

Town & Country Planning Act 1990

**Proof of Evidence of George Atta-Adutwum
London Borough of Havering**

**Appeal Site: S.Walsh & Son Limited, Ferry Lane, Rainham, RM13
9YH**

Public Inquiry: 14th May 2024

Appeal by S.Walsh & Son Limited, Ferry Lane, Rainham, RM13 9YH

**Planning Inspectorate Reference: APP/B5480/C/22/3305409
Planning Enforcement References ENF/559/20
Internal appeal reference 4134**

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The Council’s witness, George Atta-Adutwum, will say:

1.1 I am employed as a deputy Team Leader, Planning Enforcement, Planning & Public Protection Section of the London Borough of Havering. I have been employed at Havering since August 2018. I currently hold Masters in Planning, Policy and Practice.

2 History and Enforcement Notice

2.1 This appeal arises from the service of an Enforcement Notice dated 18th July 2022. The land affected is shown edged in black on the plan attached to the Enforcement Notice and refers to the material change of use of the Land from use for storage to a waste management facility importing processing and exporting waste materials. The change of use 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 – although as the operational development forms part of the unauthorised material change of use, the period for immunity is also 10 years. I refer in this proof to that parcel of the land as the “Site”. I also refer to the Town and Country Planning Act 1990 as the 1990 Act in this Proof of Evidence.

2.2 This proof will include a description of the Site where there is particular need to expand upon that already provided in the Council’s Written Representations Appeal Statement (which I refer to in this proof as the Council’s “Statement of Case”). The history leading to the serving of the enforcement notices is covered in the Council’s Statement of Case and in the enforcement officer’s report, (which is referred to and relied on in the Council’s Statement of Case).

2.3 This proof will deal with the overall planning enforcement issues raised by the appeal proposal with regard to the grounds (c), (d), (e), (f) and (g) appeals against the enforcement notices. Simon Thelwell, Head of Strategic Development, will present a separate proof, dealing chiefly with the planning issues relevant to ground (a).

3. The breach alleged in the Notice

3.1 It is important to set out the particular breach that is alleged in the Notice. That breach was (see section 3):

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. The reasons why these breaches of planning control are unacceptable are set out in section 4 of the Notice as to its reasons for issue.

3.2 Thus the unauthorised material change of use relates to both the change of use and any operational development through the siting of stacked shipping containers on the Land.

3.3 The law is set out further below in the next section. The appeal is made on grounds (a), (c), (d), (e), (f) and (g). The Grounds of Appeal document included several comments to which I respond below.

3.4 It is for the Appellant to show that on the balance of probability, that use as a waste management facility importing, processing and exporting waste materials use has taken place for a continuous period of ten years prior to the service of the Notice and that to the extent that it is not part and parcel of the material change of use, any operational development on the Land was substantially complete and remained in situ for a period of four years such that enforcement action could have been taken against it at any time during the relevant period.

4. The Site

(i) Site and Surroundings

4.1 The site is referred to and described in the Statement of Case submitted by the Council, and the Enforcement Notice along with the site plan in my exhibit **GAA1**.

4.2 The appeal site may be summarised as a site 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 in use by an aggregate/construction management company who operate from a number of temporary modular buildings and use a large part of the site for parking and storage. There is only a limited planning history for this site on file. The site does form 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.

(ii) Investigations and access

4.3 I refer to the background enforcement investigation set in Section 4 of the council's report for taking planning enforcement action dated 14th July 2022 submitted as part of the appeal questionnaire for this appeal.

4.4 I refer to the following visits undertaken by myself, George Atta-Adutwum.

4.5 On the 30th September 2020, I observed that there were many activities going on site including storage of waste materials, waste transfer and processing and the siting of containers is in my exhibit **GAA2**.

4.6 On the 7th April 2021, I visited the site and observed the activities including storage of waste materials, transfer of waste and the processing has increased is in my exhibit **GAA3**.

4.7 On the 1st October 2021, I visited the site and further observed that the activities had been intensified including storage of waste materials, waste transfer, processing and storage of transports on site is in my exhibit **GAA4**.

- 4.8 On the 7th March 2022, I visited the site and further observed that the activities had been intensified including storage of transports on site is in my exhibit **GAA5**.
- 4.9 On the 29th April 2022, I visited the site and further observed that the activities had been intensified including storage of waste materials, waste transfer and processing and storage of vehicles is in my exhibit **GAA6**.
- 4.10 On the 24th June 2022, I visited the site and further observed that the activities had been intensified including storage of transports, materials and processing on site is in my exhibit **GAA7**.
- 4.11 On the 13th July 2022, I visited the site and further observed that the activities had been intensified including storage of waste materials, waste transfer, processing and storage of transports on site is in my exhibit **GAA8**.
- 4.12 On the 18th July 2022, I visited the site to serve the enforcement notice and further observed that the activities had been intensified including storage of waste materials, waste transfer and processing and storage of vehicles is in my exhibit **GAA9**.
- 4.13 On the 7th October 2022, I visited the site to assess the compliance of the requirements the notice to the Environmental Agency (EA) and it was observed that all waste materials and containers have been removed from the EA's land. However, the various activities including storage of waste materials, waste transfer and processing and storage of vehicles were on going on the land own by S.Walsh & Son Limited is in my exhibit **GAA10**.
- 4.14 On the 15th February 2024, the site was visited as a planned inquiry site visit with the Inspector and its use and appearance had been further changed. I observed that the layout of the site has totally changed totally from my previous site visits (**Exhibit GAA11**).
- 4.15 In his pre-inquiry note, the Inspector refers to the fact that the site is described as a depot on its signage and that operating as a depot may involve activities not encompassed by the description of the use in the enforcement notice. I agree with this, which appears to be the result of the further change of use following the service of the notice that I have referred to above. The notice was directed at the breach of planning control that was identified on the site at the date of service. The Appellant has not provided evidence to dispute the

correctness of the description of the breach of planning control in the notice, and has not brought an appeal on ground (b). I therefore have worked on the basis that the breach of planning control identified in the notice was correct at the date of service, with the effect being that this is the scope of the deemed application for planning permission under section 177(1)(a) of the 1990 Act.

5. Enforcement Appeal

5.1 The Appellant has appeal on (a), (c), (d), (e), (f) and (g).

5.2 The Grounds of Appeal document included several comments which I have considered to respond at this stage.

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

6.1 The Appellant's case is made that the site is a *B1/B2/B8* use and it invites the inspector to characterise the use in that way. I consider it to be inaccurate to describe the current use as *B1/B2/B8* – no such use class exists. As the Inspector agrees in his pre-inquiry note at para. 8, a mix of uses is a *sui generis* use and therefore the main constituent parts of the use is set out in the Enforcement Notice. I 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 is in my exhibit **GAA12**.

6.2 As the Inspector also notes in his pre-inquiry note, the Appellant has not argued that there has been no breach of planning control, and the fact that some ancillary activities could also be considered to be lawful as part of or ancillary to a *B8* use does not mean that the use enforced against was lawful, such that ground (c) cannot succeed.

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

7.1 The Appellant suggests demonstrating that the use of the Site for the siting and storage of shipping containers has been occurring on Site at least since it took occupation in February 2016.

- 7.2 I have carefully considered the relevant evidence. The Appellant has not submitted any evidence to demonstrate, on the balance of probabilities, that the breaches of planning control enforced against were immune from enforcement action at the date the notice was served.
- 7.3 It is for the Appellant to prove their case as to ground (d) on the balance of probabilities.
- 7.4 As regards the sitting of the containers, I consider these to be operational development but also to have been integral to, and part and parcel of, the material change of use which show clearly that there were no shipping containers were in place surrounding the site in 2016, nor April 2018, is in my exhibit **GAA12**. Further, in accordance with Section 171B(4)(b) of the Town and Country Planning Act 1990, the Local Planning Authority have purported to take enforcement action against the containers through the service of an Enforcement Notice on 5th May 2022 (subsequently withdrawn and substituted with the current notice) – no evidence has been submitted that shows the containers in place by 5th May 2018, just days after the 2018 photo in GAA12. I am instructed that in those circumstances, the Council would be entitled to take enforcement action requiring them to be removed as part of enforcing against the material change of use and that the time limit for doing so would be 10 years. This is a legal issue to be addressed by the Council’s legal advisors.
- 7.5 On the balance of probabilities, however, the Appellant has failed to make their case that the Council is out of time to take planning enforcement action. I therefore respectfully request that the Inspector dismisses this ground of appeal as to the Notice.
8. **Ground (e): the Notice was not properly served on everyone with an interest in the land**
- 8.1 I will deal with the Appellants appeal on ground (i) in three parts (i) to (iii) and make some observations on the breach in the notice in (iv).
- (i) First I make comments on the land affected and the recipients served,
- (ii) second I comment on the Appellant land title EGL387875 referred in the statement

(iii) Third I discuss why in my view, the appellants ground (e) should fail.

8.2 I refer to the highlighted in the notice paragraph 2 – The Land affected is in my exhibit **GAA1**.

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**.*

8.3 The Notice was served on the right recipients with right land titles correctly which are office entries and filed plans as to Land Registry show in my exhibit **GAA13** and I considered these details in the notice entries.

8.4 The Appellant's case appears to be that The land title EGL387875 was not included.

(ii) I refer to my exhibit **GAA14** indicating that the land title is outside the area identified in the enforcement notice. 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.

8.5 (ii) 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” (Exhibit **GAA15**).*

8.6 In any event, the Appellant has not identified what prejudice any alleged failure in terms of service has caused.

9. **On the ground (f) appeal: that the steps required to comply with the requirements of the notice are excessive.**

9.1 The purpose of issuing the enforcement notice included to remedy the breach of planning control. The question of whether planning permission should be forthcoming for these breaches of planning control is addressed by my colleague Simon Thelwell in his proof of evidence. He explains the planning harm that the material change of use of the land and operational development through the siting of stacked shipping containers on the land have caused.

9.2 I refer to my site visit that was made on the 7th October 2022 to check the fully compliance of the requirements of the notice served on the Environmental Agency. I established that the Environmental Agency was able to comply with the notice is in my exhibit **GAA10**.

9.3 I say that due to the seriousness of the breaches of planning control lesser steps to remedy the breach of planning control should not be specified. 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.

9.3 The Inspector is respectfully asked to dismiss this ground of appeal.

10. **On the ground (g) appeal: that the time given to comply with the Enforcement Notices at appeal is too short.**

10.1 I say that the time allowed to comply with the Notice is reasonable and that the necessary steps to comply with the Notice could be achieved within the time given.

10.2 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. I 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.

10.3 As such, the appeal under Ground (g) must fail.

11. Conclusion

11.1 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 is unacceptable for the reasons set out in the proof of evidence of my colleague Simon Thelwell and, for the reasons given above (as well as those given by my colleague Simon Thelwell), these appeals as to grounds (a),(c),(d),(e), (f) and (g) appeals must also fail.

12. Exhibits

1. Exhibit GAA1 Planning enforcement notice 18 July 2022
2. Exhibit GAA2 – Site visit photos on the 30 September 2020
3. Exhibit GAA3– Site photos on 7th April 2021
4. Exhibit GAA4 - 1st October 2021
5. Exhibit GAA5– Site photos 7th March 2022
6. Exhibit GAA6– Site photos on the 29th April 2022
7. Exhibit GAA7 – Site photos 24th June 2024
8. Exhibits GAA8 - On the 13th July 2022
9. Exhibit GAA9– Site photos 18th July 2022
10. Exhibit GAA10 - 7th October 2022
11. Exhibit GAA11 - Site photos 15 February 2024
12. Exhibit GAA12 - Site visits photos 7 Oct 2016 and Google Streetview April 2018
13. Exhibit GAA13 - land registry details and plans
14. Exhibit GAA14 - Exhibit GAA15 - land title EGL387875 and other details
15. Exhibit GAA15 – Email correspondence between the Council and Port of Land Authority