the permitted development rights contained in the GPDO Part 2 is subject to two criteria which must be met. These are that the bunds as constructed would form a “means of enclosure”, and that the height of the bunds as constructed does not exceed 2m above ground level.
- 5.18 The submitted plans (BSG-02 and BSG-03) clearly show that the bunds as proposed to be constructed do not exceed 2m in height (and I address the remaining test in relation to the bunds constituting a “means of enclosure” in the following section, commencing at paragraph 5.22). For the majority of their length the bunds in their part-constructed state do not exceed 2m in height, although there are some areas where they are currently over-height due to the stage of construction at which they are at. From a planning perspective, the bunds need to be assessed in respect of their intended form, rather than in a piecemeal and transitory way in phases as their construction progresses. This is consistent with the way all development is treated (for example the construction of a house) under the planning system. A house under construction would never fully accord with the plans approved under the planning permission until such time as it is completed, and the same principles would apply in respect of the construction of the security bunds here.
- 5.19 The Council have attempted to argue an alternative view, that for planning purposes the bunds should be assessed as they are now, rather than in their intended completed form. This cannot be the case, and is most clearly illustrated by making the point that by using this logic the bunds cannot form a “means of enclosure” until they are substantially complete, and so would then be vulnerable to enforcement action at any point during their construction and a requirement for the material to be removed. However, at the point of completion the bunds would instantly change status from unauthorised engineering works, to lawful permitted development under Part 2, and become acceptable in planning terms. This interpretation cannot therefore be correct.
- 5.20 Some screening of material in the bunds is required, and other works associated with their profiling. This work would be undertaken using appropriate mobile plant and/or machinery required temporarily for the duration of the works, carried out under GPDO Part 4. This constitutes the provision on land of plant and machinery required in connection with and for

the duration of the engineering works required to complete the bunds, and is permitted under Part 4A (temporary buildings and structures) of the GPDO. Once works are complete the machinery will be removed and the land reinstated to its original condition.

- 5.21 As part of the screening operations, the Appellant expects to remove some clean hardcore and hardcore like materials (eg clay pipe) from the soils. The Appellant proposes to use this material appropriately in the maintenance of tracks and hardstandings on the wider farm unit, works which are reasonably necessary for the purposes of agriculture, and are permitted under Part 6A(b) of the GPDO.

Agricultural need for a security solution

- 5.22 The security bunds are being constructed as Permitted Development under Part 2/Part 4 of the GPDO as a means to enclose the southern part of the farm, where the problems resulting from trespass are most severe. They perform a similar function to the fencing which encloses the northern part of the farm, but are more structurally robust (for example they are not vulnerable to cutting in the way post and wire fencing is). The security bunding therefore falls under the definition of an “other means of enclosure” as set out in Part 2 of the GPDO.
- 5.23 The perimeter security bunding forms part of a means of enclosure for the agricultural unit (and planning unit) of the farm which is made from a combination of fencing and bunds. The fencing is shown on plan BSG-01 REV A and the security bunds are shown on plan BSG-02. Furthermore, potential additional measures are being considered in order to make the footpath less accessible for motorised vehicles (for example gates and/or barriers) and these will be discussed further and agreed with Bromley Rights of Way Team if the remaining parts of the security solution can remain as a result of the success of this appeal. The function of the bunds as a means of enclosure can be viewed as a matter of fact on the accompanied site visit carried out at the outset of the Inquiry, and then subsequently examined in evidence if required.
- 5.24 Proper security of the farm from trespass is essential to facilitate an agricultural use in this area of the farm due to the danger (both to people and to livestock) and the damage caused to arable land from trespass, particularly from motorcycles and quad bikes. This is addressed in the witness statement of Joe Killoughery. However, I have personally seen the presence of motorbikes on the land during my occasional visits to the site, and have also spoken to the farmer (Robin Moxon), the local police, rights of way officers for Bromley Council and the local police force.
- 5.25 My understanding from the evidence of Joe Killoughery and Mr Moxon is that although the whole farm was blighted by anti-social behaviour, this has now been narrowed down primarily to the top field on the southern boundary. The fencing and bunding has had a huge impact in reducing the trespassing and intimidation, and although the problem persists it is much reduced in scale.
- 5.26 I can see personally from my experience of the site, that the majority of the farm is now typical of what I would expect of a farm in a countryside setting. Although I have seen evidence of fences being cut, the farmer seems to be broadly managing the trespass issue across most of the unit, and the most severe problems appear largely confined to the area which is the subject of the Enforcement Notice.
- 5.27 It is clear to me there is a need for a security solution at the farm boundaries, and that trespass is having significant adverse impacts on the ability of the tenant farmer to manage the land in the south-eastern area of the farm effectively. Mr Moxon (statement in Appendix

E) says that in his opinion, *although the fence has been effective to a degree, [he has] found that the placement of the bunding has had a larger impact.*” and that *“it is more difficult for the trespassers to gain access to the farm across the bunded areas.”*

- 5.28 A bund is the most effective means of enclosure for the southern part of the farm because it is more robust and less vulnerable to vandalism and cutting than the post and wire fencing used in other areas. Plan BSG-02 shows the location and Plan BSG-03 shows the profile of the bunds under construction, combined with the additional measures proposed for the points where unauthorised access is a particular problem, and difficult to stop.

Examples of the use of bunds for agricultural purposes

- 5.29 The use of soil bunds is used as a security solution on other farms in appropriate circumstances. For example, Farmers Weekly reported on bunding as a solution to trespass and antisocial behaviour as a part of Operation Firefly, Gloucestershire Constabulary’s operational response to rural and wildlife crime within the county, which forms part of the force’s neighbourhood policing operation (Article Philip Case, 19 May 2019). Some relevant quotations from his report (available in full at <https://www.fwi.co.uk/news/crime/video-farm-bunds-fend-off-rural-criminals>) are set out below:

“Earth bunds offer a cheaper way of building a barrier between roads or lanes and fields to prevent rural criminals from entering with 4×4 vehicles and damaging crops or killing livestock and wildlife.”

“The partnership – between police, plant hire company Smiths of Gloucester, farmers and landowners – started two and a half years ago. Since then, four landowners have signed up and up to 10km of farmland boundaries have been protected – with many more kilometres planned.”

“Some farmers have planted hedgerows around their bunds to add natural shelter, habitat and a source of food for wildlife. Police and landowners are also working with the Cotswolds’ Area of Outstanding Natural Beauty (AONB) grassland project team to sow grass or wildflowers on the bunds from this summer to encourage wildlife and make them look more aesthetically pleasing.

Mr Case reports PC Weller as stating:

“Previously, multiple times a week the joyriders were driving into fields, doing donuts, damaging the crops, running down deer or using that farmland to access other bits of farmland where they knew there was machinery. Every farmer who has had this [bunds] done has had 100% success – not a single infiltration so far. I’m very confident that that success will carry on.”

- 5.30 The article is accompanied by a short video in which some farmers and a police officer associated with the scheme are interviewed and give their thoughts upon it. This is available to view at <https://www.youtube.com/watch?v=7nWFLPZmIlgM&t=11s>.

- 5.31 Earth bunds are also used in agricultural settings for other purposes. RPG 9 – Earth banks and soil bunds encourages the construction of bunds on farmland in appropriate circumstances, and there is a current government subsidy for this work of £195.61 for each unit (100m of bund) under Countryside Stewardship Grants. Although the bunds in this situation are envisaged to be for the purposes of surface water management, rather than mitigation of trespass as is the case at Lower Hockenden Farm, it is of note in respect the general principle of their utilisation and acceptability in association with agricultural activities.

Construction of Bunds as Permitted Development - GDPO Part 6

- 5.32 In any case, as well as forming a means of enclosure, I consider the works being undertaken can also be characterised in planning terms as an engineering operation to construct security bunds which are reasonably necessary for the purposes of agriculture within the unit. Even if the Inspector were to accept the Council's assertion that the materials from which the bunds are being constructed are waste, the work being undertaken would be the construction of engineered structures from site derived waste materials and would be permitted under Part 6 A(b).
- 5.33 Although the Appellant contends that they clearly do form a means of enclosure, in this alternative context above the security bunds would not then need to form a "means of enclosure" within the terms of Permitted Development rights under Part 2, so long as the erection of the bunds is reasonably necessary for the purposes of agriculture (and I have set out above clearly why they are). In this case the security bunds would not be subject to limits on heights (including also in theory if they were being constructed under GDPO Part 2, and were being enforced against while part-constructed for temporarily exceeding 2m in places) or restrictions on the materials they are constructed from, provided (as is the case) that these materials are site derived from the farm.
- 5.34 Whether or not the bunds have been constructed from waste materials, 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 "development" is still an engineering operation, and therefore the provisions argued to apply by the Council in respect of Condition A.2(2) and Prior Notification would not apply.

Appeal - Ground (f) fall-back / alternative position

Introduction

- 5.35 For the reasons I have previously explained, I consider that the soils within the bunds or alleged to be in the south-west field are not waste, and the Enforcement Notice does not require them to be removed from the land. However, it became apparent following exchange of Statements of Case between the Council and the Appellant that the Council consider the soils within the bunds to be waste, and are seeking their removal under the Enforcement Notice which is the subject of this appeal.
- 5.36 In relation to the material that has been alleged to be deposited on the south-west field, I understand from the evidence of Joe Killoughery that he disputes the allegations of the Council. To the extent any material might have been placed there at all, in my view this would not constitute development. In any case the Enforcement Notice is insufficiently clear as to precisely what materials and volumes need to be removed, or the subsequent restoration profile required to be achieved, as to be possible to comply with in respect of removing any material that may have been placed there.
- 5.37 The Enforcement Notice does not require the removal of the soils, however, through hearing evidence presented to the Inquiry there is potential for the Inspector to come to a different view, in that he determines the soils within the bunds are waste, and are therefore required to be removed as a requirement of complying with the Notice. Should the Inspector adopt this position, then the Appellant seeks to argue an alternative position, that the steps required to be taken under the Notice are excessive (an appeal under Ground (f)), in that they go beyond

what is necessary to remedy the breach of planning control or remedy any injury to amenity. The reasons that the removal of the soils would be excessive is set out below.

The Need for a Secure Perimeter

- 5.38 I have set out previously the reasons why I believe the perimeter security bunding is essential to facilitate an agricultural use in this area of the farm due to the danger (both to people and to livestock) and the damage caused to arable land from trespass, particularly from motorcycles and quad bikes. The bunding, in forming part of a secure means of enclosure for the farm meets a planning and agricultural need, and is therefore justified in principle and there is a clear public interest and benefit in its retention.

Amenity Benefit of Bund Retention

- 5.39 The soil security bunds will result in amenity and environmental benefits in reducing anti-social behaviour and trespass on the land. These benefits include:
- i) Amenity improvements for users of the footpath which crosses the site (including reduced noise and better air quality) from the reduction in trespass from motorised vehicles.
 - ii) Safety improvements for users of the footpath (as well as associated animals such as dogs), including reduced risk of collision between pedestrians and motorised vehicles.
 - iii) Improvements visually and in respect of landscape character, in that the land will appear more agricultural and rural than in a trespass damaged state (which the Council has described in the past as having the appearance of an illegal go-kart track).
 - iv) Ecological benefits as a by-product of the sustainable farming of this area.

- 5.40 The Council allege four types of harm they believe the bunds cause, which justify their removal, these relate to harm to the Green Belt, to visual amenity of the area and for users of the footpath, and potential (unspecified) harm to Windmill Hill Wood SINC which it is not shown could be mitigated. The Council also believe harm is caused to Development Plan objectives regarding sustainable waste and management, which seek to ensure that waste is managed and deposited appropriately, and that the amount of waste generated is minimised. There is no ground a) appeal, but for completeness I have addressed each of these alleged harms briefly in Appendix F.

Environmental Harm of Bund Removal

- 5.41 The overwhelming majority of the material in the bunds is site derived clean soils. The removal of the bunds constructed from these soils would form three broad stages which are: the operations connected with their removal from the site, the transportation of the material to a new location for disposal, and the impacts on the environment at the disposal site and in a wider context. I have set out below what I believe the impacts resulting from each of the stages would be.

Harms from the removal from the land itself

- 5.42 The initial operations for removal of the material in the bunds at the site would result in harms, which include the following:

- i) Harm to local amenity through the generation of noise, dust and vibration, and harm to visual amenity through the presence of the machinery and the presence of lorries arriving at and leaving the site to collect the material being removed.
- ii) Damage to the agricultural land resulting from the need to drive HGVs across it, in order to access the bunds to be loaded to take the material off-site.

5.43 In my view these harms would be significant in planning terms.

Harms from Transportation

5.44 The material within the bunds would need to be transported to an alternative location (most likely an inert landfill site) to facilitate its disposal, which would highly likely involve its collection and transportation in 4-axle HGV tipper lorries. The volume of material requiring removal would be significant and generate a significant number of HGV movements to facilitate its removal. The HGVs would result in the following adverse impacts.

- i) Highway Safety - Lower Hockenden Lane, from where the farmland is accessed, is a rural country road, and not ideally suited to accommodating significant volumes of HGVs. It is uncertain whether this would be acceptable in respect of overall highway safety.
- ii) Air Quality - Large parts of Bromley, and London more widely, are covered by AQMAs which recognise the poor quality of air and the need to take proactive measures to address this. The ULEZ has recently been extended outward to try to contribute to addressing this recognised problem with air quality. The requirement to remove the material and to transport it somewhere else for disposal would result in the generation of a significant number of movements of diesel HGVs that would otherwise not occur. The requirement to remove the material would therefore have a demonstrable adverse impact on the air quality of the surrounding area and more widely and including the ULEZ, and likely nearby AQMAs.
- iii) Climate Change – In addition to the adverse impacts on air quality, the additional HGV movements generated as a result of the requirement to remove the material would have adverse impacts for climate change in its use of fossil fuels (primarily the use of diesel lorries) required to transport the material to a new location.

5.45 In my view these harms would be significant in planning terms.

Harms at the Destination

5.46 Whilst this might not necessarily be the case, I have assumed that the material would be transported to an authorised operational site that accepts inert waste for disposal. This would mean this material is substituted for inert material from an alternative source that would otherwise have been placed in that void. There are likely to be legal and acceptable alternatives to this option (such as a new receptor site), and in these cases I consider the harms at the destination would likely be worse. Therefore, in making the assumption I have about where the material would end up, I am assuming the least favourable possible situation in respect of the Appellant's case (and the best for the Council's).

- i) Landfill void, including inert landfill void, is a precious and finite commodity and should be preserved as far as possible for uses for which it is required. The disposal of this material in an inert landfill would sterilise void that could otherwise be used for wastes from alternative sources. As a result, this would reduce the overall supply of inert landfill, reduce the operational life of the landfill which accepts the material, and generate a need to identify a new alternative source of landfill at an earlier date.

5.47 In my view these harms would be significant in planning terms.

Planning Purpose

- 5.48 As set out above, the removal of the soils and their transportation to an alternative location for disposal would result in significant planning harm in both environmental and amenity terms. However, the removal of the perimeter security bunding serves no planning purpose against which to balance this harm because the security bunds could be simply reconstructed afterwards from other site derived materials under permitted development rights as set out in the preceding section of my Proof.
- 5.49 Since a bund could be erected anyway for security purposes, in effect the issue on which the Inspector is being asked to make a determination is as to whether the existing bund is allowed to be completed using the soils of which it is currently formed, or that bund is removed from the site and replaced with a similar bund, also formed of soils derived from the farm.

Conclusion and Acceptable Lesser Steps

- 5.50 In the event that the Inspector has come to the view that consideration of a ground (f) appeal is necessary, then the Enforcement Notice could be made acceptable by restricting it to requirements surrounding the deposit of waste.
- 5.51 Specifically, this would mean that the Notice is amended so that in order to comply with its requirements, the Appellant would need to:
- a) Cease depositing further waste on the land – within 7 days after this notice takes effect.
 - b) Cease using the land for the deposit of waste.
 - c) Remove all waste (as defined in Schedule 1¹) from the land – within 12 months after this notice takes effect.”
- 5.52 As set out in the preceding section, the requirements to “...in particular remove all waste from the land – within 12 months after this notice takes effect.” and to “Restore the land to its condition before the breach of planning control took place – within 18 months after this notice takes effect.” would be excessive, serve no planning purpose, and result in significant harm both in respect of amenity and the environment.

¹ Schedule 1 would contain a list of “Other Materials” such as plastics, which are referred to in paragraph 5.12 of my Proof and included in a consolidated list in Appendix D of my Proof.

6.0 SUMMARY AND CONCLUSION (INCORPORATING SUMMARY PROOF)

- 6.1 I am Adrian Lynham, Director, of Continuplan. I have a BA (Hons) degree and diploma in town planning with a specialism in Environmental Impact Assessment, and an MSc in town planning, all from Oxford Brookes University. I currently work as a planning consultant, dealing entirely with waste, minerals and renewable energy related work for both public and private sector clients.
- 6.2 I am a chartered town planner with nearly thirty years specialist experience of waste and minerals planning and Environmental Impact Assessment, gained in both the private sector as a consultant, and in the public sector in roles as a development control planner, policy planner and enforcement officer with county councils in the south of England. I have also worked for the Environment Agency providing specialist town planning advice.
- 6.3 My proof of evidence sets out the planning evidence, with a focus on permitted development rights to undertake the development, the issue in respect of material change of use, whether or not the materials deposited should be considered waste, and the planning harm associated with removal of material from the land.
- 6.4 The area subject to the Enforcement Notice forms part of a much larger agricultural unit, known as Lower Hockenden Farm, and is being actively managed for farming by a tenant farmer Mr Moxon, who has rented the land since 2020. Current and historic problems with trespass and antisocial behaviour have caused issues with farming the unit effectively – particularly in the area where the Enforcement Notice applies.
- 6.5 Amongst other activities related to the general management and upkeep of the farm, the farmer has recently erected over 10km of fencing throughout the holding for the protection and management of livestock, etc. In order to erect the fencing, some vegetation, including shrubs and trees, were stripped back. Significant earth works were also carried out to even out ground levels so the fencing could be properly aligned. In some areas this has resulted in level changes of approximately 1 metre.
- 6.6 The material arising from the erection of the fencing was used in creating the new security bunds at the farm, as part of a wider plan to restrict and deter access to the land. In some areas where access problems are particularly severe, additional measures involving the placement of tree trunks will be used, and it is intended that these measures may be adapted as appropriate to maximise their level of effectiveness.
- 6.7 The Local Planning Authority allege that the construction of the security bunds is a breach of planning control because waste materials have been imported to the land without planning permission such that a material change of use has occurred.
- 6.8 However, I consider that what has occurred is the placement of soils and other site derived materials arising from the erection of fencing on the wider farm unit, to form a means of enclosure to deter trespass – in accordance with permitted development rights under the GPDO. As a result, there has been no material change of use to the deposition of waste.
- 6.9 The area enforced against forms part of a much larger agricultural unit which is managed by a tenanted farmer. The area enforced against remains functionally related to the whole agricultural unit and forms part of a single planning unit.
- 6.10 It is clear to me there is a need for a security solution at the farm boundaries, and that trespass is having significant adverse impacts on the ability of the tenant farmer to manage the land in the south-eastern area of the farm effectively. A bund is the most effective means of enclosure for the southern part of the farm because it is more robust and less vulnerable to vandalism and cutting than the post and wire fencing used in other areas.

- 6.11 The construction of the bunds from clean site derived soils come within permitted development rights under Parts 2 (Minor operations) and 4 (Temporary buildings and structures) of the GPDO. Even in the event the Inspector considers that the soils on site are waste, which I contend that they are not, the erection of the bunds would still be permitted under Part 6 (agricultural development on units of 5ha or more) of the GPDO. For planning purposes, the bunds need to be considered in their completed form. This is consistent with the way all other developments are treated under the planning system.
- 6.12 In the event the ground b) and c) appeals fail, the Appellant will pursue a ground f) appeal because the steps required by the Notice are excessive.
- 6.13 The soil security bunds will result in amenity and environmental benefits in reducing anti-social behaviour and trespass on the land. These benefits include:
- i) Amenity improvements for users of the footpath which crosses the site (including reduced noise and better air quality) from the reduction in trespass from motorised vehicles.
 - ii) Safety improvements for users of the footpath (as well as associated animals such as dogs), including reduced risk of collision between pedestrians and motorised vehicles.
 - iii) Improvements visually and in respect of landscape character, in that the land will appear more agricultural and rural than in a trespass damaged state (which the Council has described in the past as having the appearance of an illegal go-kart track).
 - iv) Ecological benefits as a by-product of the sustainable farming of this area.
- 6.14 The overwhelming majority of the material in the bunds is site derived clean soils, and the removal of the soils and their transportation to an alternative location for disposal would result in significant planning harm in both environmental and amenity terms. However, the removal of the perimeter security bunding serves no planning purpose against which to balance this harm because the security bunds could be simply reconstructed afterwards from other site derived materials under permitted development rights.
- 6.15 Since a bund could be erected anyway for security purposes, in effect the issue on which the Inspector is being asked to make a determination is as to whether the existing bund is allowed to be completed using the soils of which it is currently formed, or that bund is removed from the site and replaced with a similar bund, also formed of soils derived from the farm.
- 6.16 In the event that the Inspector comes to the view that consideration of a ground (f) appeal is necessary, then in my view the Enforcement Notice could be made acceptable by restricting it to requirements surrounding the cessation of the deposit of waste.
- 6.17 Specifically, this would mean that the Notice is amended so that in order to comply with its requirements, the Appellant would need to cease depositing further waste on the land. The other requirements to *"...in particular remove all waste from the land – within 12 months after this notice takes effect."* and to *"Restore the land to its condition before the breach of planning control took place – within 18 months after this notice takes effect."* would be excessive, serve no planning purpose, and result in significant harm both in respect of amenity and the environment.