



**LONDON BOROUGH OF BROMLEY
HOUSING, PLANNING & REGENERATION**

STATEMENT OF CASE

JANUARY 2023

**LBB Ref No: EN/21/00270/CHANGE
PINS Ref No: APP/G5180/C/22/3312256**

Appeal by Bournemouth Sand and Gravel against an Enforcement Notice issued by the London Borough of Bromley in respect of the material change of use of the land from agriculture to the storage of waste at the site at Lower Hockenden Farm, Hockenden Lane, Swanley, BR8 7QH

1.0 INTRODUCTION

1.1 This appeal is made against the Enforcement Notice issued by the Council on 27 October 2022 in respect of the unauthorised material change of use of the land from agriculture to the storage of waste at the site at Lower Hockenden Farm, Hockenden Lane, Swanley, BR8 7QH. A copy of the Notice is attached at **Appendix 1**.

1.2 The Enforcement Notice was issued on 27 October 2022 under the terms of Section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended). The alleged breach of planning control is:

“Without planning permission, the material change of use of the land from agriculture to the deposit of waste.”

1.3 The reasons why the Council has considered it expedient to issue the Enforcement Notice are as follows:

“It appears to the Council that the above breach of planning control has occurred within the last ten years.

The purpose of the green belt in this location is to check the unrestricted sprawl of large built-up areas, assist in safeguarding the countryside from encroachment and assist in urban regeneration by encouraging the recycling of derelict and other urban land. The use conflicts with those purposes and also fails to preserve the openness of the green belt. It is therefore inappropriate development in the green belt. There are no considerations which

clearly outweigh the harm to the green belt by reason of the inappropriateness of the use and other harm resulting from it. In the absence of very special circumstances the use is contrary to policy 49 of the Bromley Local Plan, policy G2 of the London Plan and section 13 of the National Planning Policy Framework (NPPF).

The development also adversely affects visual amenity of the area and the amenity of users of footpath 170 by reason of the amount, extent and height of the deposits. Part of the land is within the Windmill Hill Wood Site of Importance for Nature Conservation (SINC). The nature of the use is such that it may significantly affect the nature conservation interest of the SINC. It has not been shown that such harm could be mitigated. For these reasons the land is an unsuitable location for the use and its use is contrary to policies 37, 69, 77 and 114 of the Bromley Local Plan, policy SI 8 of the London Plan, paragraph 185 of the NPPF and paragraph 7 of the National Planning Policy for Waste.

The use undermines 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. Notwithstanding that, at the present time the Council does not require any additional waste management sites to meet the apportionment targets in the London Plan. It is therefore contrary to Bromley Local Plan Policy 112 and London Plan Policies SI 7 and SI 8.”

1.4 The step required to remedy the breach of planning control is:

“(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 and in particular remove all waste from the land – within 12 months after this notice takes effect

(c) Restore the land to its condition before the breach of planning control took place – within 18 months after this notice takes effect”

1.5 The Notice would have taken effect on 1 December 2022 had an appeal not been made against it.

1.6 The Appellant has appealed against the Enforcement Notice on ground (b): that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.

2.0 SITE AND SURROUNDINGS

2.1 The appeal site forms part an open area of land to the south of Hockenden Lane which has a lawful agricultural use. The site is traversed by Public Footpath No 170 which extends to a distance of approximately 1 mile and which connects Hockenden Lane in the north to Bourne Wood in the south and ultimately Crockenhill Village after crossing a railway line. A map of the footpath is attached at **Appendix 2**. The site adjoins a quarry to the south known as Bournewood Sand and Gravel with a gated access connecting the two sites (the public footpath has been temporarily diverted until the quarry area is restored). Both sites are in the

same ownership. The site falls within the Metropolitan Green Belt. Details of the Local Plan designations are outlined in the map attached at **Appendix 3**.

- 2.2 The areas of land which are the subject of the Enforcement Notice are situated to the south of a line of post and rail fencing, which separates them from areas of land which have remained in agricultural use.

3.0 RELEVANT PLANNING HISTORY

- 3.1 Under reference 11/00536/FULL1, retrospective planning permission was granted on 11 May 2011 for a new vehicular access and access track. This replaced a former access originally through the adjacent yard of Lower Hockenden Farm with the new access diverted around the yard. Copies of the Decision Notice and approved plans are attached at **Appendix 4**.
- 3.2 Under reference APP/G5180/C/21/3285855, a planning appeal issued in respect of an Enforcement Notice concerning the material change of use of land for storage of metal containers, skips, quarrying equipment, metal cylinders and other machinery was allowed on 21 December 2022. This was on the basis that the Enforcement Notice was not served on everyone with an interest in the land. A copy of the Appeal Decision is attached at **Appendix 5**.
- 3.3 On 15 December 2022 a further Enforcement Notice was issued by the Council in respect of the material change of use of the land from agriculture to storage, a copy of which is attached at **Appendix 6**.

4.0 NATIONAL, REGIONAL & LOCAL PLANNING GUIDANCE

- 4.1 The Development Plan for the Borough comprises the policies of the Bromley Local Plan (adopted January 2019) and the London Plan (adopted March 2021). The National Planning Policy Framework was updated on 20 July 2021.
- 4.2 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:
- a) the provisions of the development plan, so far as material to the application,
 - b) any local finance considerations, so far as material to the application, and
 - c) any other material considerations.

- 4.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 12 of the NPPF both state that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The Bromley Local Plan

- 4.4 The Council is committed to the need to protect the living conditions and environment of all local residents of the Borough. Section 1 of the Bromley Local Plan states that new development of all kinds should well designed, safe, energy efficient, and complements its surroundings, respecting the existing scale and layout. Private or public open space, and appropriate car parking are key considerations. Good quality public art and street furniture make places more attractive and comfortable for users. Bromley's roads and streets are clean but uncluttered, with street trees and verges improving their appearance. New development should incorporate high quality design standards, include appropriate well planned private or public open space that promotes and enhances biodiversity, and ensure public areas are well designed, safe and accessible.

- 4.5 Policy 37: General Design of Development states as follows:

- “All development proposals, including extensions to existing buildings, will be expected to be of a high standard of design and layout. Developments will be expected to meet all of the following criteria where they are relevant:*
- a) Be imaginative and attractive to look at, of a good architectural quality and should complement the scale, proportion, form, layout and materials of adjacent buildings and areas;*
 - b) Positively contribute to the existing street scene and/or landscape and respect important views, heritage assets, skylines, landmarks or landscape features;*
 - c) Space about buildings should provide opportunities to create attractive settings with hard or soft landscaping (including enhancing biodiversity);*
 - d) The relationship with existing buildings should allow for adequate daylight and sunlight to penetrate in and between buildings;*
 - e) Respect the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by noise and disturbance, inadequate daylight, sunlight, privacy or by overshadowing;*
 - f) The development should address sustainable design and construction and include where appropriate on-site energy generation;*
 - g) Suitable access should be provided for people with impaired mobility and meet the principles of inclusive design. Where necessary and relevant to the development, contributions may be sought to improve accessibility around the development;*
 - h) Security and crime prevention measures should be included in the design and layout of building and public areas;*
 - i) Recycling and waste storage facilities are incorporated within the design layout;*
 - j) Respect non designated heritage assets. Applications should be accompanied by a written statement setting out design principles and illustrative material showing the relationship of the development to the wider context.”*
 - k)*

4.6 Policy 49: The Green Belt states as follows:

“Within the Green Belt permission will not be given for inappropriate development unless very special circumstances can be demonstrated that clearly outweigh the harm by reason of inappropriateness or any other harm.

The construction of new buildings on land falling within the Green Belt will be inappropriate, unless it is for the following purposes:

- *agriculture and forestry;*
- *appropriate facilities for outdoor sport and outdoor recreation and cemeteries which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it;*
- *extension or alteration of a building that it does not result in disproportionate additions over and above the size of the original building;*
- *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- *limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or*
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

Certain other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

- *mineral extraction;*
- *engineering operations;*
- *local transport infrastructure which can demonstrate a requirement for a Green Belt location;*
- *the re-use of buildings provided that the buildings are of permanent and substantial construction; and*
- *development brought forward under a Community Right to Build Order.”*

4.7 Policy 69: Development and Nature Conservation Sites states as follows:

“A development proposal that may significantly affect the nature conservation interest or value of a Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC) or a Regionally Important Geological Site (RIG) will be permitted only:

- *If it can be shown that the reasons for the development or benefits to the local community from the development outweigh the interest or value of the site, or*
- *Any harm can be overcome by mitigating measures, secured through conditions or planning obligations.”*

4.8 Policy 77: Landscape Quality and Character states as follows:

“In considering development proposals and in the management of its own land and operations, the Council will:

- *Seek to safeguard the quality and character of the local landscape; and*
- *Seek the appropriate restoration and enhancement of the local landscape through the use of planning obligations and conditions”*

4.9 The supporting text at paragraphs 5.3.16–5.3.17 states as follows:

“Extensive areas of open land in the Borough have considerable landscape value. These areas are principally within the Green Belt, but also includes some areas of Metropolitan Open Land (MOL). They overlap with the Kent Downs AONB and include Sites of Special Scientific Interest, Sites of Importance for Nature Conservation and Local Nature Reserves. Holwood Park, Down House, Sundridge Park, and Crystal Park are included on English Heritage’s Register of Historic Parks and Gardens in part for their landscape value.

When considering proposals, the Council will pay special attention to the need to preserve the landscape, whether for its visual, historic or nature conservation value. Proposals, for example, for open space recreational uses, which, in principle, may be acceptable within the Green Belt or on MOL, can affect the appearance of the land.”

4.10 Policy 112: Planning for Sustainable Waste Management states as follows:

“The Council will support sustainable waste management by:

- Implementing the waste hierarchy in its approach to future waste management*
- Allocating the strategic waste management sites of Waldo Road, Churchfields and Cookham Road and safeguarding them for waste uses only.*
- Working in collaboration with the London Boroughs of Bexley, Greenwich, Southwark, Lewisham and City of London to make optimum use of waste management capacity in the south east London sub region.*
- Meeting the London Plan waste apportionment targets.”*

4.11 Policy 114: New Waste Management Facilities and Extensions and Alterations to Existing Sites states as follows:

“New waste management facilities and extensions and/ or alterations to existing waste management facilities must demonstrate that they will not undermine the local waste planning strategy and help the Borough move up the waste hierarchy.

The likely impact of the proposal on the local environment and on amenity will be considered against the development plan as a whole and the specific criteria for waste management facilities set out in the London Plan and national policy. New facilities, extensions and alterations should be well designed and contribute positively to local character as far as possible.

Prospective developers of new waste management facilities will be expected to look to the Strategic Industrial Location in the Cray Business Corridor and then other industrial areas before other previously developed land. New waste facilities in industrial areas will only be acceptable where the proposed use does not impede effective operation of other nearby businesses nor undermine the primary function of the designation.”

Full transcripts of Policies 112 and 114 are attached at **Appendix 7**.

The London Plan

4.12 Policy G2: London's Green Belt states the following:

- "A. *The Green Belt should be protected from inappropriate development:*
- 1) *development proposals that would harm the Green Belt should be refused except where very special circumstances exist;*
 - 2) *subject to national policy tests, the enhancement of the Green Belt to provide appropriate multi-functional beneficial uses for Londoners should be supported.*
- B. *Exceptional circumstances are required to justify either the extension or de designation of the Green Belt through the preparation or review of a Local Plan."*

4.13 Accompanying paragraphs 8.2.1–8.2.2 state the following:

- "8.21 *The Mayor strongly supports the **continued protection of London's Green Belt**. The NPPF provides a clear direction for the management of development within the Green Belt and sets out the processes and considerations for defining Green Belt boundaries. London's Green Belt makes up 22 per cent of London's land area and performs multiple beneficial functions for London, such as combating the urban heat island effect, growing food, and providing space for recreation. It also provides the vital function of containing the further expansion of built development. This has helped to drive the re-use and intensification of London's previously developed brownfield land to ensure London makes efficient use of its land and infrastructure, and that inner urban areas benefit from regeneration and investment.*
- 8.2.2 *Openness and permanence are essential characteristics of the Green Belt, but despite being open in character, some parts of the Green Belt do not provide significant benefits to Londoners as they have become derelict and unsightly. This is not, however, an acceptable reason to allow development to take place. These derelict sites may be making positive contributions to biodiversity, flood prevention, and reducing the urban heat island effect. The Mayor will work with boroughs and other strategic partners to enhance access to the Green Belt and to **improve the quality** of these areas in ways that are appropriate within the Green Belt."*

4.14 Policy SI 7: Reducing Waste and Supporting the Circular Economy states as follows:

- "A *Resource conservation, waste reduction, increases in material re use and recycling, and reductions in waste going for disposal will be achieved by the Mayor, waste planning authorities and industry working in collaboration to:*
- 1) *promote a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible*
 - 2) *encourage waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products*
 - 3) *ensure that there is zero biodegradable or recyclable waste to landfill by 2026*
 - 4) *meet or exceed the municipal waste recycling target of 65 per cent by 2030*

- 5) *meet or exceed the targets for each of the following waste and material streams:*
 - a) *construction and demolition – 95 per cent reuse/recycling/recovery*
 - b) *excavation – 95 per cent beneficial use¹⁶⁴*
 - 6) *design developments with adequate, flexible, and easily accessible storage space and collection systems that support, as a minimum, the separate collection of dry recyclables (at least card, paper, mixed plastics, metals, glass) and food.*
- B** *Referable applications should promote circular economy outcomes and aim to be net zero-waste. A Circular Economy Statement should be submitted, to demonstrate:*
- 1) *how all materials arising from demolition and remediation works will be re-used and/or recycled*
 - 2) *how the proposal’s design and construction will reduce material demands and enable building materials, components and products to be disassembled and re-used at the end of their useful life*
 - 3) *opportunities for managing as much waste as possible on site*
 - 4) *adequate and easily accessible storage space and collection systems to support recycling and re-use*
 - 5) *how much waste the proposal is expected to generate, and how and where the waste will be managed in accordance with the waste hierarchy*
 - 6) *how performance will be monitored and reported.*
- C** *Development Plans that apply circular economy principles and set local lower thresholds for the application of Circular Economy Statements for development proposals are supported.”*

4.15 Policy SI 8: Waste Capacity and Net Waste Self-Sufficiency states as follows:

- “A** *In order to manage London’s waste sustainably:*
- 1) *the equivalent of 100 per cent of London’s waste should be managed within London (i.e. net self-sufficiency) by 2026*
 - 2) *existing waste management sites should be safeguarded (see Policy SI 9 Safeguarded waste sites)*
 - 3) *the waste management capacity of existing sites should be optimised*
 - 4) *new waste management sites should be provided where required*
 - 5) *environmental, social and economic benefits from waste and secondary materials management should be created.*
- B** *Development Plans should:*
- 1) *plan for identified waste needs*
 - 2) *identify how waste will be reduced, in line with the principles of the Circular Economy and how remaining quantities of waste will be managed*
 - 3) *allocate sufficient sites, identify suitable areas, and identify waste management facilities to provide the capacity to manage the apportioned tonnages of waste, as set out in Table 9.2 – boroughs are encouraged to collaborate by pooling their apportionment requirements*
 - 4) *identify the following as suitable locations to manage borough waste apportionments:*
 - a. *existing waste and secondary material sites/land, particularly waste transfer facilities, with a view to maximising their capacity*
 - b. *Strategic Industrial Locations and Locally Significant Industrial Sites*
 - c. *safeguarded wharves with an existing or future potential for waste and secondary material management.*

- C *Mayoral Development Corporations must cooperate with host boroughs to meet identified waste needs.*
- D *Development proposals for materials and waste management sites are encouraged where they:*
- 1) *deliver a range of complementary waste management and secondary material processing facilities on a single site*
 - 2) *support prolonged product life and secondary repair, refurbishment and remanufacture of materials and assets*
 - 3) *contribute towards renewable energy generation, especially renewable gas technologies from organic/biomass waste, and/or*
 - 4) *are linked to low emission combined heat and power and/or combined cooling heat and power (CHP is only acceptable where it will enable the delivery or extension of an area-wide heat network consistent with Policy SI 3 Energy infrastructure Part D1c)*
- E *Developments proposals for new waste sites or to increase the capacity of existing sites should be evaluated against the following criteria:*
- 1) *the nature of the activity, its scale and location*
 - 2) *effective implementation of the waste hierarchy and its contribution to London's circular economy*
 - 3) *achieving a positive carbon outcome (i.e. re-using and recycling high carbon content materials) resulting in significant greenhouse gas savings – all facilities generating energy from waste will need to meet, or demonstrate that steps are in place to meet, a minimum performance of 400g of CO₂ equivalent per kilowatt hour of electricity produced*
 - 4) *the impact on amenity in surrounding areas (including but not limited to noise, odours, air quality and visual impact) – where a site is likely to produce significant air quality, dust or noise impacts, it should be fully enclosed*
 - 5) *the transport and environmental impacts of all vehicle movements related to the proposal – the use of renewable fuels from waste sources and the use of rail and waterway networks to transport waste should be supported.*
- F *When planning for new waste sites or to increase the capacity at existing sites the following should be considered:*
- 1) *job creation and social value benefits, including skills, training and apprenticeship opportunities*
 - 2) *local need*
 - 3) *accessibility of services for local communities and businesses.”*

Full transcripts of Policies SI7 and SI8 are attached at **Appendix 8**.

National Planning Policy Framework

4.16 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

4.17 Paragraph 2 of the 'Introduction' states: "*Planning law requires that applications for planning*

permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF must be taken into account in preparing the development plan, and is a material consideration in planning decisions.”

4.18 In regard to planning conditions paragraph 56 states: *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification”.*

4.19 Chapter 13 of the NPPF – “Protecting Green Belt Land” states a paragraph 137 that *“The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”*

4.20 Paragraph 138 of the NPPF states as follows:

“Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;*
- b) to prevent neighbouring towns merging into one another;*
- c) to assist in safeguarding the countryside from encroachment;*
- d) to preserve the setting and special character of historic towns; and*
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

4.21 Paragraph 145 of the NPPF states as follows:

“Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.”

4.22 Paragraph 147 of the NPPF states as follows:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

4.23 Paragraph 148 of the NPPF states as follows:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

4.24 Paragraph 149 of the NPPF states as follows:

“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

- a) buildings for agriculture and forestry;*
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;*
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- e) limited infilling in villages;*
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
 - not have a greater impact on the openness of the Green Belt than the existing development; or*
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”**

4.25 Paragraph 150 of the NPPF states as follows:

“Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;*
- b) engineering operations;*
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;*
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;*
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and*
- f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.”*

5.0 GROUNDS OF APPEAL

5.1 The appellant has appealed on ground (b): that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. Since no appeal on ground (a) has been pursued the Council will not delve into the merits of the planning contravention which it alleges.

The appellant's case

5.2 The thrust of the appellant's case is set out in a supporting letter from Icen Projects Ltd dated 30 November 2022, which may be summarised as follows:

- For a period of 10 years and more the appeal has formed part of Lower Hockenden Farm and has been in agricultural use.
- The appeal site has been subject to on-going lawless and anti-social behaviour which has degraded the land. This has included the riding of motorbikes across the site. The appellant has stationed concrete blockades and dirt bunds within the site to prevent riders from being able to access and/or ride around it. Unfortunately, the problem persists.
- The site is in agricultural use. The farmer on the land is seeking to improve the quality of the soil. This has required the movement of topsoil across the site.
- The farmer has an exemption from the Environment Agency in order to spread mulch across the land to conserve soil moisture, moderate soil temperature and control growth of weeds. The mulch is simply wood cuts from the site itself and does not involve any importation of material onto the site. All of the activities on this site relate to agriculture use.
- European Directive 2008/98/EC provides a definition of "waste" as any substance or object which the holder discards or intends or is required to discard. Therefore, it must be assumed that the Council believe any operations that have taken place form a type of "waste development".
- Government Guidance published in relation to the Planning System (Waste Guidance, Paragraph: 002 Reference ID: 28-002-20141016) lists what can constitute "waste development". None of the above operations which have taken place or are currently taking place within the site fall within this guidance.

The Council's case

5.3 The Council has undertaken detailed investigations of the appeal site. These have included site inspections in conjunction with the Environment Agency, in which the nature of deposited material has been recorded, as well as follow-up enquiries to the site owners and Bournewood Sand and Gravel Ltd involving Planning Contravention Notices. The Council has also commissioned independent analysis of the site (undertaken by Atkins (part of the SNC-

Lavalin Group)) (“the Atkins Report”) involving a further site inspection and LIDAR data analysis in order establish the nature of deposits within the site, and changes in ground levels and changes in landform by volume which have occurred. In light of the available evidence the Council considers that a material change of use of the land involving the deposit of waste has occurred within the last ten years, which necessitates the Enforcement Notice.

5.4 Materials identified within the appeal site have included the following: (1) hard and soft plastics of various sizes; (2) metal fragments; (3) cables and wiring; (4) branches and wood fragments; (5) concrete boulders; (6) plasterboard; (7) woodchip material in a general sandy gravel matrix; (8) chalk and flint gravels and chalk boulders; (9) glass; (10) broken ceramics; (11) brick fragments; and (12) insulation materials.

5.5 The Atkins Report (June 2022) – a copy of which is included at **Appendix 9** – has concluded the following:

“The volume balance calculations indicate that there has been an overall increase in the deposition of materials from numerous areas across the site.

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 material is of unknown quality in terms of chemical components and the source(s) of the material is not known.”

5.6 In the course of investigating the use of the site, the Council contacted both the landowners and tenants. Responses to Planning Contravention Notices issued by the Council on 8 November 2021 are included at **Appendices 10 and 11**. Neither party provided any detailed answers to the Council’s questions; however, in response to the Council’s question regarding the origins of the soil/stones/shredded wood matter and other deposits imported onto the land, Bourewood Sand and Gravel responded that this was “generated from the land.” In response to a question regarding details of any permission/s or licence/s which exist to permit the deposits on the land, Bourewood Sand and Gravel responded that this was “material from land.” During the course of a site visit on 16 November 2021, an employee of Killoughery advised the Council that material on the land derived from fencing material which had been shredded.

5.7 A letter from the Environment Agency dated 23 January 2023 regarding its observations of the appeal site is included at **Appendix 12**, together with accompanying photographs. Whilst the letter refers to the adjoining quarry to the south, it includes specific reference to the appeal site (which it refers to as: “*agricultural land, known as Windmill Hill Wood; land adjacent to the A20 Swanley Bypass, which leads to Hockenden Lane, Swanley*”). The letter states as follows:

“A site visit was undertaken on 14 July 2021, by Paul Bennett and John Radclyffe of the Environment Agency to Bournemouth Landfill. We also inspected the agricultural land, known as Windmill Hill Wood; land adjacent to the A20 Swanley Bypass, which leads to Hockenden Lane, Swanley.

This agricultural land was accessible through the open rear gate of the landfill site. We observed residual shredded wood on the ground leading from the site and onto the agricultural land. We observed significant soil and stones stockpiles, indicative of construction wastes as well as 2 shredded wood and plastics partially buried under the soil stockpiles, around the edge of the adjoining fields, adjacent to the A20 Swanley Bypass, which led to Hockenden Lane Swanley. There was also visual evidence that the levels of some of the fields, on the opposite site of Windmill Hill Wood, leading to Hockenden Lane had been raised. Significant volumes of soil and stones indicative of construction wastes had been deposited and stockpiled. In some areas we considered that the land level had been raised by at least 2-3 metres with additional extensive soil, stone stockpiles noted since our last visit in 2019.

We took a number of photographs, and a selection of these photographs will be sent to you, as a separate attachment to this letter.

We identified shredded wood stockpiles and residue within Bournemouth landfill, which appeared to have been the source of the shredded wood stockpiles on the land at Hockenden Lane.”

- 5.8 In regard to the waste exemptions, which was cited the appellant in their supporting letter of 30 November 2022, the Environment Agency has advised the following:

“Waste exemptions are considered a low level activity, not requiring the need for an Environmental Permit and are incumbent on the applicant to register and comply with the requirements of the exemptions to ensure the strict limits are adhered to and that the activity does not breach the relevant objectives for which the exemption was registered; i.e. (a) without risk to water, air, soil, plants or animals; (b) without causing a nuisance through noise or odours; and (c) without adversely affecting the countryside or places of special interest.”

Response to the appellant’s case

- 5.9 While the Council acknowledges that the land to the north adjoining the appeal site has remained in agricultural use, this does not account for the appeal site – to the south of the line of post and rail fencing – where substantial waste deposits have been identified. It is unclear whether the author of the supporting letter of 30 November 2022 has visited the site. In regard to the movement of topsoil, the Council has no reason to dispute that this has occurred within areas of land which have remained in agricultural use.
- 5.10 Whilst the Environment Agency has confirmed to the Council that waste exemptions have been sought in relation to the appeal site and the adjoining quarry, the appellant has provided little information in regard to such exemptions, other than to state that a farmer has an exemption to spread mulch across the land, and that this is *“simply wood cuts from the site itself and does not involve any importation of material onto the site.”* The appellant fails to explain the origin of these “wood cuts” in any detail, for example by confirming whether these

derive from trees which have been felled within the land. Moreover, it is unclear who exactly the farmer in question is, or whether the appellant company comprises an agricultural enterprise. The appellant should be put to proof.

- 5.11 Aside from the materials listed within paragraph 5.4 of this statement, the Council and the Environment Agency have identified residual shredded wood within the appeal site (assumed to be the “wood cuts” cited by the appellant); however, much of this material comprises treated wood (which includes paint traces) derived from either construction material or furniture, as well as fragments of plastic and building hardcore (images taken from the site are attached at **Appendix 13**). Whilst the appellant refers to European Directive 2008/98/EC and the Government’s Waste Guidance, these documents fail to account for the waste deposits identified within the appeal site.

6.0 CONCLUSION

- 6.1 The Council has set out the outline of its case in the preceding section and in so doing has responded to the grounds of appeal.
- 6.2 For this ground (b) appeal to succeed, the burden of proof is firmly on the appellant to demonstrate that the matters stated in the Enforcement Notice relating to the material change of use of the land have not occurred as a matter of fact. In this case, the appellant has failed to not only demonstrate that this has not occurred, but the Council has detailed evidence to substantiate its case.
- 6.3 The Inspector is respectfully requested to uphold the Enforcement Notice and dismiss the appeal.
- 6.4 The Council reserves the right to make further representations in the event of the appellant’s or the appellant’s agent’s additional comments or material.
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LIST OF APPENDICES

APPENDIX 1	Copy of Enforcement Notice
APPENDIX 2	Map of Public Footpath No 170
APPENDIX 3	Plan of Local Plan designations
APPENDIX 4	Planning application 11/00536/FULL1 – Decision Notice and approved plans
APPENDIX 5	Appeal Decision: APP/G5180/C/21/3285855 (21 December 2022)
APPENDIX 6	Enforcement Notice in respect of the material change of use of land from agriculture to storage (dated 15 December 2022)
APPENDIX 7	Full transcripts of Local Plan Policies 112 and 114
APPENDIX 8	Full transcripts of London Plan Policies SI7 and SI8
APPENDIX 9	Atkins Report (June 2022)
APPENDIX 10	Response from Killoughery Properties Ltd to Planning Contravention Notice issued by the Council on 8 November 2021
APPENDIX 11	Response from Bournemouth Sand and Gravel to Planning Contravention Notice issued by the Council on 8 November 2021
APPENDIX 12	Letter from the Environment Agency dated 23 January 2023 regarding its observations of the appeal site
APPENDIX 13	Images taken from the appeal site