
**STATEMENT OF CASE
- LAND AT FROG ISLAND,
FERRY LANE, RAINHAM,
RM13 9YH**

**Appeal against Enforcement
Notice issued by the London
Borough of Havering
APP/B5480/C/22/3305409**

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1 Introduction

- 1.1 This Statement of Case is submitted on behalf of S Walsh & Son Limited (**Appellant**) against an Enforcement Notice (**Notice**) issued by the London Borough of Havering, the Local Planning Authority (**LPA**) on 18 July 2022, in respect of land at Frog Island, Ferry Lane, Rainham, RM13 9YH (**Site**).
- 1.2 It should be read in conjunction with the Grounds of Appeal (August 2022) which set out the background relating to this Enforcement Appeal.
- 1.3 The appeal is made on 6 grounds as set out in s174(2) of the Town and Country Planning Act 1990 (**TCPA**), namely:
- (a) that, in respect of the alleged breach of planning control, planning permission, should it be required, ought to be granted;
 - (c) that those matters (if they occurred) do not constitute a breach of planning control;
 - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - (e) that copies of the enforcement notice were not served as required by section 172;
 - (f) the steps required to comply with the requirements of the notice are excessive; and
 - (g) the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
- 1.4 The matters contained within this Statement of Case build upon the outline case set out within the Grounds of Appeal, provides details of the evidence which will be submitted as part of case for the Appellant at inquiry and respond directly to the apparent basis for and terms of the Notice.
- 1.5 It should be noted that a separate appeal against the Notice has been submitted by the Environment Agency (appeal ref: APP/B5480/C/22/3305398) with grounds (b), (e) and (g) pleaded and that appeal is progressing by written representations.

2 Ground (a) – planning permission should be granted for what is alleged in the Notice

- 2.1 In the alternative to the case as per ground (c) (as to which, see below), the Appellant asserts that planning permission should be granted for what is alleged in the Notice.
- 2.2 Section 177(1) of the TCPA provides that planning permission may be granted for the whole or any part of the matters set out in the Notice or in relation to the whole or any part of the land to which the Notice relates.
- 2.3 The main planning issues are:
- (a) Whether planning permission for the development as set out in the breach of planning control should be granted having regard to the National Planning Policy Framework and any relevant development plan policies;
 - (b) The effect of the development on the Site on the amenity of those working in and adjacent to the area;
 - (c) The effect of the development on the visual amenity of the area;

- (d) The impact of the development on the highway network;
- (e) Whether there are other matters that result in additional harm;
- (f) Whether there are other considerations weighing in favour of the development;
- (g) Whether any harm resulting from the development is clearly outweighed by other considerations.

2.4 The Appellant considers that should planning permission be required for the development at the Site then it ought to be granted for the present development on the Site which the Appellant considers is more accurately described as a B1/B2/B8 use for which the Appellant will present evidence and invite the inspector to characterise the use in that way. This is consistent with the Planning Portal's guidance on waste management applications which confirms that waste management activities *'fall within the general industrial class in the Use Classes Order and can be considered to be a B1, B2 or B8 use'*.

2.5 The Appellant considers that the use enforced against is consistent with (or at the very least can be the subject of conditions so that it is consistent with) the aims and objectives of national policy and guidance and the terms of the statutory development plan for the area. In addition, material considerations (including the social and economic benefits arising from the development) weigh strongly in favour of granting planning permission.

2.6 The Appellant's evidence will demonstrate that if the Inspector decides there has been a material change of use, then planning permission should be granted for these uses. This is bearing in mind the fall-back of an unrestricted B8 use as already acknowledged by the LPA; and the scope for a range of conditions to be put in place to ensure that the operations are acceptable (as to which see further below).

2.7 The relevant planning considerations are set out below and will be refined and expanded upon as necessary in the Appellant's evidence to the inquiry in the light of any agreed statement of common ground.

History and nature of the Site

2.8 The Site was historically partly an area of marshland (the west of the Site) and partly an area of infilled land (the eastern part of the Site) which was formerly the channel of Rainham Creek. The Appellant will show that the Site was historically used as a depot for vehicle and container storage.

2.9 A review of publicly available information in the form of historic aerial imagery shows the appeal Site being used as an operational depot for storage of containers since at least the 1990s. The aerial imagery shows this level of activity fluctuates over time

2.10 The more recent planning history of the Site is set out within the table below.

Reference	Description	Decision
P1525.19	Construction of a new jetty with mooring and berthing dolphins and a conveyor bridge to shore discharging to a 40,000 tonne piled stockpile. The jetty will accommodate vessels up to 6,000	Refused 3 Feb 2020

¹ https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-waste_management.pdf

Reference	Description	Decision
	tonnes and barges up to 1,650 tonnes, the vessels will not take the ground during operations.	
P1934.16	The construction of a marine terminal for the importation of cement to a silo facility on the land behind the existing flood wall at Frog Island.	no decision
P0573.16	Proposed new office and workshop building.	Approved with conditions 9 Dec 2016
P1434.16	The construction of a marine terminal for the importation of cement to a silo facility on the land behind the existing flood wall at Frog Island.	Withdrawn 11 Nov 2016
P0272.16	Proposed new office and workshop building	Approved with conditions 9 Dec 2016
P0842.05 -	Small scale standby electricity generation plant at the site in Rainham.	Approved with conditions 17 Nov 2014
P0530.11	Construction of a Biogas Generation Plant, using Anaerobic Digestion, capable of handling up to 100,000 tonnes of organic materials including supermarket waste, food waste and manufacturing waste, per annum.	approved with conditions 29 March 2012

- 2.11 The Appellant will show that the Site is located in an established industrial area with commercial and industrial uses.
- 2.12 The Site is not located within any nationally designated landscape area and is not in an area designated for nature conservation or protection.
- 2.13 The Appellant will show that, in accordance with the definition set out at Annex 2 of the NPPF, the Site is previously developed land in particular because it has been used for B8 storage use.

Lawful use & fallback position

- 2.14 The Site is clearly previously developed land having been used for industrial uses including open storage over the years. The Appellant will adduce evidence to demonstrate that the Site has been in industrial use since the early part of the 20th Century.
- 2.15 The LPA has previously acknowledged (in the Notice) that the authorised use of the Site is for B8 purposes which (within the terms of the Town and Country Planning (Use Classes) Order 1987, as amended) relates to use for storage or as a distribution centre including open air storage. Matters listed in the Notice would appear not to constitute a breach of planning control because they would fall within uses covered by Class B8. There are currently no planning conditions in place in respect of the use of the appeal Site for storage and distribution operations which could take place 24 hours per day, 7 days per week on an unrestricted basis. A B8 storage use can and does cover all manner of storage and distribution uses of all types of goods including containers and aggregates. As such, as a B8 site, aggregates or other materials can,

in planning terms, legitimately be imported, stored on site until required for use and then exported.

- 2.16 As part of the proofs of evidence to be submitted to the inquiry, the Appellant will provide documentary evidence to demonstrate the impact of the uses of the Site as well as the baseline 'fallback' impact as a consequence of the lawful use of the Site which must be taken into account.
- 2.17 The Appellant will argue that the lawful use of the site for B8 purposes is a significant fall-back position and which the LPA has failed to properly take into account in taking this enforcement action.
- 2.18 The use of the Site for unrestricted storage of shipping containers is consistent with the B8 use of the land which is acknowledged as the lawful use, as is the siting of such containers for ancillary purposes e.g. as offices. The Appellant considers the siting of the storage containers to be consistent with the historic use of the Site. The number of containers stored and structures located on the Site fluctuates over time. Any concerns the LPA may have regarding the impact of this use could be addressed by the use of planning obligations such that the height and orientation of the container storage could be limited by condition, for example. On this matter, please see ground (f) below.
- 2.19 The Appellant notes the LPA considers that the siting of shipping containers constitutes operational development. The Appellant disagrees given that they are not permanently stored, but instead moved around the site; are not affixed to the ground; and bearing in mind their size. The Appellant will make submissions regarding the size and permanence of the containers and the degree of physical attachment to the ground in accordance with the test set out in Skerritts of Nottingham Ltd v SSETR & Harrow LBC [2000] JPL 1025. As indicated further below, the Appellant will adduce evidence, including aerial photographs showing the container siting is consistent with the use of the Site over time.
- 2.20 The Site could revert to B8 use, without requiring planning permission. In addition, the LPA would have no opportunity to control the use via the imposition of any conditions or further mitigation measures. This is a significant fall-back position in the consideration of these proposals and a material consideration which, the Appellant asserts, should be afforded substantial weight.
- 2.21 The judgment in R (on the application of Zurich Assurance Ltd (t/a Threadneedle Property Investments),) v North Lincolnshire Council & Anor [2012] EWHC 3708 (Admin) (20 December 2012) at [75] states:
- "The prospect of the fall back position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fall back position happening is "very slight indeed", or merely "an outside chance", that is sufficient to make the position a material consideration."*
- 2.22 The Appellant has a long leasehold interest in the Site and has applied significant time to this project and the fall-back plans associated with the Site (i.e. its lawful B8 use of the entire Site) are realistic prospects that will occur in the alternative.
- 2.23 In addition, as noted in Zurich Assurance the case of Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333 established that a "realistic prospect" of a fall-back being implemented by an applicant was sufficient to influence the outcome of a planning application or appeal. The basic principle is for a prospect to be a real prospect, it does not have to be probable or likely, a possibility will suffice.

- 2.24 In Mansell v Tonbridge and Malling [2018] J.P.L. 176 the Court of Appeal established it is not a precondition of the consideration of a fall-back that an applicant has made an application for prior approval for the fall-back.
- 2.25 In considering the acceptability of any development that requires planning permission in the context of this appeal the Appellant will argue that it is entirely reasonable and in accordance with the legal tests that there is a realistic prospect that the Appellant would utilise the Site for a B8 use and that this constitutes a significant material consideration to be taken into account which weighs in favour of granting planning permission under ground (a) of this appeal for these proposals.
- 2.26 The Appellant's position is that any development which is found to require permission as a result the Notice and a proper consideration of evidence will be shown to be entirely in accordance with the NPPF and LPA development plan (which is discussed further below). However, significant weight should also be afforded to these fall-back positions, which are key material considerations, when considering the appeal proposal.

Response to LPA's reasons for taking enforcement action

- 2.27 The LPA has eight principal reasons for issuing the Notice. Six are relevant to the consideration of the Ground (a) appeal and whether planning permission should be granted, as summarised below:
- (a) *The use of the Site (as changed) is highly detrimental to the amenities of the occupiers of nearby businesses²;*
 - (b) *The use of the Site (as changed) with lack of landscape/urban greening, dust effects and mud on surrounding roads is visually obtrusive and detrimental to the visual and other amenities of the area;*
 - (c) *The use of the Site would adversely impact on the highway network and road safety³;*
 - (d) *The use of the site fails to provide any enhancement to biodiversity.*
 - (e) *The use of the site fails to provide a riverside walk for the public*
 - (f) *Conditions attached to any consent cannot remedy the breach*

Development Plan

- 2.28 Prior to the issuing of the Notice, approval for the adoption of Havering Local Plan was received at full council on 17 November 2021. The Havering Local Plan replaced the Core Strategy and Development Control Policies DPD (2008) which are no longer relevant.
- 2.29 The relevant adopted development plan for the area in which the Site is located comprises:
- (a) London Plan March 2021;

² 3. The use of the Land for open air waste storage and processing results in dust pollution which adversely affects the amenity of those working in and adjacent to the area

³ 5. Without a detailed transport assessment, which would be required to accompany any planning application, and due to the lack of control over throughput and vehicle movements, the use for waste storage and processing of building materials would result in unacceptable impacts on the highway network. The lack of adequate wheel washing facilities results in dangerous highway conditions through mud being deposited on roads

- (b) Havering Local Plan November 2021; and
- (c) Joint Waste Development Plan for the East London Waste Authority Boroughs February 2012.

2.30 The Appellant will draw attention in its evidence to the NPPF and NPPG as well as other national policy and guidance, specifically:

- (a) Planning Policy for Waste October 2014; and
- (b) Waste Management Plan for England January 2021

Amenity impact on neighbouring occupiers

2.31 The LPA contends the additional uses, because of the nature of the operations and vehicle movements on adjacent highways, the obtrusive nature of the development as well as the dust the additional uses generates means that nuisance arises which is detrimental to the amenities of those working nearby.

2.32 The LPA state the uses would be contrary to the following policies:

- (a) *biodiversity - contrary to the London Plan Policy G6, the Local Plan Policy 30 and the JWDPD Policy W5.*
- (b) *unauthorised use contrary to the London Plan Policies T4, SI15 and SI16, the Local Plan Policies 23 and 31 and JWDPD Policy W5.*
- (c) *riverside walk - contrary to Policy SI16 of the London Plan and Policy 31 of the Local Plan.*
- (d) *visual amenity - to the London Plan Policies SI8 and G5, the Local Plan Policies 19, 26 and 27 and the JWDPD Policy W5.*
- (e) *dust - the London Plan March 2021 (the London Plan) Policies SI1 and SI8, the Havering Local Plan November 2021 (the Local Plan) Policy 34 and the Joint Waste Development Plan Document for the East London Waste Authority Boroughs November 2011 (the JWDPD) Policy W5*

2.33 Whilst the Appellant will adduce evidence on planning policy, these issues are addressed briefly in turn below.

(a) biodiversity - contrary to the London Plan Policy G6, the Local Plan Policy 30 and the JWDPD Policy W5.

2.34 There are no habitats of biodiversity value within the Site. The Appellant will put forward a site development plan, secured by planning obligation, which will show that the Appellant will set aside two areas for biodiversity enhancement on the Site. It is proposed that these areas are planted with native woodland and scrub in order to complement local habitats. The biodiversity enhancement areas will be subject to a five year aftercare management regime to ensure the successful establishment of the created habitats. The Appellant's evidence will demonstrate that the provision of these habitats will represent a net gain in biodiversity.

(b) unauthorised use contrary to the London Plan Policies T4, SI15 and SI16, the Local Plan Policies 23 and 31 and JWDPD Policy W5.

- 2.35 Policy T4 of the London Plan relates to transport assessment and impact mitigation. The Appellant will adduce evidence in the form of a transport statement that will confirm the operations at the appeal site will not have any adverse impact in terms of highways safety or capacity and is therefore in accordance with Policy T4 of the London Plan. Policy 23 of the Havering Local Plan also relates to transport matters and will be considered within the evidence. Granting of planning permission for the operations at the Site subject to condition will enable planning controls to be put into place to regulate the hours of operation and scale of the development which is currently un-restricted in terms of the Site's use.
- 2.36 Paragraph 111 of the NPPF states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The Appellant's evidence will provide expert traffic evidence which will demonstrate that there would be no unacceptable impact on highway safety and the residual cumulative impacts of the development on the road network would not be severe. To that end the Appellant will show that it meets the test at NPPF para 111 and that the development should not be prevented or refused on highways grounds.
- 2.37 Policy SI 15 relates to water transport and the need to safeguard existing wharves and piers and encourage the transportation of freight by water. The appeal Site is not an established or proposed wharf or pier, nor is there the opportunity to provide one at this Site.
- 2.38 Policy 31 of the Havering Local Plan relates to rivers and river corridors, and their important role in provision of biodiversity, recreation, placemaking, amenity freight transport and flood defence. The use of the established site provides the necessary opportunities for biodiversity enhancement as set out in relation to Policies G6 of the London Plan, Policy 30 of the Havering Local Plan and the relevant part of Policy W5 of the Joint Waste Plan above.
- 2.39 Policy W5 of the Joint Waste Local Plan provides general considerations with regard to waste development, including the need to ensure that adverse impacts are appropriately controlled and that due consideration is given to the effects of climate change and mitigation measures required. The Appellant will adduce technical evidence as part of its ground (a) appeal covering the following topics: transport, heritage, noise, ground conditions, landscape and visual, ecology, air quality and surface water management and drainage. All of these technical reports will show that the use of the appeal site as a materials recycling facility is an acceptable land use and provides the opportunity for biodiversity and landscape enhancement which can be delivered by planning condition. The Appellant will seek to agree common ground on the technical matters as appropriate with the LPA in advance of the submission of evidence.

(c) riverside walk - contrary to Policy SI16 of the London Plan and Policy 31 of the Local Plan.

- 2.40 Policy SI 16 relates to the use and enjoyment of waterways including the need, where feasible, to protect and enhance infrastructure, access points to water, and should improve and enhance the Thames Path. The appeal Site is not a new development site and has been used for many years for storage related operations. The Site does not form an immediate water frontage with an established flood defence and wall separating the appeal Site from the river.
- 2.41 The Appellant is willing to work with other landowners to seek to facilitate the riverside walk and/or to safeguard land within the Appellant's control for such purposes and will commit to a vehicle management scheme at the Site to safeguard pedestrians should the path come forward.

(d) visual amenity - to the London Plan Policies SI8 and G5, the Local Plan Policies 19, 26 and 27 and the JWDPD Policy W5.

- 2.42 The Appellant will adduce evidence with regard to landscape and visual impact assessment carried out which will confirm that based on landscape character, townscape and visual grounds the appeal Site is a suitable location for a recycling facility. The Appellant will also show that as part of its proposals for the Site there are opportunities for landscape enhancement areas and mitigation of any current visual impacts in accordance with policies G5 of the London Plan and Policy W5 of the joint waste plan. These are capable of being addressed by planning obligation.

(e) dust - the London Plan March 2021 (the London Plan) Policies SI1 and SI8, the Havering Local Plan November 2021 (the Local Plan) Policy 34 and the Joint Waste Development Plan Document for the East London Waste Authority Boroughs November 2011 (the JWDPD) Policy W5

The Appellant will adduce evidence in the form of an air quality assessment (including assessment of particulate matter) that will show that the operations at the Site (with appropriate mitigation as the Appellant will propose as part of a suite of planning conditions comprising materials handling control and use of dust suppression water sprays) are air quality neutral in terms of impacts. That aside, the use of the Site as a materials recycling facility is subject to routine regulatory control by the Environment Agency due to the operations benefiting from an environmental permit. The environmental permit already controls such matters as emissions, odour, noise and vibration. The operations at the Site are subject to regular inspection and monitoring by the Environment Agency.

- 2.43 The Appellant will show that no additional impact can be shown to arise as a consequence of any new uses in light of the lawful use and fall-back position and to the extent that there is additional impact, this can be mitigated by the imposition of appropriate planning obligations.
- 2.44 The Appellant will show that in the event that it is concluded that any additional unacceptable impact from dust arises from the additional uses of the Site as alleged it is willing to provide additional dust mitigation measures. The Appellant is also willing to have condition imposed upon any permission which controls the operating hours for the facility which are normal working hours. These reasonable operating hours would ensure the amenities of nearby occupiers are safeguarded. This should be considered in light of the largely unrestricted lawful B8 use.
- 2.45 Allowing development as a consequence of this ground (a) appeal would afford the Inspector the opportunity to attach suitably worded planning conditions to mitigate any proven additional unacceptable impact. This would be a potential improvement on the current largely "unrestricted" nature of the lawful use of the Site. This would ensure the proposals secure a betterment for any nearby occupiers when compared to the lawful use of the Site.

Other material considerations

- 2.46 As part of its evidence to the inquiry, the Appellant will address the need for waste recycling facilities in London and the contribution that the Site makes in meeting that identified need.
- 2.47 The Appellant will show that meeting this identified need and the socio-economic benefits that the development of the Site provides are material considerations militating in favour of the grant of permission under ground (a).

3 Ground (c) – matters alleged in the notice (if they have occurred) do not constitute a breach of planning control

- 3.1 The lawful use of the Site is for B8 purposes which relates to "storage." As set out in paragraphs 2.14 to 2.26 of this statement of case above which are relied upon in respect of this ground (c) element also, the LPA acknowledges the authorised B8 use of the Site. B8 use relates to use

for storage or as a distribution centre. This includes open air storage and storage of any type of goods as a land use. Matters listed in the Notice such as the container storage, car and HGV parking, use of the established access and ancillary operations would appear not to constitute a breach of planning control because they would fall within uses covered by Class B8.

- 3.2 Paragraph 2 of part 3 of the Notice alleges *without the benefit of planning permission operational development through the siting of stacked containers*. The use of the Site for unrestricted storage of shipping containers is consistent with the B8 use of the land which is acknowledged as the lawful use, as is the siting of such containers for ancillary purposes e.g. as offices. The Appellant considers the siting of the storage containers to be consistent with the historic use of the Site. The number of containers stored and structures located on the Site fluctuates over time. Any concerns the LPA may have regarding the impact of this use could be addressed with the Appellant such that the height of the container storage could be limited by condition, for example. On this matter, please see ground (f) below.

4 Ground (d) – at the date at which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

- 4.1 The Appellant will adduce evidence to demonstrate that the use of the Site for the siting and storage of shipping containers has been occurring on Site at least since it took occupation in February 2016 and that there is evidence to support the longstanding and historic storage use taking place at the Site.

- 4.2 The Appellant will adduce evidence showing the nature of the use on the Site, demonstrating that the use of the Site for the storage of the containers has been consistent over the relevant period albeit that the number of containers and therefore the level of use of the Site has fluctuated over time (as seen on aerial imagery for example).

5 Ground (e) that copies of the enforcement notice were not served as required by section 172

- 5.1 The land encompassed by the Notice appears to the Appellant to include land in the ownership of GLA Land and Property Limited (title EGL387875) who are not included as recipients served with the Notice.

- 5.2 As set out above, there are also issues arising from the service of the Notice on the Environment Agency which has lodged its own appeal against the Notice on this ground.

6 Ground (f) – the steps required by the Notice exceed what is necessary

- 6.1 An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

- 6.2 In the alternative to the other grounds, even if the inspector considers that the LPA can show that any of the alleged unlawful development has occurred and results in unacceptable levels of harm (which the Appellant firmly believes is not the case), the Appellant will show that the steps required in the Notice exceed what is necessary to remedy that harm. The fall-back position will again be relevant to this ground of appeal.

- 6.3 More specifically the Notice currently appears to require all the storage containers to be removed. However, the evidence provided for the ground (d) appeal will show that the use is

immune from enforcement. Not only that, but as stated above, the Site has an existing B8 use under which the storage of any goods, containers and even aggregates, is permissible.

6.4 The Appellant will submit that if the Inspector is unable to grant planning permission for all the development that is the subject of the Notice, that some of the development that is shown to be unlawful should be granted in part under ground (a), based upon any conclusions as to planning harm resulting from the scheme.

6.5 To that end and in those circumstance, the Appellant would ask that the Notice be amended so that the Appellant is only required to remove or address those elements of any proven change of use within the uses and operational development which are unacceptable in planning terms and the Inspector declines to permit under ground (a).

7 Ground (g) – the period specified for compliance falls short of what should reasonably be allowed

7.1 Without prejudice to the Appellant's case above, section 6 of the Notice gives 4 calendar months to comply with part 5 of the Notice.

7.2 This appeal is submitted on ground (g) in the alternative. In the event the inspector considers any development referred to in the Notice as unlawful is such an unduly harmful (which the Appellant does not believe to be the case), 4 months is not considered sufficient time in which to comply with the Notice.

7.3 Given the consequences of a failure to comply with the Notice, it is considered that a far more reasonable period of time for the works would be 8 - 12 months. The reasons for this are set out in the Appellant's grounds of appeal and will be set out in evidence.

7.4 In addition, the materials stored at the Site include inert materials that are capable of being recycled into construction materials (aggregates) and stockpiles of already processed materials. These types of materials are produced to supply local and regional markets with materials required to facilitate development. As such the materials, like primary aggregates, are generally only required at specific times and in terms of large quantities for specific construction contracts. The removal of these products and materials from the appeal site now, in the absence of a specific contract to supply them to, will either require their removal and temporary storage at an alternative site or disposal to landfill. Neither activity can be considered a sustainable or an efficient and environmentally acceptable use of a resource that is specifically aimed at reducing the requirement for primary aggregates and landfill.

7.5 The LPA would not be prejudiced by extending the length of time for compliance.

7.6 Under ground (g), and in the alternative to the other submitted grounds, the Appellant seeks an amendment to the Enforcement Notice to allow a longer period of time for compliance.

8 Environmental Impact Assessment

8.1 The Appellant has previously requested that the Secretary of State make a screening direction prior to any determination of this appeal.

9 Statement of common ground

9.1 The Appellant will work with the LPA to produce a statement of common ground in order to agree factual and any technical matters with the LPA and narrow down the areas of

disagreement. It will be agreed following the receipt of the LPA's Statement of Case, thereby facilitating the smooth running of the appeal.

10 Summary/Conclusions

10.1 The Appellant will adduce evidence to demonstrate, amongst other matters:

- (a) The Site is in a Strategic Industrial Location and constitutes previously developed land;
- (b) The Site has a lawful B8 use which is an important fall-back position to be taken into account;
- (c) The Site is not within any nationally designated landscape area and is located in a predominantly industrial area;
- (d) The Site operations benefit from an environmental permit;
- (e) There is an acknowledged need for the development across London;
- (f) Suitably worded planning conditions can mitigate any concerns regarding the impact of the proposals, when compared to the largely "unrestricted" nature of the present use of the Site. This would ensure the proposals would secure a betterment for local occupiers when compared to the lawful use of the Site;
- (g) There would not be an unacceptable impact on highway safety as a result of the development as proposed;
- (h) There will be biodiversity enhancement and provision of habitats that will represent a net gain in biodiversity

10.2 The Inspector is respectfully requested to allow this appeal, to grant planning permission for the development and quash the Notice.