

Land at Frog Island, Rainham

784-B065006

Proof of Evidence of Mark Walton BSc (Hons), Dip.T.P, MRTPI

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S.Walsh & Son Limited

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Personal Statement

- 1 My name is Mark Walton. I am a Planning Director of Tetra Tech, a multidisciplinary planning and environmental consultancy. I am a Chartered Town Planner and a member of the Royal Town Planning Institute (MRTPI). I hold a Bachelor of Science Honours Degree in Town Planning Studies and a post graduate Diploma in Town Planning.
- 2 I have been in professional planning employment for over 29 years. I have worked as a minerals and waste planning officer in the public sector (Dorset Council) and for the last twenty-nine years as a planning consultant in private practice. During this time, I have specialised in planning matters and assisting private sector clients relating to minerals, waste and energy developments. I have also been retained by public sector clients to assist with the determination of stalled minerals and waste planning applications.
- 3 I have acted as an expert witness on planning matters for local authorities and waste operators/developers and attended public local inquiries into waste planning applications and Local Plan proposals.
- 4 I have been retained by S. Walsh and Sons Ltd to review the background and the planning considerations associated with this Enforcement Appeal and prepare independent evidence on these matters to assist the Inquiry.
- 5 I have visited the site and the surrounding area. I am therefore familiar with the background to the Site, the proposed development, and the current enforcement action.
- 6 The evidence which I have prepared and provide in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.

1.0 Introduction

1.1 I have been retained by S. Walsh and Sons Ltd (“the Appellant” hereafter) to provide planning consultancy advice and prepare of a Proof of Evidence (PoE) on Planning matters in support of an appeal against an Enforcement Notice issued by the London Borough of Havering (“the Council” hereafter) on the 18th July 2022. The appeal was formally submitted to the Planning Inspectorate on 17th August 2022.

1.2 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”.

1.3 The Enforcement Notice states that the Council’s reasons for issuing the notice are:

1. “It appears to the Council that the above breach of planning control in relation to the material change of use has occurred within the last ten years.

2. It appears to the Council that the above breach of planning control in relation to the operational development has occurred within the last four years.

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. In accordance with the relevant planning policies below, activities likely to generate dust should be fully enclosed. In this respect, the unauthorised use of the Land is contrary to the London Plan March 2021 (the London Plan) PoliciesSI1 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.

4. *The use of the Land for waste storage and processing of building materials, including the stockpiling of materials, stacking of shipping containers, complete lack of landscape/urban greening, dust effects and mud on surrounding roads results in a visually obtrusive development which detracts from the visual amenity of the area and views of the Land. In this respect, the unauthorised use of the Land is contrary to the London Plan Policies SI8 and G5, the Local Plan Policies 19, 26 and 27 and the JWDPD Policy W5.*
 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. In these respects, the unauthorised use of the Land is contrary to the London Plan Policies T4, SI15 and SI16, the Local Plan Policies 23 and 31 and JWDPD Policy W5.*
 6. *The use of the Land for waste storage and processing of building materials fails to provide any enhancement to biodiversity contrary to the London Plan Policy G6, the Local Plan Policy 30 and the JWDPD Policy W5.*
 7. *The use of the Land for waste storage and processing of building materials fails to provide a riverside walk for the public contrary to Policy SI16 of the London Plan and Policy 31 of the Local Plan.*
 8. *The Council does not consider that planning permission should be given to the unauthorised development because conditions attached to any consent would not overcome these problems”.*
- 1.4 The Council sets out at Section 5 of the Enforcement Notice the actions required to remedy the breaches of planning control and, at Section 6, the period for compliance with these actions as four calendar months.

1.5 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 set out in Section 1.3 of the Appellant's Statement of case. This proof of evidence is focussed on the planning matters associated with supporting ground (a) of the appeal, namely,

"a) that, in respect of the alleged breach of planning control, planning permission, should it be required, ought to be granted".

1.6 A Statement regarding the Appellant's response to grounds (c), (d), (e), (f) and (g) is presented at Appendix A.

Appellant

1.7 S. Walsh and Sons Ltd are a specialist construction waste company who operate within London and the South East and has experience in haulage, handling and recycling of waste materials. The company employs over 1,000 staff and was acquired by GRS in January 2018.

1.8 The appellants have occupied the site since 'early 2016. The Site was previously occupied by Renewi (formerly known as previously trading as Shanks Waste Management Ltd) since November 2010.

Site Context

1.9 The Site comprises 2.78 Ha of land at Frog Island, Ferry Lane in the south of the Borough in Rainham within the London Borough of Havering.

1.10 The Site is relatively flat and triangular in shape. The Site is bounded by Ferry Lane to the east with existing industrial uses beyond. On the western side of Ferry Lane, a 9-metre-wide planted verge separates the edge of the highway from the boundary of the Site. The flood defences for the River Thames, comprising a reinforced concrete flood wall, forms the western boundary of the Site. The northern boundary is defined by existing palisade fencing which demarks the Site from the adjoining Renewi Waste Management Facility. Further industrial uses are located to the north and north-east of the Site.

- 1.11 The Site is not designated for any heritage, landscape or ecological purposes but is located within the outer Ingrebourne Marshes SSSI Impact Risk Zone. The Site falls within Flood Zone 3.
- 1.12 An existing environmental enhancement scheme forming part of the Rainham Riverside Project is located to the South of the Site. The existing 'London Loop' footpath associated with the Rainham Riverside Project passes the south-eastern corner of the Site before crossing Ferry Lane and heading in a easterly direction to join the RSPB Rainham Marshes Nature Reserve.
- 1.13 The area in the vicinity of the land at Frog Island has a history of existing and former mineral extraction and waste management development. The former Rainham landfill Site is located approximately 800m to the South of the Site and accommodates an advanced materials recycling facility (glass/containers/plastic) and in vessel composting facility. Other existing waste management facilities including Mechanical Biological Treatment and Materials Recovery Facility producing Refused Derived Fuel (RDF) (Renewi), metal recycling (Keebles) and tyre recycling facilities are present within the wider industrial estate.
- 1.14 Ferry Lane forms a priority junction with the A13, approximately 650m to the north-east of the Site. The nearest residential properties to the Site are located on the southern side of Rainham approximately 1.4kms to the north-east of the Site and beyond the A13 and the London Fenchurch Street to Greys railway line.
- 1.15 The land at Frog Island comprises reclaimed land that formerly marked the point where the River Ingrebourne joins the River Thames. Historical plans indicated that the land was reclaimed in the 1970's and has been used for industrial storage uses from that time.
- 1.16 Prior to the acquisition of the Site by the appellant the site was occupied by Renewi for open storage of recycling equipment for our neighbouring site, including roll on roll off bins, skips, and for parking vehicles.

Site activities

- 1.17 The onsite activities comprise a number of uses. The western part of the Site comprising the parking and storage of haulage vehicles operated by the appellant together with the storage of building material, e.g. paving slabs. This material is then transported from the Site. The remainder of the Site is currently used in connection with the recycling and processing of imported inert construction, demolition and excavation waste originating principally (70%) from the East London Joint Waste Planning Area.
- 1.18 The materials processing operations are undertaken in the open and comprise the screening, crushing and washing of imported material to produce aggregate building products of various grades and reprocessed soils for use in local building and road construction projects. Storage areas and stocking bays for processed and imported materials together with metals are also located with the materials processing area.
- 1.19 Other ancillary uses on the Site associated with the storage use and the materials processing use comprise a lorry wheel washing facility, car parking area for cars, temporary site offices and meeting room (portacabins), employee welfare/toilet facilities, weighbridge with associated office and a covered workshop area for the maintenance of onsite plant, vehicles and equipment. A water bowser is also permanently stored on site to assist with dust suppression from stockpiles during periods of dry windy weather conditions.
- 1.20 The eastern and south-eastern boundary of the materials processing uses are screened by the presence of metal shipping containers stacked 2 or 3 units high. A total of 35 metal shipping containers are located on the site boundary. Whilst the lower containers are filled with soils to ensure stability the containers are also used for storage of materials that need to be kept dry, i.e. cement. Some containers are used to store water which is used for dust suppression around the site in connection with the processing activities.

1.21 In March 2016, the appellant applied for an environmental permit which was subsequently granted on 11 July 2016. A copy of the Environmental Permit is presented at Appendix B The Environmental Permit relates to the eastern part of the Site only and a site plan confirming the extent of the permitted area is presented at Schedule 7 of the Environmental Permit. The Environmental permit authorises the Appellants to accept, store and treat (crushing and screening) up to 209,000 tonnes per annum of construction and demolition waste to produce soil, soil substitutes and aggregate.

1.22 The appellant began waste processing activities in July 2016. The activities on the Site are regularly inspected by the Environment Agency officers and monitored against the conditions of the environmental permit.

1.23 The hours of operation for the site are currently:

- 5.00am to 8.00pm Monday to Friday.
- 6.00am to 5.00pm weekends.
- No working on Sundays, Bank and Public Holidays.

Planning History

1.24 The planning history for the Land at Frog Island is set out in the table below:

Reference	Proposal	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 tonnes and barges up to 1,650 tonnes, the vessels will not take the ground during operations. It was refused on the 3rd February 2020.	Refuse – 03.02.2020. Reason for refusal: Insignificant information has been submitted to allow a full assessment of the environmental, ecological and highways impacts likely from the proposed development to be formally assessed contrary to policies CP9, CP10, CP16, CP17, DC16, DC32, DC39, DC55, DC56

		and DC61 of the Core Strategy and Development Management Plan (2008).
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. Application was withdrawn 11th November 2016.	Withdrawn – 11.11-2016 No documents/reasons for withdrawal available.
P0573.16	Proposed new office and workshop building. It was approved with conditions on 9th December 2016.	Approved – 09.12.2016.
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. It was approved with conditions on the 29th March 2012. This permission was never implemented.	Approved – 29/03/2012
Z0006.10	Screening opinion for Shanks Waste Management sewage treatment. Non-standard decision on 17th February 2011.	EIA required – 29/01/2011
P0349.22	Construction of 2no. fire water storage tanks and a pump house at existing waste management facility.	Approved – 28/04/2022
Q0240.22	Discharge condition 3 = P0349.22	Approved – 01/09/202.
Q0158.22	Discharge of condition 3 - P0349.22	Approved – 10/08/2022.
P0272.16	Proposed new office and workshop building	Approved – 09/12/2016
P1180.14	To develop a small-scale standby electricity generation plant at the site in Rainham.	Approved – 17/11/2014

U0003.10	Change/vary condition 14 of P0197.03 - change of use to waste management facility and erection of a biological materials recycling facility and RRC materials recycling facility.	Withdrawn – 27/8/2010. Reason for withdrawal not available.
P0833.08	Upgrade of existing tidal sluice structures to improve health & safety and operational efficiency. Works include replacing existing worn components, construction of a new access gantry and electrical substation to support new electrical equipment at the sluice and additional security fencing and associated landscaping.	Approved – 05/08/2008.
Z0004.08	Screening Opinion	EIA not required – 03/04/2008
P0940.06	Equipment storage building, for engineering spare parts.	Approved – 24/07/2006.
P0197.03	1) Change of use to waste Management facility. 2) Erection of a biological materials recycling facility (Bio-MR2F) and RRC materials recycling facility	Approved – 27/11/2003.
Z0001.02	Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999. Request for a Scoping Opinion Proposed waste management facility	No decision required – 19/08/2002. No documents available online.
P0689.00	Erection of new workshop, fuel/vehicle wash facilities/refurbishment of offices to form new bus servicing depot for a period of five years	Refused – 10/11/2000. Application refused because the nature and design of the proposal would represent unacceptable development within the River Thames Area of Special Character, because the proposed building is not of a high frontage and because the proposed

		vehicle parking would be prominent on the river frontage and could not be adequately screened within the period of the development, contrary to Policy ENV25 and Appendix 8, parts (c) and (d) of the Havering Unitary Development Plan.
P0797.95	The temporary location of an asphalt plant	Approved – 18/09/1995. No documents available online.
P0742.94	Construction of temporary offices, storage of materials, aggregate processing plant, pre-cast concrete manufacture and storage - (revised plans received 03/08/94).	Approved – 16/09/1994. No documents available online.
P0297.93	Beam Park: 1) new offices to replace existing temporary offices; 2) floodlighting around perimeter; 3) garage/ workshop. New pallet compound, new canopy to pallet repair bay to replace existing. Frog Island: 1) new offices to replace existing temporary offices; 2) new gatehouse Additional plans received 27/05/93.	Approved – 04/01/1994. No documents available online.

2.0 Planning Policy and other Material Considerations

2.1 Introduction

- 2.1.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) requires that proposals are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises those local planning documents which have been the subject of examination in public or testing through public inquiry and are adopted having been through due processes.
- 2.1.2 The Site falls within the administrative boundary of the London Borough of Havering where the statutory Development Plan comprises:
- Havering Local Plan 2016 - 2031 (Adopted November 2021);
 - The London Plan (Adopted March 2021); and
 - Joint Waste Development Plan for the East London Waste Authority Boroughs (Adopted February 2012).
- 2.1.3 In addition to the Statutory Development Plan, planning proposals should also be assessed against the National Planning Policy Framework (2023) (NPPF or the Framework) and National Planning Practice Guidance (PPG), and the National Planning Policy for Waste (2014) (NPPW) which are material considerations in the determination of a waste planning applications or waste planning appeal.
- 2.1.4 The Joint Waste Development Plan for the East London Waste Authority Boroughs set out a planning strategy for sustainable waste management in the East London Waste Authorities area until 2021.
- 2.1.5 The East London Waste Authority Boroughs have commenced work on the preparation of a new Joint Waste Development Plan albeit no formal consultation stage has been reached. An Evidence Base Report for the new Joint Waste Development Plan was published by the East London Waste Authority Boroughs in November 2022. The Evidence Base Report is a material consideration in this appeal.

2.1.6 Other material considerations relevant to this appeal are:

- Waste Management Plan for England - January 2021,

2.1.7 The relevant policies and Paragraphs of the Development Plan and NPPF, NPPW and other material considerations are set out in turn below, in so far as they are relevant to the determination of this appeal.

2.2 Havering Local Plan 2016 – 2031

2.2.1 The Havering Local Plan was adopted in November 2021 sets out the Council's vision and strategy for future growth and sustainable development for the 15-year period up to 2031. The Local Plan indicates the broad locations in Havering for future housing, employment, retail, leisure, transport, community services and other types of development. The Local Plan also set out policies associated with environmental protection, design and amenity considerations relevant to all planning applications.

2.2.2 No specific waste related policies are set out in the Havering Local Plan. Waste Planning Policies are set out in the Joint Waste Development Plan for the East London Waste Authority Boroughs referenced in Section 2.4 below.

2.2.3 The Local Plan Proposals Map confirms that the Land at Frog Island falls within a wider designation for Strategic Industrial Locations (**Policy 19**) and the Thames Policy Area (**Policy 31**). The Site also falls within Flood Zone 3 (**Policy 32**). An extract from the Havering Local Plan Proposals Map is presented at Figure 1.

2.2.4 **Policy 19** confirms the Council's committed to building a strong and prosperous economy in Havering by supporting sustainable business growth and expansion and being 'business friendly'. Policy 19 seeks to achieve this by protecting designated Strategic Industrial Locations for industrial uses.

2.2.5 Policy 19 states "*Waste uses will be assessed in accordance with the Joint Waste Development Plan Document*".

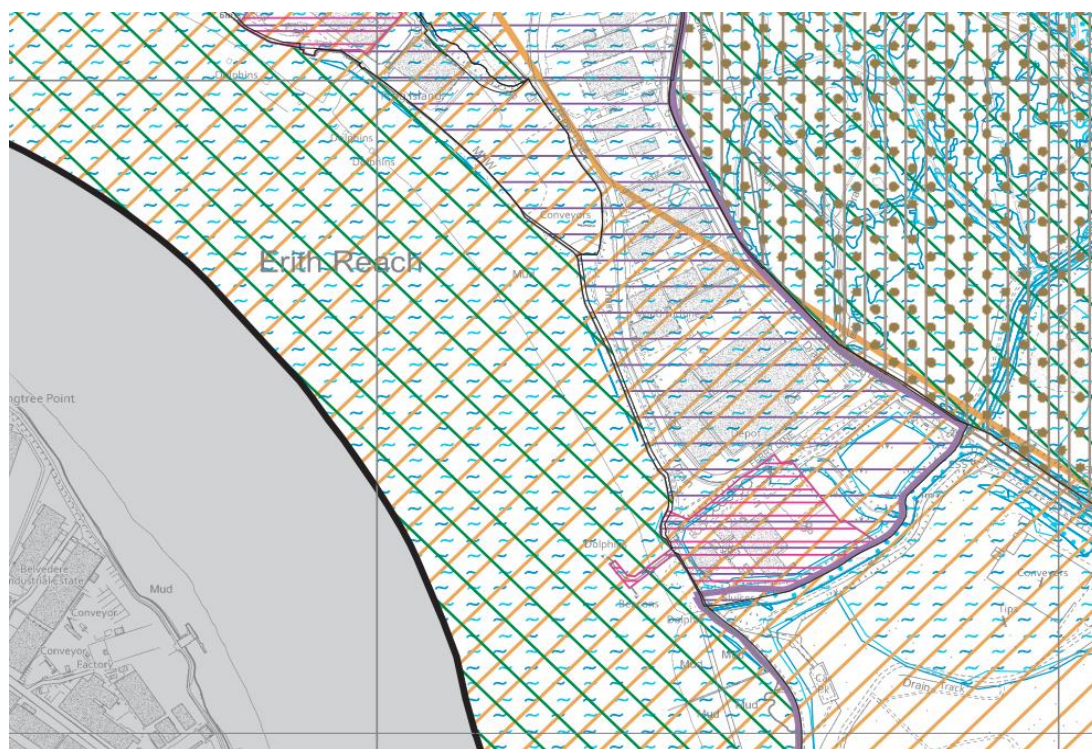


Figure 1 – Extract from Havering Local Plan – Proposals Map (South)

- 2.2.1 **Policy 31** seeks to optimise and enhance Havering’s rivers and river corridors for biodiversity, recreation, place making, amenity, freight transport and flood management functions.
- 2.2.2 The policy goes on to state that in the Thames Policy Area the Council will support development which establishes a link with the river, preserves and enhances views to and from the river, creates a high quality built and natural environment and contributes towards the enhancement and extension of a riverside path to enable local communities to enjoy the riverside.
- 2.2.3 **Policy 32** relates to flood management and confirms that the Council will support development that seeks to avoid flood risk to people and property and manages residual risk by applying the Sequential Test and, if necessary, the Exception Test as set out in the NPPF.
- 2.2.4 The following policies are specifically referenced in the Enforcement Notice issued on 18th August 2022.

- 2.2.5 **Policy 23** confirms that the Council will support and encourage developments in Havering in the locations that are most accessible by a range of transport options. The Council supports development which ensures safe and efficient use of the highway and demonstrates that adverse impacts on the transport network are avoided or, where necessary, mitigated. Major planning applications will require a transport assessment in line with TfL's Transport Assessment Best Practice Guidance.
- 2.2.6 The Policy goes on to the Council will work with partners including the port of London Authority to explore opportunities for utilising the River Thames for freight and passenger transport to reduce traffic congestion and support local businesses.
- 2.2.7 **Policy 26** states that the Council will promote high quality design that contributes to the creation of successful places in Havering by supporting development proposals that are informed by respect and complement the distinctive qualities, identity, character and geographical features of the site and local area. Proposals should also respond to distinctive local building forms and patterns of development and respect the visual integrity and established scale, massing, rhythm of the building, frontages, group of buildings or the building line and height of the surrounding physical context together with respecting and complementing the local street scene. Proposals should be fully integrated with neighbouring developments, existing path and circulation networks and patterns of activity particularly to accommodate active travel.
- 2.2.8 **Policy 27** confirms that the Council will support development proposals that incorporate a detailed and high-quality landscape scheme which takes full account of the landscape character of the site and its wider setting, retains and enhances existing landscape features that contribute positively to the setting and character of the local area and also demonstrates how existing landscape features will be protected during the construction phase.

- 2.2.9 **Policy 30** seeks to protect and enhance the Borough's natural environment and increase the quantity and quality of biodiversity in Havering by ensuring developers demonstrate that the impact of proposals on protected sites and species have been fully assessed and appropriate mitigation and compensation measures identified where necessary.
- 2.2.10 Policy 30 also states that the Council will encourage developments where there are opportunities to incorporate biodiversity in and around the development.
- 2.2.11 **Policy 34** confirms that the Council will support development proposals that do not unduly impact upon amenity, human health and safety and the natural environment by noise, dust, odour and light pollution, vibration, and land contamination. The Policy goes on to state that proposals must not pose an unacceptable risk to the quality of the water catchment, groundwater, or surface water. Development proposals should also optimise the design, layout and orientation of buildings and the use of green infrastructure to minimise exposure to the above pollutants.
- 2.2.12 The whole of the borough is identified as an Air Quality Management Area based on Nitrogen Dioxide (NO₂) levels. **Policy 33** is therefore relevant to this enforcement appeal.
- 2.2.13 Policy 33 confirms that the Council is committed to improve air quality in Havering to improve the health and wellbeing of Havering's residents. The policy states that the Council will support development which is at least air quality neutral, optimises the use of green infrastructure to reduce pollution concentrations and exposure, delivers measures to support active travel to reduce emissions, meets the targets for carbon dioxide reduction in the London Plan; and minimises emissions from construction.

2.3 London Plan

- 2.3.1 The following policies are specifically referenced in the Enforcement Notice issued on 18th August 2022.

- 2.3.2 **Policy SI1** states that development proposals should not lead to further deterioration of air quality or create unacceptable risk of high levels of exposure to poor air quality. Development proposals must be air quality neutral. Major development proposals must be submitted with an Air Quality Assessment.
- 2.3.3 **Policy SI 15** states that a development proposal which increases the amount of freight transported on London's waterways should be supported. The policy goes on to state that the Mayor will keep the network of safeguarded wharves under regular review. Boroughs should protect existing locations and identify new locations for additional waterborne freight.
- 2.3.4 **Policy SI 16** states that development proposals should protect and enhance water infrastructure. The Policy goes on to confirm that development proposals along waterways should also protect and enhance inclusive public access to and along the waterway front and explore opportunities for new, extended, improved and inclusive access infrastructure to/from the waterways.
- 2.3.5 **Policy SI8** states that 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".*

2.3.6 The Policy confirms that Development Plans should identify “*Strategic Industrial Locations and Locally Significant Industrial Sites*” as suitable locations to manage borough waste apportionments.

2.3.7 The Policy goes on to state that development proposals for new waste 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

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”.

2.3.8 The Policy also states that “*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”.

- 2.3.9 **Policy T4** states that development proposals should reflect and be integrated with current and planned transport access, capacity, and connectivity. When required in accordance with national or local guidance, transport assessments/statements should be submitted with development proposals to ensure that impacts on the capacity of the transport network, at the local, network-wide, and strategic level, are fully assessed.
- 2.3.10 The Policy goes on to confirm that where appropriate, mitigation, either through direct provision of public transport, walking and cycling facilities and highways improvements or through financial contributions, will be required to address adverse transport impacts that are identified. Also, development proposals should not increase road danger.
- 2.3.11 **Policy G5** states that major development proposals should contribute to the greening of London by including urban greening as a fundamental element of site and building design, and by incorporating measures such as high-quality landscaping (including trees), green roofs, green walls, and nature-based sustainable drainage.
- 2.3.12 **Policy G6** states that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain. This should be informed by the best available ecological information and addressed from the start of the development process.
- 2.3.13 Given the nature of the proposed development, **Policy SI 7** is also relevant to this appeal. **Policy SI 7** confirms that reducing waste and supporting the circular economy will be achieved by meeting a number of measures including:
- “ 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 use”.*

The footnote to criterion b) states “*All inert excavation waste should be used for beneficial uses*”.

2.4 Joint Waste Development Plan 2012

2.4.1 The following policy is specifically referenced in the Enforcement Notice issued on 18th August 2022.

2.4.2 The Joint Waste Development Plan set out a planning strategy for sustainable waste management in the East London Waste Authorities area until 2021.

2.4.3 **Policy W5** sets out general considerations applicable to all waste proposals. The Policy states that “Planning permissions for a waste related development will only be granted where it can demonstrate that any impacts of the development can be controlled to achieve levels that will not significantly adversely affect people, land, infrastructure and resources”. The Policy goes on to confirm that “Applications for new facilities that manage non-apportioned waste must demonstrate that there is not a more suitable site nearer the source of waste arising” with regard to 18 criteria.

2.4.4 **Policy W1** sets out the overarching strategy for sustainable waste management in the joint Borough Authorities area. The Policy is, therefore, relevant to the appeal.

2.4.5 Policy W1 confirms that the Boroughs will aim to drive waste management up the waste hierarchy by promoting waste minimisation, materials reuse, recycling & recovery of resources and help the delivery of national and regional targets for recycling and composting by requiring the reuse of construction, excavation and demolition waste during new developments, such as the Thames Gateway, with on-site recycling and use of recycled aggregate wherever possible and encourage use of sustainable transport modes where the movement of waste is necessary.

2.4.6 The agreed waste targets set out in for the Joint Waste Development Plan, set out at Paragraph 5.2, intended to deliver sustainable waste development include:

- *Recycling and reuse of C,E&D - 95% by 2020.*

2.5 Other Material Considerations

National Planning Policy Framework (2023)

- 2.5.1 National Planning Policy is contained within the National Planning Policy Framework ('NPPF' or 'the Framework' hereafter). The NPPF includes the Government's planning policies for England, highlighting the economic, social and environmental roles of planning, and its contribution to meeting the mutually dependent objectives of a strong, responsive and competitive economy; strong vibrant and healthy communities; and the protection of the natural, built and historic environment.
- 2.5.2 The NPPF establishes that the purpose of planning is to contribute to the achievement of sustainable development (paragraph 7) and in paragraph 8 identifies three overarching objectives which need to be pursued in mutually supportive ways to achieve sustainable development: economic, social and environmental:
- *"An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
 - *A social objective – To support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

- *An environmental objective – contributing to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”*

2.5.3 At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 10), which should be applied both through the plan-making and decision-making (paragraph 11) process. Paragraph 11 states that:

“...For decision-taking, this means:

a) approving development proposals that accord with an up-to-date development plan without delay; or

b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

2.5.4 Section 4 deals with the decision-making process, with Paragraph 38 stating that “local planning authorities should approach decisions on proposed development in a positive and creative way...and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

- 2.5.5 Section 6 of the NPPF relates to ‘Building a strong, competitive economy’ Promoting healthy and safe communities’ and seeks planning policies and decisions which help create the conditions in which businesses can invest, expand and adapt. The NPPF states that “*significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (Paragraph 85)*”.
- 2.5.6 Section 11 of the NPPF seeks to promote effective use of land in meeting the need for homes and other uses and supports the use of previously-developed land. Paragraph 124 gives “*substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs*” and “*promotes and supports the development of underutilised land*”.
- 2.5.7 Paragraph 191 states that “planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
 - b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
 - c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”

National Planning Policy for Waste 2014

- 2.5.8 The National Planning Policy for Waste (NPPW) confirms that the Government’s ambition for England is to work towards a more sustainable and efficient approach

to resource use and management. The document goes on to state that Planning has a pivotal role in delivering this ambition by the “delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste up the waste hierarchy” and “helping to secure the reuse, recovery or disposal of waste without endangering human health and without harming the environment”.

2.5.9 Paragraph 4 of the NPPW provides guidance to Waste Planning Authorities on the appropriate locations for new or enhanced waste management facilities. The NPPW states that waste planning authorities should “*consider a broad range of locations including industrial sites, looking for opportunities to co-locate waste management facilities together and with complementary activities*”. The paragraph goes on to state that waste planning authorities should “*give priority to the re-use of previously developed land, sites identified for employment uses, and redundant agricultural and forestry buildings and their curtilages*”.

2.5.10 Paragraph 7 of the NPPW provides guidance on determining waste planning applications and confirms that waste planning authorities should:

only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need;

consider the likely impact on the local environment and on amenity against the criteria set out in Appendix B and the locational implications of any advice on health from the relevant health bodies. Waste planning authorities should avoid carrying out their own detailed assessment of epidemiological and other health studies;


ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.

2.5.11 Appendix B of the NPPW sets out locational criteria for testing the suitability of sites when determining planning applications. The waste planning authorities should consider the factors below and also bear in mind the envisaged waste management facility in terms of type and scale.

- Protection of water quality and resources and flood risk management.
- Land instability.
- Landscape and visual impacts.
- Nature conservation.
- Conserving the historic environment.
- Traffic and access.
- Air emissions, including dust.
- Odours.
- Vermin and birds.
- Noise, light, and vibration.
- Litter.
- Potential land use conflict.

Evidence Base for the East London Joint Waste Plan November 2022

- 2.5.12 Commissioned by the Joint Borough Waste Planning Authorities, the purpose of the report is to provide an up-to-date evidence base, upon which a new East London Joint Waste Plan can be prepared. The waste evidence base sets out the key information and data on waste issues in East London and makes recommendations on the most appropriate approach to planning for each of the relevant waste streams, to be taken forward in a new East London Waste Plan.
- 2.5.13 For Construction and Demolition Waste, the report reviewed waste arisings and available capacities from Environment Agency site returns data. The report does not consider the planning status of the sites listed nor does it confirm that the licensed capacity of the sites aligned with any limits on throughput set out in planning conditions imposed in the interest of protecting amenity.
- 2.5.14 The report identified that for Construction and Demolition wastes an aggregated capacity surplus is currently available decreasing from 1.2Mtpa in 2021 to 909Ktpa into 2036, due to the closure of temporary sites with time limited planning permissions. The report concludes that there is therefore currently sufficient waste management capacity in East London to manage the equivalent of 100% of C&D waste arisings over the next fifteen years.
- 2.5.15 Appendix 5 of the report contains (Page 67) a site profile for the land at Frog Island, see extract below:

Site Name	S Walsh & Son (Frog Island)	
Borough	Havering	
Site address	Frog Island, Ferry Lane South, Rainham, Essex, RM13 9YH,	
OS grid reference	TQ5122580875	
Site size (ha)	2.778	
Location map		
Site operator	S Walsh & Son Limited	
Type of facility	A16 : Physical Treatment Facility	
Throughput (tonnes)	2019	190,620
	2018	98,476
	2017	101,953
	2016	56,592
	2015	0
Licensed capacity	209,000	
Permit number	403185	
Type of waste accepted	CDE	
Planning policy designations	Strategic Industrial Location	

2.5.16 Total CD&E capacity figure used in the evidence base was calculated using the maximum throughput for sites accepting 'Inert C&D' waste on WDI over the last 5 years (2015-2019). Appendix 5 of the waste evidence base report confirms that the Land at Frog Island is an established waste treatment facility with the Joint Borough Waste Planning Authority area that manages C,D&E waste with a permitted capacity of 209,000 tonnes per annum.

2.5.17 The evidence base has not been the subject of public consultation nor has it yet been used to prepare a new waste planning strategy for the East London Joint Waste Local Plan area for the period post 2021. Accordingly, the suitability of all the sites listed in the evidence base at Appendix 5 to meet the future needs of the East London Joint Waste Local Plan area is unknown.

3.0 Planning Assessment and Planning Balance

3.1 Introduction

3.1.1 This section presents an assessment of the proposed change of use of the land at Frog Island, the subject of the enforcement appeal, against the Development Plan Policies and other material considerations considered in Section 2 of this proof of evidence.

3.1.2 In the Pre-Inquiry Note dated 27th February 2024, the Inspector has identified the following planning matters relevant to the appeal:

- *The effect of the use on the amenity of the area, in terms of dust and noise pollution*
- *The effect on the character and appearance of the area*
- *The effect on the highway network*
- *Whether the location is suitable for the development, having regard to the need for a waste management/processing facility in the area, and, if necessary, whether there are suitable alternative sites.*
- *Whether the development can meet the development plan aims of biodiversity enhancement and public amenity, and if so, consideration of the means to achieve these aims.*

3.1.3 I comment on each of these issues below and other considerations within the planning balance.

3.2 Impacts on the Amenity of the area

3.2.1 It is acknowledged that development of this nature has the capacity to generate noise and dust emissions which, if uncontrolled, can leave the site boundary and have an adverse impact on the amenity of the local area.

- 3.2.2 The waste operations are restricted to the eastern part of the Site which is the subject of an Environmental Permit (ref: EB3004CE). A copy of the Environmental Permit is presented at Appendix B. The onsite operations are controlled by the provisions of the Environmental Permit and monitored for compliance by the Environment Agency.
- 3.2.3 In accordance with the requirements of Condition 3.1.2 (a) of the Environmental Permit, a Dust Management Plan (DMP) for the Site was prepared in December 2016. A further revision to the DMP was submitted to the Environment Agency in May 2018 and remains the extant DMP for the Site. A copy of the DMP is presented as an Appendix to the Proof of Evidence of Nigel Mann relating to Air Quality, Dust, Odour and Noise matters.
- 3.2.4 The DMP identifies the sources of dust emissions from the Site, the pathways for emissions and the presence of receptors in the local area. The DMP sets out the following mitigation measures that are employed on the Site to suppress dust and minimise the instances where emissions leave the site boundary:
- The entire Site, including the access road, is surfaced in hardstanding or concrete to allow easy cleaning and prevent wind-whipping.
 - A wheel wash is installed on the western edge of the permitted area and located over 115m from the site entrance meaning that cleaned vehicles traverse concreted areas before accessing the public highway.
 - Drop heights from crusher, screener and vehicles are kept to a minimum, with a maximum drop height being from the screener of approximately 2.56m.
 - All vehicles delivering and exporting material to the Site are sheeted.
 - A speed limit of 5mph is enforced, with signage, on the Site.
 - Dust netting has been installed along the southern and eastern boundaries.
 - Stockpile heights are restricted to a maximum of 3m.

- A water bowser is permanently located on the Site and used to dampen surfaces and stockpiles daily or more regularly during dry or windy conditions.
- The site manager reviews the local weather conditions and undertakes daily visual inspections of the Site and the adjoining highway to monitor for instances of dust emissions from the Site or mud/dust being deposited on the highway. A road sweeper is available and used daily to ensure that the site entrance and Ferry Lane remains clean.

3.2.5 The mitigation measures set out in the DMP are equally appropriate for the purposes of planning control and accordingly it is proposed that a planning condition is imposed requiring that the measures set out in the DMP (or an updated DMP as necessary) are implemented in full. Other planning conditions will relate to the hours of operation of the Site and the maximum quantum of material of construction and demolition waste to be treated on the Site.

3.2.6 Further details and analysis on the effectiveness of the measures employed on the Site to minimise the deposit of debris on the highway is set out at Section 3.3 of the Proof of Evidence of Pravin Godhania on highways matters.

3.2.7 The Proof of Evidence of Nigel Mann also considers Air Quality, Odour and Noise matters associated with the proposed development. Mr Mann's proof confirms that noise emissions are generally contained within the Site due to the presence of the stacked shipping containers on the eastern and southern boundaries of the Site. Odour emissions will not arise due to the nature of the waste material being treated on the Site which comprises inert construction and demolition waste only which does not biodegrade or generate odour.

3.2.8 The whole of the London Borough of Havering is identified as an Air Quality Management Area due to existing Nitrogen Dioxide (NO₂) levels. An Air Quality Assessment has been prepared to accompany the proof of evidence of Nigel Mann. The assessment concludes that the proposals, including the traffic movements associated with the vehicles delivering and exporting material to the

Site, will not result in a significant adverse impact on the air quality of the local area, including NO₂ (whereby the impact of the development is considered to be negligible).

- 3.2.9 I have commented at Paragraph 1.13 that the nearest residential properties to the Site are located on the southern side of Rainham approximately 1.4kms to the north-east of the Site. This significant distance between the Site and properties means that residential amenity will not be adversely affected by these proposals in terms of air quality, noise and dust emissions.
- 3.2.10 The Site is located within an existing industrial and commercial area where noisy and dusty activities either already exist or would be acceptable in land use terms. Notwithstanding this point, the measures employed on the Site to mitigate noise and dust emissions and ensure they are contained, as far as practicable, within the Site. Mr Mann's proof confirms that there will be no significant adverse impacts on users/employees at the adjoining industrial uses or users of local footpaths and amenity or nature conservation areas.
- 3.2.11 The proposed development will not materially adversely impact neighbouring amenity, human health and safety and the natural environment and therefore accords with criterion i) Policy 34 of the Havering Local Plan, criteria i) and xi) of Policy W5 of the East London Joint Waste Plan and Policies SI 1 and SI 8 Part E (4) of the London Plan.
- 3.2.12 Policy SI 8 Part E criterion 4 of the London Plan (Page 370) states that "*where a site is likely to produce significant air quality, dust or noise impacts, it should be fully enclosed*". Based on the conclusions of the air quality assessment, the nature and character of the local area and the noise and dust mitigation employed on the Site (which can be secured by planning conditions) no *significant* impacts are associated with the proposed development and thus there is no operational requirement for the activities to be fully enclosed.

3.3 Effects on the character and appearance of the area

- 3.3.1 The Proof of Evidence of Robin Smithyman relates to Landscape and Visual matters and considers in detail the character and appearance of the area.
- 3.3.2 The site is not located within a nationally or locally designated landscape area.
- 3.3.3 Mr Smithyman’s proof confirms that at the National Level the site is located within the NCA 81 – Greater Thames Estuary Landscape Character Area (LCA) and at the Borough Level it is located within the Rainham Averly and West Thurrock Marshes LCA.
- 3.3.4 At the Site Level and its immediate local context, the resulting character is Mixed Urban Employment Land. Mr Smithyman goes on to confirm that this localised character area contains varied commercial, industrial, recycling, manufacturing and storage land uses of variable size, scale and layout. The visual value and amenity of this local area is not considered an unpleasant view but it is not overly attractive either.
- 3.3.5 Detailed landscape and biodiversity mitigation and enhancement measures have been proposed. These comprise:
- Strengthening existing woodland / scrub planting along the sites eastern boundary facing Ferry Lane using both native deciduous and evergreen species to help provide year round vegetation structure;
 - Creation of scrub block within the northern area of the site to enhance Biodiversity Net Gain / landscape structure;
 - Re-organisation of the shipping containers located along the sites eastern boundary area with Ferry Lane to establish a more uniform “screening barrier”. This will include the removal of random elements e/g car, replacing broken containers, and 3No. stacked containers are in place and painting the existing containers with a unifying colour and finish to match that of the adjacent Eastern Industrial Park steel structures. Where there is only a double storey of containers along the north-eastern boundary, a third storey

is to be added to screen offices and plant. New netting is also proposed within a single framework structure.

- Confirmation that stocks / plant and equipment will not be higher than the enhanced “screening barrier”.
- A double storey of shipping containers to be placed along the southern/south western boundary of the site. These are again to be painted mid grey to provide a unified screening structure to match the character of the Eastern Industrial Park. Individual and groups of trees to be placed on the outer facing margin of the shipping containers.

3.3.6 The sensitivity of the local landscape character areas has then been assessed by Mr Smithyman in respect of the effect of the land use structures and activities of the Appeal Site together with the proposed mitigation and enhancement measures set out in paragraph 3.3.5 above.

3.3.7 Mr Smithyman concludes that the development will not result in any significant adverse impacts on Landscape Character. At the immediate context / site level, it was concluded that the level of significance of effect as Very Slight to Slight Adverse.

3.3.8 In respect of Visual Matters, Mr Smithyman concluded that without mitigation measures, 2No. representative visual receptors (a section of public right of way of the London Loop located immediately south of the site and employment units off Ferry Lane, located opposite the site and looking west towards the site) currently do receive Notable Adverse visual effects from the existing development. Once the proposed mitigation and enhancement measures have been implemented, Mr Smithyman concludes that these levels are reduced to Moderate Adverse which is not a significant level of visual effect.

3.3.9 A detailed Specification for all proposed mitigation and enhancement planting, and its maintenance and management are provided at Appendix F of Mr Smithyman’s Proof of Evidence.

- 3.3.10 The proposed enhancement measures can be secured by means of a planning condition which will require the prior approval of a scheme of works and a timetable with the Planning Authority.
- 3.3.11 The enhancement measures will maximise the opportunities for greening the site whilst providing a strong and defined site boundary that integrates with the local landscape character and street scene. The proposed development therefore accords with Policies 26 and 27 of the Havering Local Plan, criteria ix) and x) of Policy W5 of the East London Joint Waste Plan and Policies G 5 and SI 8 Part E (4) of the London Plan.

3.4 Effects on the highway network

- 3.4.1 The Proof of Evidence of Pravin Godhania relates to Highways matters and is supported by a Transport Assessment that considers the traffic impact of the site in terms of capacity and road safety.
- 3.4.2 Vehicular access to the site is provided by an existing simple priority junction on Ferry Lane. Ferry Lane is typically 7.3m wide with footways on both sides of the road. ranging from 1.5m to 2.0m along its length. There are no formal segregated cycle facilities on Ferry Lane, however cycling is permitted on the footways on Ferry Lane.
- 3.4.3 The access is an established junction which fully complies with relevant highway design standards relating to junction geometry. In addition, based on existing traffic speeds, suitable visibility splays are achievable in accordance with relevant highway design standards in both directions on Ferry Lane.
- 3.4.4 Furthermore, there have been no recorded collisions resulting in injury at the site access or in the vicinity of the vicinity of the site access between 2018 and 2022.
- 3.4.5 The site access junction has been tracked using the largest available articulated vehicle (an articulated vehicle with a 16.5m length) and demonstrates that there are no conflicting highway issues for HGVs manoeuvring in and out of the site.

- 3.4.6 The Public Transport Accessibility Level (PTAL) score for the site is '0' indicating poor public transport accessibility. However, despite the low PTAL score, there are opportunities for journeys by foot, cycling and public transport.
- 3.4.7 The on-site parking areas and vehicle circulation routes will be kept free from obstruction at all times. This matter can be secured by means of a condition.
- 3.4.8 Based on the conclusions of the Transport Assessment and Proof of Evidence of Mr Godhania, the proposed development accords with Policies 23 and 31 of the Havering Local Plan, criteria i), xi) and xiii) of Policy W5 of the East London Joint Waste Plan and Policies G 5 and SI 1, SI 8 Part E (5), SI 15, SI 16 of the London Plan.

3.5 Locational considerations and suitability

- 3.5.1 The Appeal Site comprises previously developed land and falls within an allocated 'Strategic Industrial Location (SIL)', namely the 'Dagenham Dock/Rainham Employment Area' as defined in the London Plan (Figure 6.1 and Table 6.2).
- 3.5.2 Policy E5 of the London Plan confirms that "*Strategic Industrial Locations should be managed proactively through a plan-led process to sustain them as London's largest concentrations of industrial, logistics and related capacity for uses that support the functioning of London's economy*".
- 3.5.3 Policy E5 goes onto state at Part C "*Development proposals in SILs should be supported where the uses proposed fall within the industrial-type activities set out in Part A of Policy E4 Land for industry, logistics and services to support London's economic function*".
- 3.5.4 Part A of Policy E4 states "*A sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions should be provided and maintained, taking into account strategic and local employment land reviews, industrial land audits and the potential for intensification, co-location and substitution (see Policy E7 Industrial intensification,*

co-location and substitution). This should make provision for the varied operational requirements of:

.....3) secondary materials, waste management and aggregates..."

3.5.5 Policy E5 and E4 of the London Plan confirms that the secondary materials, waste recovery operations and aggregates, as being undertaken on the Appeal Site, are acceptable "industrial type activities" that should be supported on Strategic Industrial Locations to support London's economic function.

3.5.6 This point is further reinforced in the supporting text to Policy E5 which states at paragraph 6.5.1. "**SILs are given strategic protection because they are critical to the effective functioning of London's economy. They can accommodate activities which - by virtue of their scale, noise, odours, dust, emissions, hours of operation and/or vehicular movements - can raise tensions with other land uses, particularly residential development**".

3.5.7 Policy SI 8 of the London Plan, which sets out specific planning guidance for new waste development in the Capital confirms that Development Plans should identify "**Strategic Industrial Locations and Locally Significant Industrial Sites**" as suitable locations to manage borough waste apportionments. Paragraph 9.8.11 that accompanies Policy SI 8 states that "**Land in Strategic Industrial Locations will provide the main opportunities for locating waste treatment facilities**".

3.5.8 The London Plan acknowledges that a Strategic Industrial Locations is the preferred location for the activities being undertaken on the Appeal Site so they are situated with other industrial uses and away from residential development.

3.5.9 The provisions of the London Plan are cascaded to the Havering Local Plan at Policy 19. Policy 19 states:

"The Council is committed to building a strong and prosperous economy in Havering and will encourage and promote business growth by:

i. Protecting designated Strategic Industrial Locations for industrial uses as set out in the London Plan.....”

3.5.10 The National Planning Policy Framework (NPPF) states at Paragraph 123 that *“Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions”*.

3.5.11 Paragraph 124 provides further guidance on this matter and states:

Planning policies and decisions should:

....c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;....”

3.5.12 National Planning Guidance on the appropriate locations for waste management facilities is set out at Paragraph 4 of the ‘National Planning Policy for Waste’ dated October 2014. Two criteria in Paragraph 4 are directly applicable to the Appeal Site. Paragraph 4 (Page 5) states that when identifying sites for new waste management facilities, Waste Planning Authorities should:

- *consider a broad range of locations including industrial sites, looking for opportunities to co-locate waste management facilities together and with complementary activities.....*
- *give priority to the re-use of previously-developed land, sites identified for employment uses, and redundant agricultural and forestry buildings and their curtilages....”*

3.5.13 The principle of the development on the Appeal Site accords with Policy E5 and E4 of the London Plan and Policy 19 of the Havering Local Plan together with the locational criteria set out in the National Planning Policy for Waste and the NPPF.

Need for a waste management/processing facility in the area, and, if necessary, whether there are suitable alternative sites.

3.5.14 National Planning Policy for Waste states, at paragraph 1, that:

“Positive planning plays a pivotal role in delivering this country’s waste ambitions through:

delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy” (Figure 1).

3.5.15 The waste hierarchy seeks to minimise the disposal of waste to landfill by promoting waste minimisation, materials reuse, recycling & recovery of resources. Policy SI 8 of the London Plan confirms, at Part E, that developments proposals for new waste sites or to increase the capacity of existing sites should be evaluated against the *“effective implementation of the waste hierarchy and its contribution to London’s circular economy”*.

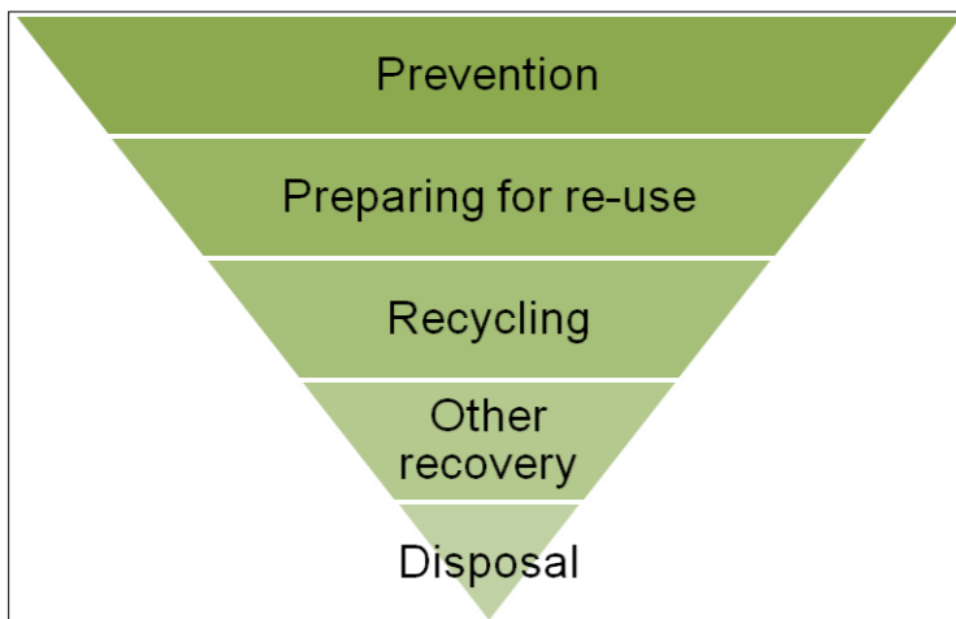


Figure 1: The Waste Hierarchy

- 3.5.16 For Construction, excavation and demolition waste (C,E&D) agreed targets for recycling and reuse rates are set out in Policy SI 7 of the London Plan and, for the East London Waste Area, in the Joint Waste Development Plan at Paragraph 5.2. The agreed target for C, E& D waste in the East London Waste Area is 95% by 2020.
- 3.5.17 The operations at the Appeal Site have a recycling and recovery rate of 90-95% and thus accord with the targets in Joint Waste Development Plan and London Plan. The site is therefore contributing to the implementation of the waste hierarchy by diverting waste that will either be sent to landfill and the aim of a circular economy for London.
- 3.5.18 The C,E&D waste being brought to the Appeal Site for processing is generally sources from a mixture of small and medium scale construction projects from within the East London and Greater London area. Significant recent and ongoing projects include Cross-Rail, A13 Improvement works, land reclamation works at Bream Park, Dagenham and excavations associated with the development of HS2 at Ruislip.

- 3.5.19 Other current local projects include groundworks and land reclamation works associated with the redevelopment of the former waste transfer operations at River Road, Barking on behalf of Cory Barking Operations Ltd.
- 3.5.20 A future aspiration of the Appellants is the provision of a berth facility associated with the Frog Island site which will allow material to be landed by barge for processing. Construction work on the Second Thames Crossing to the east of Tilbury is expected to commence in 2025/26 and, with a future berth facility, the Appeal Site will be well placed to process C,E&D material.
- 3.5.21 The Site therefore have a maximum 'reach' of 50 miles from the site at Frog Island albeit the vast majority (70%) of the material processed at the Appeal Site is sourced from the East London Waste Area and Greater London Area. The remaining 30% of material is sources from adjoining areas i.e. Essex and Hertfordshire.
- 3.5.22 Given the high tonnage and low value nature of C,E&D material it is not cost effective to transport inert material over significant distance for processing. Material processed from outside of the East London Waste Area is generally restricted to commercial contracts were opportunities for 'back hauling' of processed material can also be undertaken, for example, construction sites or highway repairs/resurfacing projects.
- 3.5.23 The Appeal Site has been operating for eight years with a permitted throughput of around 200,000 tpa. The existence of the operations and its continued commercial success during this period is consistent with the ongoing need for the recycling and recovery uses it offers remains valid and it remains vital to the economy of East London.
- 3.5.24 A number of alternative sites are available in the local area. The Evidence Base for the East London Joint Waste Plan (November 2022) contain at Appendix 5 site profiles for existing sites and at Appendix 6 a methodology for calculating CD&E capacity within the East London Waste Local Plan area.

- 3.5.25 As set out at Paragraph 2.1.13 onwards, the evidence base report reviewed waste arisings and available capacities from Environment Agency site returns data at 2019 but did not review the planning status of the sites listed nor does it confirm that the capacity of the sites aligned with any limits on throughputs set out in planning conditions.
- 3.5.26 The evidence base has not been the subject of public consultation, nor has it yet been used to prepare a new waste planning strategy for the East London Joint Waste Local Plan area for the period post 2021 but remains the latest published information on C, D& E waste in the East London Joint Waste Local Plan.
- 3.5.27 Most of the C, D& E sites listed in the site profiles have a permitted capacity of <50,000 tpa and are not comparable to the Appeal Site.
- 3.5.28 The following sites managed 50,000 tpa or above of C,D&E waste only within the East London Waste Local Plan area and are potential alternatives sites for the processing of material (subject to planning and permitting limits on throughput) currently received at the Appeal Site:
- Rainham Recycling Facility, Havering - Brett Aggregates Limited, Treatment of waste to produce soil
 - Mohawk Wharf Recycling Facility, Newham - Keltbray AWS Limited T03: Other Biological Treatment installation
 - Thames Wharf, Newham - Keltbray Environmental Ltd - TS: Temporary storage installation
 - S U C Exc Uk Ltd, Barking and Dagenham - S U C Exc U K Ltd - Treatment of waste to produce soil <75,000 tpy
 - Thunderer Road, Barking and Dagenham - Neptune Contract Services Limited - Physical Treatment Facility
 - Perry Road Recycling Facility, Dagenham - Recycled Material Supplies Limited; and

- Frog Lane Waste Transfer Station, Havering - Andrews Waste Management Ltd.

- 3.5.29 The Rainham Recycling facility, operated by Brett Aggregates Limited, uses inert material and is associated with the restoration of formal mineral workings at Rainham Quarry, Havering. This operation has a permit limit of 75,000 tonnes per annum and will cease once the former mineral workings are completed. This site is the only alternative similar scale site in the London Borough of Havering presented in the updated Evidence Base for the East London Joint Waste Plan.
- 3.5.30 Mohawk Wharf is a waste recovery, recycling, treatment and transfer station for construction, demolition and excavation waste located on the River Thames. The annual volumes of waste accepted, as stated in the Environmental Permit, are 100,000 non-hazardous waste, 50,000 hazardous waste.
- 3.5.31 Thames Wharf was a storage and transfer facility for hazardous and non-hazardous waste predominately C, D&E. Due to the commencement of works for the Silvertown tunnel the operator vacated the site and the Environmental Permit was surrendered in March 2023. The operations have relocated to Plaistow Wharf approximately 600m to the south-east of the Thames Wharf site. As no treatment of waste is undertaken at Plaistow Wharf the facility is not considered a comparable alternatives site to the Appeal Site.
- 3.5.32 The S U C Exc Uk Ltd facility has a permit limit of 75,000 tonnes per annum.
- 3.5.33 The Thunderer Road facility is a waste treatment installation will undertake the screening and storage of hazardous waste soils and dredgings and has a permit limit of 75,000 tonnes per annum. As this facility treats solely hazardous C,D& E waste it is not considered a comparable alternative to the Appeal Site.
- 3.5.34 The Perry Road site comprises an aggregate recycling facility treating up to 250,000 tonnes per annum of general construction, demolition and excavation waste. In April 2024, the operator submitted a variation application to the Environmental Agency to amend the environmental permit to receive and treat

hazardous construction, demolition, and excavation waste as well as non-hazardous waste.

- 3.5.35 The Frog Lane Waste Transfer Station processes inert waste and was granted planning permission (Ref: P1364.17) by the Council in February 2018. The planning consent includes a condition limiting throughput to 75,000 tonnes per annum.
- 3.5.36 Based on the analysis above, only one alternative site (at Perry Road, Dagenham) within the East London Waste Local Plan area has a similar quantum of treatment capacity as the Appeal Site. However, all the extant sites are understood to be operating at or close to full capacity thus there is no identified surplus capacity within the East London Waste Local Plan area to meet the future C, D&E needs for the area should the Appeal Site be decommissioned.
- 3.5.37 The proposed development is currently contributing to meeting the C,D&E needs of the East London Waste Local Plan area. Whilst alternatives C,D&E site are operating in the East London Waste Local Plan area only one represents a viable alternative site to the Appeal Site. It is understood that there is no surplus capacity within the extant sites. In my view, the proposed development accords with requirement of Policy W5 of the East London Joint Waste Plan to *'demonstrate that there is not a more suitable site nearer the source of waste arising'*.

3.6 Bio-diversity Enhancement and Public

- 3.6.1 An Ecological Appraisal of the Site, following a walkover survey, was undertaken in March 2024. A separate ecology proof of evidence has not been prepared but the Ecological Walkover Survey, BNG Assessment and Biodiversity Enhancement Strategy for the Site are presented at Appendix C of my proof.
- 3.6.2 The ecological appraisal confirmed that the site comprises of primarily an urban broad habitat type of developed land with built linear features such as the flood defence wall and boundary fence. A single stand of Japanese knotweed is present

on the inside of the flood defence wall on south western boundary. This has been fenced off and signposted for avoidance.

- 3.6.3 A narrow strip of bramble dominated scrub, approximately 1m wide, is present along the north to east boundary fence. Blackthorn occurs occasionally. The strip of scrub also has abundant buddleia present, which is listed on the London Invasive Species Initiative (LISI) as a species of concern. This strip of scrub is used for protection of the site and has razor wire throughout. The scrub extends outside of the site boundary to a larger extent of dense scrub of a similar species composition situated on the roadside verge.
- 3.6.4 The scrub may provide nesting opportunities for common birds, shelter for common reptiles and amphibians and nectar sources to invertebrates however the quality of the habitat is low with limited species and structural diversity. It may also provide a commuting corridor for bats providing a pathway to additional habitats in the wider landscape such as scrub and grassland adjacent to the Thames to the south, the River Ingrebourne and links to Rainham Marshes to the northeast. Plant diversity on site is low.
- 3.6.5 The containers and temporary buildings on site have negligible potential to support roosting bats. There are no other habitats present able to support protected species and the site overall is subject to high disturbance being an active industrial site.
- 3.6.6 Overall, the site has been assessed as having a very low ecological value, with extremely limited seminatural habitats unable to provide significant biodiversity benefits.
- 3.6.7 The Biodiversity Net Gain Assessment has concluded that the baseline biodiversity score is **0.07 units**. The landscape enhancement works comprise the planting of 0.0197ha of mixed scrub and 40 individual urban trees. On this basis, the post-development BNG value of the proposed development has been calculated to be **0.53 units**. This comprises a BNG of **782.80%**.

- 3.6.8 A detailed Biodiversity Enhancement Strategy has been prepared to support the proposed biodiversity enhancement works. The Strategy sets out the planting and management arrangements for the works. The Implementation of the Biodiversity Enhancement Strategy can be secured by means of a planning condition.
- 3.6.9 Based on the ecological information presented at Appendix C, the proposed development will result in no loss or harm to existing habitats of ecological value but will deliver the opportunity for significant biodiversity enhancement and BNG above the mandatory 10% requirement. The proposals accord with Policy 30 of the Havering Local Plan, criteria xiv) of Policy W5 of the East London Joint Waste Plan and Policies G6 of the London Plan.
- 3.6.10 Reason 7 for the issuing of the Enforcement Notice states that “*the use of the Land for waste storage and processing of building materials fails to provide a riverside walk for the public contrary to Policy SI16 of the London Plan and Policy 31 of the Local Plan*”.
- 3.6.11 It is acknowledged that the existing ‘London Loop’ public footpath passes the south-eastern corner of the Site before crossing Ferry Lane and heading in an easterly direction to join the RSPB Rainham Marshes Nature Reserve located approximately 150m to the east of the Appeal Site. There is no riverside path along the north bank of the river, to the north of the Appeal Site.
- 3.6.12 The Appellants would be content, in principle, to safeguard a corridor of the Appeal Site adjacent to the existing flood defences as part of new connection to the existing Riverside path. However, it must be observed that such a route cannot practically be delivered as part of this appeal for the following reasons:
- 1) The provision of a continual Riverside Walk would require a similar safeguarding agreement with (a) the Environment Agency, who own the land immediate to the south of the Appeal Site and the north of the existing London Loop footpath, and (b) Renewi, who are the freeholder of the Appeal Site. No such agreements are available.

- 2) Due to existing river fronting industries, operations and landownerships, there is no other available land for a connecting Riverside Walk until Horseshoe Corner, circa 3.5kms, to the north Appeal Site.

- 3.6.13 For the above reasons, the absence of Riverside walk for use by the public is not a consequence of a 'missing connection' across the Appeal Site but rather the need for the delivery of a substantially more extensive length of Riverside walk which extends well beyond the Appeal Site. In order for that to be delivered it would be necessary for the Council to have pursued coordinated negotiations and agreements with a variety of landowners and interested parties (including, among others, the Port of London Authority across a significant extent of riverside land in The London Boroughs of Havering and Barking & Dagenham).
- 3.6.14 The aims of Policy SI16 of the London Plan and Policy 31 of the Havering Local Plan, whilst supported in principle by the appellant, cannot be secured by this appeal.

3.7 Other Considerations

- 3.7.1 The Appeal Site supports 65 employees including full time members of staff associated with the office, weighbridge and maintenance operations and the remainder associated with material delivery and exporting.
- 3.7.2 The direct and indirect economic benefits associated with the on-site employees, business rates and supporting the construction industry of London is a material consideration. The NPPF states that significant weight should be placed on the need to support economic growth and productivity (Paragraph 85).
- 3.7.3 Policy 19 of the Havering Local Plan confirms that the Council is committed to building a strong and prosperous economy and being 'business friendly'. The proposed development is considered to offer important economic benefits by contributing to the recovery and recycling of resources and London's circular economy. The proposals accord with Policy 19 of the Havering Local Plan and Policy SI 8 Part F of the London Plan.

- 3.7.4 The Appeal Site is located in Flood Zone 3 but defended by the River Thames flood wall that defines the western edge of the Site. Waste treatment uses are defined in Annex 3 of the NPPF as 'less vulnerable' on the Flood Risk Vulnerability classification. Guidance in the National Planning Policy Guidance (Paragraph: 079 Reference ID: 7-079-20220825) confirms that 'less vulnerable' uses are considered acceptable within Flood Zone 3 without the requirement for an exception test.
- 3.7.5 The Appeal Site is surfaced with concrete which incorporate a sealed drainage system of drains and gullies linked to an underground storage tank. Rainwater falling on the Site is collected in the storage tank and reused as part of the material processing facility. Collected water is also used as part of the wheel washing facility and dust suppression system. No water is discharged from the Appeal Site.
- 3.7.6 Based on the location of the Appeal Site (behind established flood defences), the nature of the operations and the onsite management of surface water results the proposed development will accord with criteria (v), (vi) and (vii) of Policy W5 of the East London Joint Waste Plan.
- 3.7.7 The Appeal Site comprises reclaimed land that was formerly a tributary to the River Thames. The Site does not support any features of structure of historic or archaeological interest and thus the provision within criterion (xv) of Policy W5 of the East London Joint Waste Plan are not relevant to this appeal.
- 3.7.8 The nature of the inert material recycled and recovered on the Appeal Site means that it is unlikely to attract vermin or scavenging birds. The proposed development will not attract birds and therefore the risk of danger to aircraft from birdstrike is very low. The proposed development will accord with criterion (xvi) of Policy W5 of the East London Joint Waste Plan.
- 3.7.9 The proposed development seeks to maximise the recovery and recycling of C, D&E waste brought to the Site for processing. The on-site recycling rate is 90-95% resulting in 5-10% of residual material, mostly plastic sheeting, and non-recyclable items, being removed from the Site for disposal by landfill. These items are

separated and stored on the Site for removal off-site. The proposed development will accord with criterion (xviii) of Policy W5 of the East London Joint Waste Plan.

3.8 Planning Balance

- 3.8.1 I consider the following matters are relevant to the planning balance and attribute the following values of weight to them - positive, neutral or negative and significant, moderate, limited or negligible/nil.
- 3.8.2 The proposed development is an established operation which has been operating for eight years and accords with the principle of the waste hierarchy and the recycling targets for London and the East London Waste Area – **moderate positive weight.**
- 3.8.3 The proposed development is already providing valuable recovery and recycling activities which benefit and contribute to the need for such facilities in the East London Waste area – **significant positive weight.**
- 3.8.4 The proposed development offers direct and indirect economic benefits to the local area – **significant positive weight.**
- 3.8.5 The Appeal Site falls within a designated ‘Strategic Industrial Location’ which is a preferred location for waste related uses – **significant positive weight.**
- 3.8.6 The proposals currently result in slight adverse visual impacts when viewed from two location close to the site boundary. These impacts can be mitigated with landscaping and appropriate boundary treatment which is in keeping with the local street-scene and industrial character of the local area. The enhancement works can be secured by planning conditions – **neutral weight.**
- 3.8.7 The proposed development includes biodiversity enhancements which will result in a BNG of 782.80% – **moderate positive weight.**

- 3.8.8 I have concluded that the proposed development accords with the development plan. In the event of conflict with any development plan policies then the above site-specific factors should be given the relevant weight in the determination of this appeal.
- 3.8.9 Whilst not a matter to be weighted in the planning balance, this appeal provides the opportunity to bring the current operations under formal planning control and securing appropriate conditions. This is both desirable and achievable under appeal ground (a).
- 3.8.10 For the reasons set out above, in my opinion, the planning balance associated with this appeal favours the granting of planning permission.

4.0 Summary

- 4.1 I have been retained by S. Walsh and Sons Ltd to provide planning consultancy advice and prepare of a Proof of Evidence on Planning matters in support of an appeal against an Enforcement Notice issued by the London Borough of Havering on the 18th July 2022. The appeal was formally submitted to the Planning Inspectorate on 17th August 2022.
- 4.2 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”.
- 4.3 The Enforcement Notice states that the Council’s seven reasons for issuing the notice, the actions required to remedy the breaches of planning control and, the period for compliance with these actions as four calendar months.
- 4.4 The Appellant’s appeal is made on 6 grounds with reference to Section 174(2) of the Town and Country Planning Act 1990. This proof of evidence is focussed on the planning matters associated with supporting ground (a) of the appeal, namely,
- 4.5 A separate statement regarding the Appellant’s response to grounds (c), (d), (e), (f) and (g) is set out at Appendix A.
- 4.6 I have reviewed the Development Plan for the Appeal Site and considered the other material considerations relevant this Appeal. I have reviewed the evidence prepared on behalf of the Appellant.

4.7 I have presented by evidence to address the planning matters set out in the Inspector's Pre-Inquiry Note dated 27th February 2024, namely:

The effect of the use on the amenity of the area, in terms of dust and noise pollution

The effect on the character and appearance of the area

The effect on the highway network

Whether the location is suitable for the development, having regard to the need for a waste management/processing facility in the area, and, if necessary, whether there are suitable alternative sites.

Whether the development can meet the development plan aims of biodiversity enhancement and public amenity, and if so, consideration of the means to achieve these aims.

4.8 I have concluded that the proposed development, with the imposition of appropriate conditions, accords with the development plan and other material considerations in respect of each of the above matters. In the event of conflict with any development plan policies then I have set out the site-specific factors should be given the relevant weight in the determination of this appeal.

4.9 For the reasons set out in this proof of evidence, in my opinion, the planning balance associated with this appeal favours the granting of planning permission.

Appendices

Appendix A – Statement on ‘other’ appeal grounds (c), (d), (e), (f) and (g)

Appendix B – Environmental Permit (Ref: EPR/EB3004CE) dated 11th July 2016

Appendix C – Ecological Walkover Survey, BNG Assessment and Biodiversity
Enhancement Strategy