

Appendix A

Statement on other Appeal Grounds

1.0 Introduction

- 1.1 The Enforcement Notice (Ref: RNF/559/20) relates to Land known as Frog Island, Ferry Lane, Rainham, RM13 9YH. The notice states the following alleged breaches of planning control:
- “1, Without the benefit of planning permission, the material change of use of the Land from use for storage to a waste management facility importing, processing and exporting waste materials;
2. Without the benefit of planning permission, operational development through the siting of stacked shipping containers on the Land”.
- 1.2 An appeal against the Enforcement Notice was formally submitted to the Planning Inspectorate on 17th August 2022.
- 1.3 The Appellant’s appeal is made on 6 grounds with reference to Section 174(2) of the Town and Country Planning Act 1990. The 6 grounds are:
- (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 My proof of evidence is focussed on the planning matters associated with supporting ground (a) of the appeal.
- 1.5 This Statement provides supporting information on the Appellant's response to grounds (c), (d), (e), (f) and (g).

2.0 Ground (c)

- 2.1 The lawful use of the Site is for B8 purposes which relate to storage and distribution. This use has been in continuous use for a period that exceeds 10 years.
- 2.2 The Affidavit of Mark Robinson, Head of Property & Insurance at Renewi UK Services Limited, confirm that for a continuous period between 2011 to 2016 the eastern part of the Appeal Site was used for open storage of recycling equipment for their adjacent site, including roll on roll off bins, skips, storage containers, and for parking vehicles. An Aerial photograph of the Appeal Site dated 2010 (Labelled "Exhibit MR2") supports the Affidavit.
- 2.3 The Affidavit of Jonathan Fisher, on behalf of S Walsh and Sons Limited confirms that storage and distribution uses have continued albeit that the number of containers and their location has fluctuated over time.
- 2.4 The Affidavit also confirms that in terms of operational development, namely the storage of stacked shipping containers on the eastern boundary of the Site, that there have been containers and other structures in and around the boundary of the Site since the Appellants took occupation of the Appeal Site. The Affidavit goes on to confirm that the exact position of the containers may have changed from time to time.
- 2.5 An Aerial photograph of the Appeal Site (Labelled "Exhibit JF1") dated 2010, but also has a 2007 Google copyright watermark, confirms the presence of containers and structures on the boundary of the Appeal Site.

3.0 Ground (d)

3.1 The evidence presented for ground (c) above is also applicable for Ground (d) and confirms that operational development, associated with the stacking of storage containers around the boundary of the Site started during 2018 onwards and that there have been containers and other structures in and around the boundary of the Site since the Appellants took occupation of the Appeal Site. No further conclusive evidence on the matter is available.

4.0 Ground (e)

4.1 The Appellant does not wish to provide any further supporting information in respect of ground (e).

5.0 Ground (f)

5.1 The Enforcement Notice sets out at Section 5 the steps required to comply with the alleged breach of planning control. The Appellant contends that these steps are excessive and, based on the evidence provided ground (c) and that subject to ground (a), any breach can be addressed by means of planning condition.

6.0 Ground (g)

6.1 The period specified in the Enforcement Notice to comply with the steps required to comply with the alleged breach of planning control is four calendar months. This period is considered too short for the reasons set out in the Appellant's Statement of Case and below.

6.2 The Site currently stores a total of circa 40,000 tonnes of processed and unprocessed. Processed material is stockpiled on site awaiting a suitable construction project or contract before being exported from the Site. There is no guarantee that a suitable contract requiring all the processed material will be available should the Enforcement Notice come into effect.

- 6.3 The removal of the processed and unprocessed materials from the appeal site, 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.
- 6.4 The Affidavit of Jonathan Fisher, on behalf of S Walsh and Sons Limited, confirms that the ability to remove the amount of material on the Appeal Site at one time depends on the number of vehicles available and how far the material has to travel. Depending on availability of vehicles and distance Mr Fisher estimates that the material will be removed at a rate of 700 tonnes in a day. This equates to a period of circa 4 months for the removal of the material but excludes the decommissioning and removal of the on-site infrastructure.
- 6.5 In terms of business continuity and protection of existing employees, the preference would be finding an alternative location within the local area for the facility prior to transferring the existing processed and unprocessed material from the Appeal Site.
- 6.6 To allow a practical and orderly decommission of the Site, including the removal of on-site infrastructure, a longer period for compliance with the Enforcement Notice of 8-12 months is therefore requested.

Appellant
M Robinson
1st
MR1, MR2, MR3
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

**COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between**

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

AFFIDAVIT OF MARK ROBINSON

I, Mark Robinson, Head of Property & Insurance at Renewi UK Services Limited with the business address of Enigma, Wavendon Business Park, Ortensia Drive, Wavendon, Milton Keynes, MK17 8LX **STATE ON OATH** as follows:

- 1 I am able to make this declaration from my own knowledge and declare that the information provided is complete and accurate.
- 2 I make this declaration in connection with the use of land, situated roughly 1.6km southwest of Rainham town centre at Ferry Lane, Frog Island, Rainham, RM13 9YH within the London Borough of Havering ("**Appeal Site**").
- 3 The Appeal Site is under multiple freehold ownership. S Walsh & Sons Limited (**Appellant**) is the tenant of the Appeal Site, holding two separate leases, one of which is with Renewi UK Services Limited (**Renewi**) dated 10 August 2018 and set to end on 24 October 2033.
- 4 As Renewi's Head of Property and Insurance, I am making this declaration in relation to the enforcement notice dated 18 July 2022, reference ENF/559/20 ("**Enforcement Notice**") issued by the London Borough of Havering and in support of the Appellant's appeal dated 18 August 2022 ("**Appeal**").
- 5 There is now produced and shown to me and marked "Exhibit MR1" a plan which illustrates the boundaries of the Appeal Site outlined in yellow, with Renewi's adjacent current site of operations outlined in purple. The area outlined in red shows part of the Appeal Site which Renewi utilised when occupying the land between 2011 and 2018 ("**Renewi Land**"). I am familiar with the Appeal Site having been an employee of

Renewi for 16 years. I will discuss the utilisation of the Renewi Land, which was primarily used for open storage.

- 6 Renewi assumed occupancy from Elliot Hire in November 2010. I have been provided and shown again Exhibit MR1, which outlines the Renewi Land. The Renewi Land part of the Appeal Site is filled with storage containers. My understanding is that Elliot Hire used the Renewi Land from 2002- 2010 for portacabin storage and repairs, hence the presence of only 3-4 buildings on the Renewi Land.
- 7 Renewi (previously trading as Shanks Waste Management Ltd) began occupying the Renewi Land in November 2010. The Renewi Land was used by Renewi for open storage of recycling equipment for our neighbouring site, including roll on roll off bins, skips, and for parking vehicles. The Renewi Land primary function was for open storage.
- 8 On 6th April 2011, Renewi (then trading as Shanks Waste Management Ltd) submitted an application to the London Borough of Havering Council for a proposed Anaerobic Digestion Plant on the Renewi Land. Although statutory consents were granted, the project was not carried out.
- 9 From 2011-2018, the Renewi Land continued to be used for open storage and vehicle parking as outlined in paragraph 7, without any changes in usage. I have provided and now shown "Exhibit MR2", twenty-nine photographs taken by me on 3rd June 2015, that shows Renewi's use of the Renewi Land was primarily for container and general storage and lorry/machinery parking.
- 10 The Appellant assumed control of part of the Renewi Land which forms part of the Appeal Site in late 2018 and continued the open storage use of this part of the Renewi Land.
- 11 Renewi also retains use of part of the Renewi Land. There is now produced and shown to me and marked "Exhibit MR3", an aerial site view of current site of operations and the Appeal Site. Renewi conducts activities on this site, with the section hatched in red, used as open storage for these activities, including storage of containers and curtain-sider trailers.
- 12 I can declare that Renewi utilised the Renewi Land from 2010-2018 for continuous open storage of recycling equipment for their adjacent site, including roll on roll off bins, skips, storage containers, and for parking vehicles. The Renewi Land primary function was for open storage.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.



.....

Mark Robinson

Sworn at Enigma, Wavendon Business Park, Ortensia Drive, Wavendon, Milton Keynes, MK17 8LX

on 16 April 2024

Before me: DANIELLE ROBINS (SRA ID. 826001)

Signed 

~~Commissioner for oaths (or) solicitor empowered to administer oaths~~

This Affidavit is filed on behalf of the Appellant.

Appellant
M Robinson
1st
MR1
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

**COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between**

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

EXHIBIT "MR1"

This is the Exhibit marked "MR1" referred to in the affidavit of MARK ROBINSON dated 16 April 2024


.....

Mark Robinson

Sworn at Enigma, Wavendon Business Park, Ortensia Drive, Wavendon, Milton Keynes,
MK17 8LX

on 16 April 2024

Before me: DANIELLE ROBINS (SRA ID. 826001)

Signed 
.....

~~Commissioner for oaths (or) solicitor empowered to administer oaths~~

This Affidavit is filed on behalf of the Appellant



Creek Way

Rainham, RM138EN, UK

Gold Harbour Ln

©2010 Google™

Eye alt 70.1m

Image © 2010 Bluesky
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
© 2010 Europa Technologies
© 2010 Tele Atlas

Streaming 100%

Pointer 51°30'28.35"N 0°10'32.29"E elev 4m

Appellant
M Robinson
1st
MR2
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

EXHIBIT "MR2"

This is the Exhibit marked "MR2" referred to in the affidavit of MARK ROBINSON dated 16 April 2024


.....

Mark Robinson

Sworn at Enigma, Wavendon Business Park, Ortensia Drive, Wavendon, Milton Keynes, MK17 8LX

on 16 April 2024

Before me: DANIELLE ROBINS (SRA ID. 826001)

Signed 
.....

~~Commissioner for oaths (or)~~ solicitor empowered to administer oaths

This Affidavit is filed on behalf of the Appellant































Appellant
M Robinson
1st
MR3
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

EXHIBIT "MR3"

This is the Exhibit marked "MR2" referred to in the affidavit of MARK ROBINSON dated 16 April 2024


.....

Mark Robinson

Sworn at Enigma, Wavendon Business Park, Ortensia Drive, Wavendon, Milton Keynes, MK17 8LX

on 16 April 2024

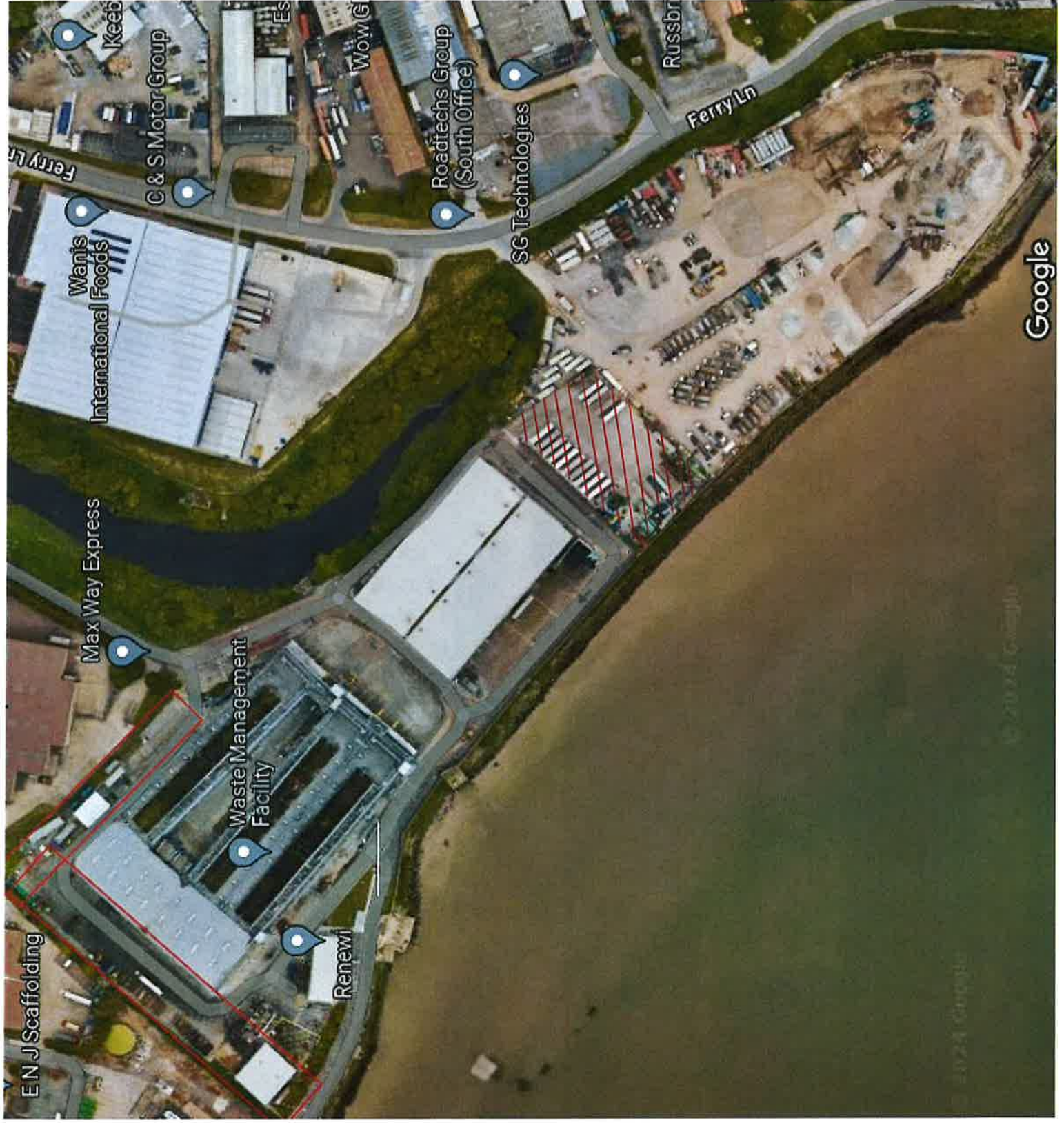
Before me: DANIELLE ROBINS (SRA. ID 826001)

Signed 
.....

~~Commissioner for oaths (or) solicitor empowered to administer oaths~~

This Affidavit is filed on behalf of the Appellant

10-82245726-1\362061-18



Appellant
M Robinson
1st
MR1, MR2, MR3
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

**COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between**

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING
Local Planning Authority

**AFFIDAVIT OF MARK
ROBINSON**

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Reference WILLEB

Appellant
J Fisher
1st
JF1
16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

**COUNCIL CHAMBERS
TOWN HALL
MAIN ROAD
ROMFORD
RM1 3BB
Between**

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

AFFIDAVIT OF JONATHAN FISHER

I, JONATHAN FISHER director of S Walsh & Sons Limited with the registered office address of Unit 10 Goldsmith Way, Eliot Business Park, Nuneaton, Warwickshire, England, CV10 7RJ **STATE ON OATH** as follows:


- 1 I am able to make this declaration from my own knowledge and declare that the information provided is complete and accurate.
- 2 I make this declaration in connection with the use of land, situated roughly 1.6km southwest of Rainham town centre at Ferry Lane, Frog Island, Rainham, RM13 9YH within the London Borough of Havering (**Appeal Site**).
- 3 I am a director of S Walsh & Sons Limited (**Appellant**) and also CEO of the Appellant's parent company, GRS Roadstone Group Limited (**GRS**).
- 4 I am making this declaration in relation to the enforcement notice dated 18 July 2022, reference ENF/559/20 ("**Enforcement Notice**") issued by the London Borough of Havering and in support of the Appellant's appeal against the Enforcement Notice dated 18 August 2022 ("**Appeal**").
- 5 The Appeal Site is under multiple freehold ownership. The Appellant company is the tenant and occupier of the Appeal Site, holding two separate leases, one of which is with Renewi UK Services Limited (**Renewi**) dated 10 August 2018 and set to end on 24 October 2033. The other, with the Port of London Authority (**PLA**), was entered into on 1 October 2015.

- 6 I am familiar with the Appeal Site having been in my current position with the Appellant for over 6 years. There is now produced and shown to me and marked "**Exhibit JF1**" a plan which illustrates the Appeal Site and other land as follows: the Appeal Site the subject of the Enforcement Notice is outlined in lime green/yellow; the area edged red shows an element of the Appeal Site and other land used by the previous occupier and the Appellant's current landlord, Renewi (**Renewi Land**); the area shaded yellow is land the subject of the PLA lease (**PLA Land**); the land edged purple is land currently occupied by Renewi outside the Appeal Site.
- 7 GRS acquired the Appellant in 2017. However, the Appellant company was on site operating at part of the Appeal Site before acquisition having entered into the lease with the PLA as above in late 2015 and was on site on the PLA Land approximately 4 or 5 weeks prior to the completion of the lease with the PLA.
- 8 At the time the Appellant company was using the PLA Land, Renewi was using the Renewi Land for open storage along with some parking space. I have seen the affidavit of Mark Robinson of Renewi which confirms this. It wasn't until 2018 that the Appellant took occupation of the entire Appeal Site following the granting of the lease with Renewi.
- 9 I provide this affidavit to confirm the use of the various parts of the Appeal Site since 2015, particularly in respect of the development comprising the containers along the boundary of the Appeal Site. However, I am familiar with all aspects of development at the Appeal Site which operates under the terms of an environmental permit and has 65 employees.
- 10 When the Appellant took over that part of the Renewi Land within the Appeal Site, it used that land in a similar way to Renewi, based on the understanding that the main use of the Appeal Site was for storage, together with associated parking, a practice that had been in place since 2011 and had continued from the Appellant's occupation of the rest of the Appeal Site (the PLA Land) in late 2015.
- 11 In 2018 the Appellant brought a large number of containers onto the Appeal Site. The containers were placed around the boundary of the Appeal Site with Ferry Lane and were stacked initially two containers high and then, later (in 2022), three containers high. There have been containers and other structures in and around the boundary of the Appeal Site since the Appellant took occupation and whilst such structures and their exact position may have changed from time to time, I can confirm that the area within the Appeal Site has been utilised from time to time for the positioning of containers and other structures.
- 12 The majority of the containers on site are full of water which is used for dust suppression around the Appeal Site in connection with the processing activities. Others are full of items that are stored until required and need to be kept dry (for example cement). The remaining containers are empty. The containers also serve the function of preventing noise and dust emissions in connection with the processing activities.
- 13 Only non-hazardous / inert waste is accepted at the Appeal Site. Once the waste material arrives at the Appeal Site it is visually inspected and recorded and, if accepted for processing, is then tipped on site where it will be stockpiled for screening. The Appeal Site stores a minimum of 20,000 tonnes of material at any one time awaiting a suitable client construction project or contract before being distributed from the Appeal Site. However, this varies. At the most recent survey by the company, there were 40,000 tonnes of processed and unprocessed material on the Appeal Site.

Material can remain on site for any number of days/weeks before being sent off site. As this is material which has been processed and effectively recycled none of the material goes to landfill.

- 14 I am aware that under the terms of the Enforcement Notice, should it take effect, the Appellant could be required to clear the Appeal Site of all materials such as aggregate etc. This could only be achieved either by sending to landfill or finding an alternative location within the local area that could take the material. The ability to remove the amount of material on the Appeal Site at any one time depends on the number of vehicles available and how far the material has to travel. Depending on availability of vehicles and distance, I estimate that the most the Appellant could remove would be 700 tonnes in a day.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.



.....
Jonathan Fisher

Sworn at 1st Floor, 4 Tenterden Street, London, W1S 1TE

on 16 April 2024

Before me: *JACK ROBERT DAVIES* SEA NUMBER: *669843*

Signed *Paul Jones*

Commissioner for oaths (or) solicitor empowered to administer oaths

This Affidavit is filed on behalf of the Appellant.

Appellant

J Fisher

1st

JF1

16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

COUNCIL CHAMBERS

TOWN HALL

MAIN ROAD

ROMFORD

RM1 3BB

Between

S WALSH & SON LIMITED

Appellant

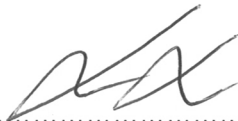
and

LONDON BOROUGH OF HAVERING

Local Planning Authority

EXHIBIT "JF1"

This is the Exhibit marked "JF1" referred to in the affidavit of JONATHAN FISHER dated 16 April 2024



.....

Jonathan Fisher

Sworn at 1st Floor, 4 Tenterden Street, London, W1S 1TE

on 16 April 2024

Before me: JACK ROBERT DAVIES

SKA NUMBER: 669843

Signed 

Commissioner for oaths (or) solicitor empowered to administer oaths





Appellant

J Fisher

1st

JF1

16 April 2024

Appeal Reference: APP/B5480/C/22/3305409

**COUNCIL CHAMBERS
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MAIN ROAD
ROMFORD
RM1 3BB
Between**

S WALSH & SON LIMITED

Appellant

and

LONDON BOROUGH OF HAVERING

Local Planning Authority

**AFFIDAVIT OF JONATHAN
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