

**Town & Country Planning Act 1990
Appeal under Section 174**

Statement of Case of the London Borough of Havering.

**Appeal Site: FROG ISLAND FERRY LANE, RAINHAM,
RM13 9YH**

Appeal by: S WALSH & SON LIMITED

Ferry Lane, Rainham, Essex, RM13 9YH

PINS Ref: APP/B5480/C/22/3305409

LB Havering Ref: ENF/559/20 and appeal 4134

1.0 INTRODUCTION

- 1.1 This appeal stems from the decision of the London Borough of Havering to serve an enforcement notice for alleged breach of planning control at S.Walsh & Son Limited, Ferry Lane, Rainham, RM13 9YH. A copy of the delegated report justifying the expediency of the action was forwarded to the Inspectorate with the Council's questionnaire, together with copies of relevant policies from the Havering Local Development Framework.
- 1.2 The enforcement notice, dated 18th July 2022 was clear in that the material change of use of the Land from use for storage to a waste management facility importing processing and exporting waste materials took place within 10 years and the operational development through the siting of stacked shipping containers on the Land took place in the last 4 years from the date of service of the notice. Notwithstanding the latter, the steps for compliance to remedy the breaches with respect to the material change of use and sitting of stacked containers on the land would include steps to cease use of the Land for waste processing, to cease the importation of waste materials onto the Land, and the removal of the operational development which is part and parcel of, or integral to, the material change of use.
- 1.3 The notice would have come into effect on the 18th August 2022 had the appeal currently being considered not been received. The timeframe for compliance would have been 4 months after the notice became effective.

2.0 The site and its Surroundings

- 2.1 The site is located in the south of the Borough in Rainham. The site forms part of Frog Island, to the south of Ferry Lane, which is reclaimed marsh land, in between Rainham Creek and the River Thames.

The site is currently used in connection with a waste recycling facility with areas for sorting/treatment of waste with ancillary offices and parking areas. There is only a limited planning history for this site on file. The site forms part of a strategic industrial location / designation. Historic files and reports as well as study of aerial photographs indicates that the lawful use of the site is for open storage.

The site is not designated for any landscape or ecological merit at local, national or international level and the area in general has an industrial appearance. The area does however form part of the outer Ingrebourne Marshes SSSI Impact Risk Zone. The site, to confirm, also forms part of Flood Zone 3 and is noted as being potentially contaminated.

The site is adjacent to the River Thames and the flood defence wall. The site is within the Thames Policy Area as defined in the Local Plan

The Site is not a listed building nor within a conservation area. It is located in the Rainham & Wennington ward

3.0 Planning & Enforcement History

- 3.1 The planning history of the site is as follows. The Local Planning Authority will produce the relevant decision notices/application documents/officer reports from the planning file in its evidence.

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.

P1934.16 - . The construction of a marine terminal for the importation of cement to a silo facility on the land behind the existing flood wall at Frog Island. Application was held and no decision was made.

P0573.16 - Proposed new office and workshop building. It was approved with conditions on 9th December 2016.

P1434.16 - The construction of a marine terminal for the importation of cement to a silo facility on the land behind the existing flood wall at Frog Island. Application was withdrawn 11th November 2016.

P0272.16 – Proposed new office and workshop building. It was granted with Conditions. 9th December 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.

Z0006.10 - Screening opinion for Shanks Waste Management sewage treatment. Non standard decision on 17th February 2011.

- 3.2 There is planning enforcement history for the appeal site.

- 3.3 ENF/559/20 - 1. Alleged unauthorised change of use from B8 to waste transfer

2. Alleged unauthorised operational development through the siting of containers

3. Alleged unlawful the material change of use of the Land from use for storage to a waste management facility importing, processing and exporting waste materials; **(Appendix LBH1) - Subject to enforcement proceedings.**

On the 16th September 2020, the Council received complaints alleging breaches of planning control related to, 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 and the operational development through the siting of stacked shipping containers on the Land.

3.4 Due to the seriousness and the intensive nature of the breach of planning control-taking place, the Authority, under Part 3, Section 4 of the Council's Constitution, such powers given to the Assistant Director Planning to authorise any planning enforcement, served an Enforcement Notice concerning the material change of use of the Land from use for storage to a waste management facility importing, processing and exporting waste materials; and the unauthorised development to interested parties on 18th July 2022.

3.5 The notice alleged:

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.

4.0 The Development Plan

4.1 The Development Plan for the London Borough of Havering is comprised of the London Plan 2021 and the Havering Local Plan 2021 which includes the retained Joint Waste Development Plan Document adopted 2012. The Planning and Compulsory Purchase Act 2004, Section 38 (6) states that: "*If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*" Considerable weight should be attached to relevant development plan policies.

Havering Local Plan Policies

4.2 In accordance with Policy 19 of the Local Plan, waste uses will be assessed in accordance with the Joint Waste Development Plan Document (2012) (JWDPD).

Paragraphs 4.13 and 4.14, Policy W1, W2 and W5 of the JWDPD are relevant to the current unauthorised development:

"4.13 Construction, excavation and demolition waste: It is estimated that a large portion of recycling and reuse of construction, excavation and demolition waste currently occurs on site rather than in designated licensed facilities, or is transferred out of London through inert transfer stations. As such it is not considered that additional permanent new C,E&D recycling facilities are required.

4.14 As an alternative to allocating sites for C,E&D recycling facilities, Joint Waste DPD Policy W1 encourages the reuse of C,E&D waste at or near to construction sites with on-site recycling wherever possible. There is increasing opportunity for the use of recycled aggregate (sourced from a variety of construction, excavation and demolition wastes) in a wide range of

applications within the construction industry, and as a result of landfill legislation changes, on-site remediation of contaminated soils is increasing. Additionally, Policy W4 ensures that the potential benefits of landfilling inert C,E&D waste are maximised.

Policy W1 - (iii) ensuring that developers and contractors design new housing, commercial and other developments to maximise opportunities for future occupiers to minimise, reuse, recycle and recover resources from waste, by providing adequate space and facilities for storage and handling of segregated waste; and

(iv) require 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.

Policy W5 - 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. 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 the factors listed below. The information supporting the planning application must include, where relevant to a development proposal, assessment of the following matters and where necessary, appropriate mitigation should be identified so as to minimise or avoid any material adverse impact and compensate for any loss including:

(i) the release of polluting substances to the atmosphere or land arising from facilities and transport;

(ii) the amount of greenhouse gases produced;

(iii) the development on sites that are likely to be at greater risk now, or over the lifetime of the development due to climate change;

(iv) the likely increase in pressure on resources with climate change;

(v) the contamination of ground and surface water;

(vi) the drainage of the site and adjoining land and the risk of flooding;

(vii) water consumption requirements and consideration of water management within operational plant;

(viii) groundwater conditions and the hydrogeology of the locality;

(ix) the visual and landscape impact of the development on the site and surrounding land, including townscape and agricultural land;

(x) in the case of buildings, demonstration of high quality of design and sustainable construction and drainage techniques;

(xi) adverse effects on neighbouring amenity including transport, noise, fumes, vibration, glare, dust, litter, odour and vermin;

(xii) transport impact of all movements, including opportunities for use of sustainable transport modes, traffic generation, access and the suitability of the highway network in the vicinity, access to and from the primary route network;

(xiii) adverse impacts of all movements including: traffic generation, an unsuitable highway network, inadequate accessibility to the site or the primary road network in the vicinity; and limited or no opportunities for the use of sustainable transport modes;

- (xiv) the loss or damage to significant biodiversity conservation interests;
- (xv) the loss or damage to the historic environment, archaeological and cultural resources of value and importance;
- (xvi) potential danger to aircraft from bird strike and structures;
- (xvii) scope for limiting the duration of use; and
- (xviii) the management arrangements for residues arising from any waste management facility.

4.3 Local Plan Policy 19 - Business growth

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; ii. Protecting designated Locally Significant Industrial Sites for B1 (b) (c), B2 and B8 uses; The Council is committed to building a strong and prosperous economy in Havering, supporting sustainable business growth and expansion and being 'business friendly'. To achieve this, it will create an environment that attracts and retains businesses through safeguarding designated employment areas and through encouraging and promoting the supply of high quality, well designed, flexible business spaces of varied types, unit sizes and cost to ensure the availability of sufficient and suitable land and floorspace to meet varied business needs within the borough.

4.4 Local Plan Policy 22 - Skills and training

The Council will promote employment and skills development opportunities for local residents by supporting major development proposals that commit to: i. A minimum local labour target of 20% during construction and end user phase for major commercial or mixed use developments including a proportion of apprenticeships where the length of construction phase allow. Promoting employment, skills development and training opportunities for local people will contribute to sustainable economic development, the health, wellbeing and quality of life of residents. The availability of the right skills in the borough will mean that there will be less need for people with these skills to travel into Havering, reducing both congestion on Havering's transport networks (roads and public transport) and carbon emissions.

4.5 Local Plan Policy 23 – Transport Connections

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. The Council will work with developers to improve transport infrastructure and the connectivity of the borough by:

- ix. Working with partners to provide sustainable access to key employment areas across the borough including Rainham Employment Area

xvii. Working 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.

4.6 Local Plan Policy 27 - Landscaping

The Council will support development proposals that incorporate a detailed and high quality landscape scheme which: i. Takes full account of the landscape character of the site and its wider setting; ii. Retains and enhances existing landscape features that contribute positively to the setting and character of the local area; ii. Demonstrates how existing landscape features will be protected during the construction phase;

4.7 Local Plan Policy 30 - Biodiversity and geodiversity

The Council will protect and enhance the borough's natural environment and seek to increase the quantity and quality of biodiversity in Havering by: i. Ensuring developers demonstrate that the impact of proposals on protected sites and species have been fully assessed when development has the potential to impact on such sites or species. Appropriate mitigation and compensation measures will also need to be identified where necessary. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission will normally be refused;

4.8 Local Plan Policy 31 - Rivers and river corridors

Havering's rivers and river corridors fulfil important biodiversity, recreation, place making, amenity, freight transport and flood management functions which the Council will seek to optimise.

The Council will seek to enhance the river environment by requiring major developments in close proximity to a river to investigate and, where feasible, secure opportunities to restore and enhance rivers and their corridors in line with the Thames River Basin Management Plan (RBMP). This should, wherever possible, include the integration of flood defences into new developments. Where enhancements or restoration are financially viable but not feasible a financial contribution will be sought.

To protect and enhance the biodiversity and amenity value of river corridors while accommodating future adaptations to flood defences, the Council will require development to be set back by 8 metres from main rivers, ordinary watercourses and other flood assets, and 16 metres from tidal rivers or defence structures, including tie rods and anchors.

In the Thames Policy Area (as identified on the Policies Map) the Council will support development which:

i. Establishes a link with the river, preserves and enhances views to and from the river and creates a high quality built and natural environment;

iii. Contributes towards the enhancement and extension of a riverside path to enable local communities to enjoy the riverside providing the appropriate life-saving equipment such as grab chains, access ladders and life buoys are provided along the river edge;

4.9 Local Plan Policy 33 - Air quality

The Council is committed to improve air quality in Havering to improve the health and wellbeing of Havering's residents. The Council will support development which:

i. Is at least air quality neutral; ii. Optimises the use of green infrastructure to reduce pollution concentrations and exposure iii. Delivers measures to support active travel to reduce emissions iv. Meets the targets for carbon dioxide reduction in the London Plan; and v. Minimises emissions from construction

The whole of the borough is identified as an Air Quality Management Area on the basis of Nitrogen Dioxide (NO₂) levels. Although these levels are not breached in all areas of the borough it is acknowledged that activities which cause air pollution affect the wider area. The health effects of air pollution are serious and long-term exposure can affect lung function, breathing and asthma.

The Council is committed to improving air quality in the borough to improve the health and wellbeing of Havering's residents and is preparing an Air Quality Action Plan setting out how air quality in the borough can be improved and health benefits can be maximised. This includes the encouraging choices which include of sustainable and active travel, the use of green infrastructure and renewable energy. The Havering Council Air Quality Action Plan 2018- 2023 is being implemented.

4.10 Local Plan Policy 34 - Managing pollution

The Council will support development proposals that:

i. 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;

ii. Do not pose an unacceptable risk to the quality of the water catchment, groundwater or surface water; and

iii. Optimise the design, layout and orientation of buildings and the use of green infrastructure to minimise exposure to the above pollutants.

The Mayor of London's Supplementary Planning Guidance (SPG) on Sustainable Design and Construction provides detailed guidance on how exposure to pollutants could be addressed in the design of schemes, how adverse effects could be appropriately mitigated and sets out when detailed assessments will be required. Additional guidance to minimise adverse impacts during construction are set out in the Mayor's 'The control of dust and emissions during construction and demolition' SPG.

London Plan Policies 2021

4.11 London Plan Policy SI1 – Improving Air Quality

Development proposals should not lead to further deterioration of air quality. Development proposals must be air quality neutral. Major development proposals must be submitted with an Air Quality Assessment.

4.12 London Plan Policy SI8 – Waste capacity and net waste self-sufficiency

New waste management sites should be provided where required. 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
- 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.

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.

4.13 London Plan Policy - SI 15 Water transport

A Development proposals should protect and enhance existing passenger transport piers and their capacity. New piers will be supported in line with the Port of London Authority and Transport for London's Pier Strategy. The necessary provision of moorings, waste and sewage facilities for passenger vessels should be provided.

4.14 London Plan Policy SI 16 - Waterways – use and enjoyment

A Development Plans and development proposals should protect and enhance waterway infrastructure.

New development should utilise the waterways (also known as the Blue Ribbon Network) for transport purposes where possible, but also for active water based leisure, and for informal waterside recreation or access. In order to make the maximum use of London's waterways a range of supporting infrastructure is required

including jetties, moorings, slipways, steps and waterside paths (piers, wharves and boatyards are addressed in Policy SI 15 Water transport).

4.15 London Plan Policy T4 - Assessing and mitigating transport impacts

A. Development Plans and development proposals should reflect and be integrated with current and planned transport access, capacity and connectivity.

B. When required in accordance with national or local guidance,¹⁷⁹ transport assessments/statements should be submitted with development proposals to ensure that impacts on the capacity of the transport network (including impacts on pedestrians and the cycle network), at the local, network-wide and strategic level, are fully assessed. Transport assessments should focus on embedding the Healthy Streets Approach within, and in the vicinity of, new development. Travel Plans, Parking Design and Management Plans, Construction Logistics Plans and Delivery and Servicing Plans will be required having regard to Transport for London guidance.¹⁸

4.16 London Plan Policy G5 - Urban greening

A 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.

4.17 London Plan Policy G6 – Biodiversity and access to nature

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.

5.0 The Enforcement Notice the subject of this Appeal

5.1 The Enforcement Notice dated 18th July 2022 was served on the same day to interested parties. The effective date of the notice, had it not been appealed, would have been 18th August 2022. The breaches of control alleged in the notice are:

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.

5.2 The requirements of the notice are:

Within FOUR calendar months of the effective date of the notice

1. Cease the unauthorised use of the Land for waste processing; and
2. Cease the importation of waste materials onto the Land; and
3. Remove from the Land all shipping containers, skips, chemical storage containers, retaining structures, plant, machinery, building materials, aggregate, cement, waste material, weighbridges, vehicles and trailers not associated with the authorised use of the Land for storage (B8); and
4. Remove all resultant building materials and debris from the Land as a result of taking steps 1- 3 above.

6.0 Planning Considerations

Summary

- 6.1 To be read in parallel with the report granting authority for the service of the notice and the section of the enforcement notice titled “reasons for issuing this notice”, this statement highlights what the Local Planning Authority consider to be the main reasons justifying the service of the notice.
- 6.2 In essence, the unauthorised change of use of the land is considered unacceptable due to its impact on the amenity of neighbouring occupiers and its impact on visual amenity. Furthermore, any planning permission for a development of this type, quantum and scale, being a significant major development, should include a range of mitigating and enhancement measures as required by adopted planning policies, none of which have been provided, nor is there any commitment to do so. The development that has taken place is of very poor quality. The change to, and continuation of, the use without the benefit of planning permission shows a serious disregard for the need for regulatory compliance and an absence of the standard of care, which may usually be expected for an operation of this size and magnitude.
- 6.3 According to the Environment Agency Waste Interrogator for the years 2019 and 2020, 190,000 tonnes and 187,000 tonnes of construction waste was processed. This is a significant operation, defined as an application of Potential Strategic Importance (Major Infrastructure) under the Town and Country Planning (Mayor of London) Order 2008. Any application, if deemed acceptable would have needed to be controlled through carefully prescribed planning conditions and legal obligations (under S106 of the Act) to ensure policy compliance and to avoid the risk of harm.
- 6.4 In regard to the waste policies in the Local Plan and the London Plan, the appeal site is not listed in Schedule 1 or 2 of the JWDPD, although is it in a designated industrial area. It is notable that the apportionments in the London Plan do not include CD&E waste streams. The commentary in the London Plan says that as the reliability of CD&E waste data is low, apportionments for this waste stream are not set out. The London Plan circular economy policy SI7 seeks greater re-use of materials on site, so it could be concluded that this would go a long way to achieving the 100% target of waste managed within London rather than this site being important to achieving that goal.

- 6.5 The existing waste facility is not identified in the JWDPD. Work on a review of the JWDPD has commenced with a view to adoption towards the end of 2022/early 2023. As part of any future waste plan, the existing waste facility would be assessed in line with Policy SI9 of the London Plan including the capacity of all other existing waste sites in the Borough and whether the Borough receives a disproportionate amount of waste which could and should be provided in other Boroughs. It would therefore be premature to suggest that the site is necessarily going to be safeguarded in the future. Further, as the EA Waste Interrogator shows, this site predominantly receives waste from outside the Borough and the East London Boroughs that form the area covered by the JWDPD and so there does not appear to be a particular need for the facility, and especially not for a facility of this size and throughput.
- 6.6 The waste processing that takes place on site has a number of negative impacts due to the nature of the operation in the open and the inability to add appropriate conditions/legal obligations that might satisfactorily mitigate such impacts.
- 6.7 A number of complaints have been received in regard to dust impacts – those working nearby have complained that their vehicles are frequently covered in dust and that they are unable to open windows due to the dust in the air. The site is subject to EA licensing regime as well as Local Authority controls through the Environmental Protection Act. It is apparent that efforts have been made to suppress dust. However, both regimes are governed by the test of best practicable means, which means that measures can only go so far, given the open air nature of the current operation. Policy SI8 E (4) of the London Plan requires that where a site is likely to produce significant dust impacts, it should be fully enclosed. It is considered that unless the operations are suitably enclosed, there is no way of preventing dust affecting surrounding areas, particularly when there is dry weather or dry materials being processed and when there is wind blowing. The dust impacts are contrary to London Plan Policies SI1, SI8, Local Plan Policy 34 and JWDPD Policy W5.
- 6.8 Visually, the site has a vista from the Thames and also from the surrounding, mainly industrial, area. The site is an area which has had significant investment and has been improving in both the quality of the built form and activities on sites. Providing an attractive area to work attracts investment and ensures the long-term employment benefits of the area. The activities on the site result in a degradation in the visual quality of the area. Containers have been placed around parts of the site as retaining structures for the material deposited – this is a most unsuitable form of boundary treatment. There are large high stockpiles of material and dust is visibly blown from the site. As part of the change of use of the site, no landscaping has been provided where the London Plan requires Urban Greening. The visual impacts are contrary to London Plan Policies SI8 and G5, Local Plan Policies 19, 26 and 27 and JWDPD Policy W5.
- 6.9 In terms of transport impact, the throughput of the site at nearly 200,000 tonnes per annum is significant and any planning application for such use would require a detailed transport assessment to assess the capacity of junctions and explore opportunities to take river borne transportation of waste. Whilst there are no known issues on the road network at present, there are currently no controls on throughput

or lorry movements and this could change if the unauthorised use were to continue. Furthermore, it does not appear that there are any wheel washing facilities on the site and mud is evident on the roads in the vicinity of the site presenting a danger to other road users as well as being unattractive. The transport impacts and inability to attach suitable conditions is contrary to London Plan Policies T4, S115 and S116, Local Plan Policies 23 and 31 and JWDPD Policy W5.

- 6.10 In terms of biodiversity, the change of use has not incorporated any measures to enhance or provide habitat. The Thames and surroundings are important to wildlife and no assessment on impact has been undertaken as would be expected as part of any planning application of this nature. In this respect the impact on biodiversity is contrary to London Plan Policy G6, Local Plan Policy 30 and JWDPD Policy W5.
- 6.11 Where any site adjacent to the River Thames is subject to development, including change of use, the opportunity to provide a river walk should be taken. In this case no extension to the river walk which ends just east of the site has taken place. This would usually be secured through a S106 legal obligation. The failure to provide a riverside walk for the public is contrary to Policy S116 of the London Plan and Policy 31 of the Local Plan.
- 6.12 The harm has been identified for the reasons outlined above. There is no overriding need for a waste facility in Havering and therefore very little in the way of grounds that weigh in favour of the development compared to the harm identified.

7.0 **Comments on the Appellant's Grounds of Appeal**

- 7.1 According to the information submitted with the appeal, the appellant is appealing on grounds (a), (c), (d), (e), (f) and (g)
- 7.2 The Grounds of Appeal document included several comments which the Local Planning Authority would respond to at this stage.
- 7.3 Paragraph 2.6 – the site has historically been used for storage purposes. Before the current unauthorised use commenced, the site was being used for the open storage of porta-cabins, a use that ceased around 2012 (**Appendix LBH2**).
- 7.4 Paragraph 3.3 – as explained above, a use such as this should be enclosed, within a building to ensure that the adverse effects, particularly in regard to dust and visual harm, are adequately addressed. Further measures to comply with policy may require S106 agreement as well as conditions.
- 7.5 Paragraph 4.1 (ground a) – it is totally inaccurate to describe the current use as B1/B2/B8 – no such use class exists. A mix of uses is a sui generis use and therefore the main constituent parts of the use would need to be described, as is set out in this Enforcement Notice. The Local Planning Authority do not consider that the use falls within any particular use class, but rather is a sui generis use. Attention is drawn to Article 3 (6) (g) of the Town and Country Planning (Use Classes) Order 1987 (as amended) which states that a yard for the storage or distribution of

minerals (it is assumed that minerals are derived from construction waste) does not fall within any Class specified (**Appendix LBH3**).

- 7.6 Paragraph 4.4 (ground a) – a open air storage use may have some impacts on visual amenity, but given that whatever is being stored is likely to be moved off and on the site over time, the permanence of that impact fluctuates and is therefore less. It is not considered that the lawful B8 use of the site weighs in favour of granting planning permission for the current use, which has significantly more harmful impact than any lawful fallback use.
- 7.7 Paragraph 4.5 (ground c) – Related to paragraph 7.5 above, it is not correct to say that the breaches constitute B8 use. There is no basis for this statement.
- 7.8 Paragraphs 4.6 and 4.7 (ground c) – The reference to *stacked containers* is in reference to the containers that have been placed around the perimeter of the site to provide a boundary and retain the stockpiles of waste material that are brought onto the site awaiting processing and stockpiles of processed material. The containers, due to the purpose as described and degree of permanence are operational development (which may also be part and parcel of, or integral to, the material change of use) and cannot be considered as storage. This is a most inappropriate boundary treatment in terms of visual impact. Other containers on the site which are part of the waste processing operations would be required to be removed if the enforcement notice is upheld (Appendix LBH3).
- 7.9 Paragraph 4.8 (ground d) – This ground appears to relate solely to shipping containers. No shipping containers were in place surrounding the site in 2016 as shown on photographs at (**Appendix LBH4**).
- 7.10 Paragraph 4.9 (ground e) -The Appellant claims that the land encompassed by the notice appears to the Appellant to include land in the ownership of GLA Land and Property Limited (titled EGL387875 who are not included as recipients served with the notice.
- 7.11 The Local Planning Authority contend that the Notice was served on the right recipients with right land titles correctly as highlighted in the notice paragraph 2 – The Land affected.

2. THE LAND AFFECTED

*The Land known as **Frog Island, Ferry Lane, Rainham, RM13 9YH**, shown edged in black on the attached plan (the Land) and is registered under Land Registry Title Numbers **BGL144233, BGL120353, EGL157629, EGL391125, BGL87904, BGL146247**.*

- 7.12 The land title EGL387875 was not included because this is a different site outside the area identified in the enforcement notice (**Appendix LBH5**). There is an area of the site subject to the enforcement notice, but within the ownership of those served, which contains a radar and associated equipment – this equipment is not the subject of the notice and is not required to be removed.

7.13 The Inspector is respectfully informed that Port of London Authority was not on the list of the recipients but the Council emailed them with the notice upon establishing that Port of London Authority was a freeholder of part of the land, although this detail was not available on the Land Registry titles that were available at the time. The Port of London Authority acknowledged the receipt of the notice;

“confirm that the Port of London Authority is the freehold owner of part of the site indicated on your site plan. This is let to S Walsh & Son Ltd under the terms of a lease that requires the lessee to ensure that the permitted use complies with all statutory and planning legislation. I have forwarded a copy of the notice to Mr Joe Gifford at S Walsh & Son Ltd and have given him your contact details to discuss the matter” (Appendix LBH6).

7.14 Paragraphs 4.10 to 4.11 (ground f) - The Appellant submits that the steps required in the Notice are excessive because the site has a longstanding lawful use for unrestricted B8 purposes and/or the change of use of the site could be controlled via condition to ensure that its impacts were acceptable. The Local Planning Authority restates that the use of the site does not benefit from a planning permission for any kind of waste processing use and that storage of minerals does not fall within Class B8.

7.15 The Enforcement Notice aims to remedy the breach in planning control specified by the notice as well as the resulting injury to amenity; this is made clear by the reasons above. The Local Planning Authority considers the steps sought by the notice are the minimum required to remedy the breach in planning control and/or the injury to amenity.

7.16 Section 174(2)(f) of the Town & Country Planning Act 1990 requires demonstration that the steps required by the Notice exceed what is necessary to remedy the breach and therefore the requirements of the Notice do not go beyond those necessary to remedy it. As such, the appeal under Ground (f) must fail.

7.17 Paragraphs 4.14 to 4.15 (ground g) - The Local Planning Authority considers that the period for compliance with the Enforcement Notice is entirely reasonable. The Appellant has not put forward any clear justification to increase the time for compliance and enforcement notice has not come as a surprise to the Appellant. The Local Planning Authority considers that the Appellant has therefore had ample time within which to contact contractors and formulate actions in the event of the appeal been dismissed. It is considered that the 4 months timeframes were perfectly reasonable and gave the appellant ample time within which to both restrain their operations to back within the lawful area. The appellant has given no good reason why these timeframes could not be met.

7.18 Paragraphs 5.1 to 5.2 (Environmental Impact Assessment) – The Local Planning Authority does not consider that the proposal falls within either Schedule 1 or Schedule 2 of the EIA Regulations and therefore this matter does not need further consideration.

8.0 CONCLUSIONS

- 8.1** The LPA considers that the material change of use of the Land from use for storage to a waste management facility importing, processing and exporting waste materials; and the operational development through the siting of stacked shipping containers on the Land is unacceptable for the reasons set out in the enforcement officer's report and as reiterated above.
- 8.2** The reasons for issuing the notice are clearly set out and the Appellant has not introduced any evidence to enable the development to be considered acceptable and therefore the ground (a),(c),(d),(e), (f) and (g) appeals must also fail.

9.0 Documents

9.1 The Local Planning Authority will make reference to at least the following:

- The London Plan (March 2021) as adopted
- The Havering Local Plan 2016-2031
- National Planning Policy Framework (July 2021)
- Letters, emails and other correspondence with owners of the site.
- Photographs of the site

The Local Planning Authority reserves the right to add to or amend this list of documents.

10.0 Appendices

Appendix LBH1 - Enforcement Notice dated 18th July 2022

Appendix LBH2 – Earthlight aerial Photo 2013

Appendix LBH3 – Various site photos

Appendix LBH4 - Officers site visit photos 2016

Appendix LBH5 – Land Registry map showing information

Appendix LBH6 - Email correspondence between the Council and Port of London