

Town & Country Planning Act 1990

**Proof of Evidence of Simon Thelwell
London Borough of Havering**

Appeal Site: Frog Island, Ferry Lane, Rainham, Essex, RM13 9YH

**Public Inquiry: 14th – 16th May 2024
Appeal by S Walsh & Son Limited**

**Planning Inspectorate References:
APP/B5480/C/22/3305409**

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1. Introduction

1.1 The Council's witness, **Simon Thelwell**, will say:

1.2 I am employed as Head of Strategic Development by the London Borough of Havering. I have over 30 years' experience in planning matters. I have been employed at Havering since July 2007 in various roles managing parts of the Planning Service. Before that, for 3 years, I was employed by London Borough of Sutton as Planning Area Manager and before that I held various development control related jobs, rising to Principal Planner at the London Borough of Hammersmith and Fulham. I have developed a detailed knowledge of planning policy, legislation and procedure and the ability to make decisions on complex planning matters. I have significant knowledge of planning issues within London. I hold a BSc(Hons) in Town and Regional Planning. I am familiar with the appeal site and its surroundings.

2. Scope of Evidence

2.1 This proof will include a description of the site where there is particular need to expand upon that already provided in the Council's Appeal Statement (which I refer to in this proof as the Council's "Statements of Case"). The history leading to the serving of the enforcement notices is covered in the Council's Statement of Case.

2.2 This proof will deal with the overall planning issues raised by the appeal proposal with regard to the ground (a) appeal against the enforcement notices. It will identify the national and local policies relevant to the proposal, assessing the extent to which the proposal accords with those policies and the development plan as a whole, as well as whether there are any other material considerations that weigh in favour or against the proposed development.

2.3 Finally this proof will set out the conclusions of the Council with regard to the appeals.

3. The Site and its Surroundings

3.1 In addition to the description of the site contained in the Statement of Case and Statement of Common Ground, I would add the following information to assist the Inspector in understanding how the site has changed as a result of the unauthorised development which has taken place.

3.2 Attached at Exhibit ST1 is an aerial photograph showing the site as it existed on 24th August 2014 (less than 10 years before the notices were served and prior to the alleged unauthorised development taking place). Exhibit ST2 is an aerial photograph showing the site as it existed on 2nd August 2018 (less than 4 years before the notices were served).

3.3 Attached at Exhibit ST3 is the latest dated aerial photograph available (May 2021) following the commencement of the unauthorised use of the site. Exhibit ST4 shows a more up to date (post May 2021 but undated) Google Maps aerial photograph. Comparing the site to the photographs at Exhibits ST1 with those after the unauthorised development has taken place, the change in the extent of activities on the site can readily be discerned.

3.4 The site is located within the Rainham Employment Area Strategic Industrial Location as defined in the London Plan. The Local Plan, adopted in November 2021, also allocates the nearby Freightmaster Estate as a Strategic Industrial Location. These employment/industrial areas form the London Riverside Business Improvement District (BID). A BID is a defined area in which a levy is charged on all eligible business rate payers in addition to the business rates bill. This levy is used to develop projects which will benefit businesses in the local area. There is no limit on what projects or services can be provided through a Business Improvement District. The only requirement is that it should be something that is in addition to services provided by local authorities. Improvements may include, but are not limited to, extra safety/security, cleansing and environmental measures. Attached at Exhibit ST5 is a range of screenshots from the London Riverside BID website setting out the core activities of the BID.

3.5 Reference is made by the BID to the Riverside Green Space which the BID have received grant funding to implement a green area with seating for employees in the area and those using the local footpath network to enjoy. Planning permission has been granted for this project and it is due to be implemented shortly. The site of the Riverside Green Space is directly adjacent and to the south of the appeal site.

3.6 Attached at Exhibit ST6 is an extract from the Ordnance Survey. It can be seen that the site directly adjoins the London Loop footpath.

4. **Appeals under Ground (a)**

4.1 The enforcement appeals are proceeding on grounds (a), (c), (d), (e), (f) and (g), although I am dealing here solely with ground (a).

4.2 This section of my proof of evidence will highlight what the Council considers to be the main reasons justifying the service of the notice.

The Development Plan

4.3 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.”*

4.4 The Development Plan for the London Borough of Havering is comprised of the Havering Local Plan November 2021, Joint Waste Development Plan for the East London Waste Authority Boroughs 2012 and the London Plan March 2021.

4.5 The Inspector has usefully set out in his Pre-Inquiry Note, the main issues in the appeal and I would agree with these. Essentially, the reasons for the enforcement notice and associated main planning considerations are considered to be the following:

- Effect on the Amenity of the Area
- Effect on Character and Appearance of the Area
- Effect on the Highway Network
- The Need for the Facility
- Delivery of Biodiversity and Public Amenity Enhancements

I will deal with each of the above in turn, although I consider it relevant to address the need case advanced in relation to the facility first, as consideration of this matter gives an understanding of the scale of the development and consequent impacts.

Need for the Facility

4.6 As confirmed by the relevant development plan policies that relate to waste development, waste should be processed as close to its source as possible (Policy W5 of the Joint Waste DPD) and should be recycled for re-use on site where possible (Policy W1 of the Joint Waste DPD; Policy SI7 of the London Plan; Policy 39 of the Local Plan)

4.7 As set out in the Council’s Statement of Case, the facility processes a significant amount of construction and demolition waste. Since the Statement of Case was submitted, the Waste Interrogator for 2021 and 2022 has been published. For the last three years of published data, a summary of amount of waste received and its origin are provided below.

2020		
WPA	Tonnes Received	%
East London Waste Authority		
Havering	17157.22	9.17%
Barking & Dagenham	14689.86	7.85%
Newham	52455.32	28.04%
Redbridge	2766.38	1.48%
‘ELWA’ =	87068.78	46.55%
Origin from other ‘East’ London Boroughs		
Waltham Forest	1256.28	0.67%
Hackney	1624.32	0.87%
Tower Hamlets	10565.6	5.65%
Haringey	1337.26	0.71%
Enfield	952.5	0.51%

'East' =	15735.96	8.41%
Other London		
Barnet	815.56	0.44%
Bexley	871.12	0.47%
Brent	1361.16	0.73%
Bromley	142.62	0.08%
Camden	704.46	0.38%
City of London	276.56	0.15%
Croydon	730	0.39%
Ealing	1910	1.02%
Greenwich	6062.5	3.24%
Hammersmith & Fulham	4837.1	2.59%
Harrow	28.46	0.02%
Hillingdon	171	0.09%
Islington	8644.18	4.62%
Kensington & Chelsea	699	0.37%
Lambeth	888.14	0.47%
Lewisham	1155	0.62%
Merton	107.78	0.06%
Richmond-Upon-Thames	120.22	0.06%
Southwark	2974.84	1.59%
Sutton	30.06	0.02%
Wandsworth	15967.64	8.54%
Westminster	15773.06	8.43%
Other London =	64270.46	34.38%
Outside London		
Cambridgeshire	37.5	0.02%
Essex	890.84	0.48%
Hertfordshire	190	0.10%
Kent	9196.42	4.92%
Medway	19	0.01%
Southend-on-Sea	423.7	0.23%
Surrey	45.26	0.02%
Thurrock	9163.54	4.90%
Outside London =	19966.26	10.68%
Combined Total	187041.5	100%

2021		
WPA	Tonnes Received	%
East London Waste Authority		
Havering	22202.78	11.17%
Barking & Dagenham	3762.6	1.89%
Newham	36417.46	18.31%
Redbridge	562.04	0.28%

'ELWA' =	62944.88	31.65%
Origin from other 'East' London Boroughs		
Waltham Forest	2719.96	1.37%
Hackney	3262.04	1.64%
Tower Hamlets	28166.86	14.16%
Haringey	1509.18	0.76%
Enfield	2154.46	1.08%
'East' =	37812.5	19.01%
Other London		
Barnet	4431.36	2.23%
Bexley	1732.74	0.87%
Brent	4405.08	2.22%
Bromley	666.84	0.34%
Camden	3194.72	1.61%
City of London	502.22	0.25%
Croydon	46.5	0.02%
Ealing	5753.38	2.89%
Greenwich	3985.98	2.00%
Hammersmith & Fulham	1666.52	0.84%
Harrow	58	0.03%
Hillingdon	273.84	0.14%
Islington	5089.72	2.56%
Kensington & Chelsea	170.34	0.09%
Kingston-Upon-Thames	19	0.01%
Lambeth	5749.66	2.89%
Lewisham	1089.94	0.55%
Merton	47	0.02%
Richmond-Upon-Thames	19	0.01%
Southwark	4484.56	2.26%
Sutton	0	0%
Wandsworth	801.36	0.40%
Westminster	19481.14	9.8%
Other London =	63668.9	32.03%
Outside London		
Essex	2688.66	1.35%
Herefordshire	114	0.06%
Hertfordshire	1663.7	0.84%
Kent	5860.3	2.95%
Medway	475.38	0.24%
Slough	264.48	0.13%
Southend-on-Sea	377	0.19%
Surrey	15.5	0.01%
Thurrock	22385.78	11.26%
Windsor and Maidenhead	190	0.10%

Outside London =	34034.8	17.13%
Combined Total	198451.1	100%

2022		
WPA	Tonnes Received	%
East London Waste Authority		
Havering	18938.52	10.29%
Barking & Dagenham	7465.54	4.06%
Newham	36460.42	19.81%
Redbridge	716.68	0.39%
'ELWA' =	63581.16	34.55%
Origin from other 'East' London Boroughs		
Waltham Forest	6614.7	3.59%
Hackney	2237.04	1.22%
Tower Hamlets	14267.04	7.75%
Haringey	994.52	0.54%
Enfield	2440.88	1.33%
'East' =	26554.18	14.43%
Other London		
Barnet	1839	1.00%
Bexley	431.2	0.23%
Brent	2569.4	1.40%
Bromley	270.76	0.15%
Camden	15778.19	8.57%
City of London	2406.22	1.31%
Croydon	1427.48	0.78%
Ealing	1637.76	0.89%
Greenwich	8316.82	4.52%
Hammersmith & Fulham	3613.28	1.96%
Harrow	96	0.05%
Hillingdon	0	0%
Hounslow	49.7	0.03%
Islington	1705.3	0.93%
Kensington & Chelsea	1327.3	0.72%
Kingston-Upon-Thames	248.9	0.14%
Lambeth	495.86	0.27%
Lewisham	2091.92	1.14%
Merton	15	0.01%
Richmond-Upon-Thames	96	0.05%
Southwark	4268.26	2.32%
Sutton	0	0%
Wandsworth	817.28	0.44%
Westminster	6858.66	3.73%
Other London =	56360.29	30.64%

Outside London		
Essex	5079.4	2.76%
Gloucestershire	76	0.04%
Hertfordshire	4019.7	2.18%
Kent	5526.68	3.00%
Medway	1035.34	0.56%
Nottinghamshire	133.2	0.07%
Southend-on-Sea	15.2	0.01%
Suffolk	15.88	0.01%
Surrey	47.2	0.03%
Thurrock	21436.57	11.65%
Windsor and Maidenhead	138.16	0.08%
Outside London =	37523.33	20.39%
Combined Total	184019	100%

4.8 From the above, it is apparent that the overwhelming majority of the waste processed at the facility originates outside Havering and the East London Waste Authority Area and in some cases, a significant distance away for which the need is unknown and certainly does not appear to be as close to the source as possible.

4.9 The current relevant waste policies are Policy 19 of the Local Plan, which refers to the Joint Waste Development Plan Document (**JWDP**), and London Plan Policy S18.

4.10 **Policy W1** of the JWDP includes the following measures identified to drive waste management up the waste hierarchy:

(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 W2 of the JWDP identifies that the ELWA boroughs will manage the amount of commercial and municipal waste apportioned to them by: (i) Safeguarding the capacity of existing waste management facilities listed in Schedule 1 and encouraging increased processing of waste at these facilities, to run at a higher figure towards the

licensed capacity; and (ii) Approving strategic waste management facilities where it will contribute to the ELWA boroughs meeting the London Plan apportionment on sites within the locations listed in Schedule 2.

Where the applicant can demonstrate there are no opportunities within these preferred areas for a waste management facility, sites within designated industrial areas as identified in borough Local Development Frameworks will be considered.”

4.11 Explanatory text in the joint waste plan deals specifically with construction waste:

“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.

4.12 The appeal site is not listed in Schedule 1 or 2. 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. To date, no justification has been given as to why the site is needed and whether it encourages recycling of material to take place away from the source rather than on the demolition/construction site itself. It would appear, however, given the source of the waste processed, that it is having precisely this effect.

4.13 A revised Joint Waste Plan is currently being prepared. As part of this, 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 receives nearly two thirds of its 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 need for the facility, and especially not for a facility of this size and throughput.

Effect on Amenity of Area

4.14 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. See Exhibit ST7 for photos of the operations that have been taken place on the site as observed from Easter Industrial Park and Harbour House, opposite the appeal site.

4.15 The site is subject to EA permitting regime through the Environmental Protection Act. The Permit issued (Ref: EB3004CE) has a condition that emissions shall not cause pollution, but the condition continues that “The operator shall not be taken to have breached this condition if appropriate measures.....have been taken to prevent or where that is not practicable, to minimise, those emissions.” In other words, the condition might not prevent pollution if it is not considered practical to achieve – (Best Available Technology Not Entailing Excessive Costs – BATNEEC).

4.16 It is apparent that efforts have been made to suppress dust through use of water spraying. Presented with an open air waste processing facility, that may be the most practical method to employ (albeit it is for the Appellant to demonstrate this) and the EA may consider that requiring anything more may fail the BATNEEC test. However, that totally ignores the fact that an open waste processing use on this site does not have planning permission in this location. It is the purpose of the planning regime to consider the acceptability of the use of land in this location for open air waste processing (see NPPF para. 191). Whilst it would be entirely appropriate to consider how to minimise the risk of adverse impacts as part of the planning process (noting what is said at NPPF para. 194), 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, high stockpiles of materials being stored or processed or dry materials being processed when there is wind blowing. The dust impacts are contrary to London Plan Policies SI1, SI8, Local Plan Policy 34 and JWDPD Policy W5. It is not possible to

identify a sufficiently clear, precise and enforceable condition capable of ensuring that there are no unacceptable impacts in this regard. Enclosure of the activities would require a substantial structure/building which itself would need planning permission and could not properly be secured through through a planning condition.

Effect on Character and Appearance of the Area

4.17 Paragraph 130 of the NPPF sets out a range of criteria to ensure that developments are well designed, including that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; that developments are sympathetic to local character including the surrounding built environment and landscape setting.. Policy 26 of the Havering Local Plan states that proposals will be supported where they are (among other things) informed by, respect and complement the distinctive qualities, identity, character and geographical features of the site and local area; are of a high architectural quality and design; provide active streets, good sight lines and natural surveillance; demonstrate adequate on-going maintenance and management arrangements. Policy 27 states that proposals should incorporate a detailed and high quality landscape scheme which (among other things) 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; demonstrates how existing landscape features will be protected during the construction phase; maximises opportunities for greening, through the planting of trees and other soft landscaping; provides strong boundary treatment that integrates with and is sympathetic to the local landscape character and street scene.

4.18 As set out above, national, London Plan and Local Plan Policy all place great emphasis upon achieving good design and ensuring that the character of the area is respected. However, the development of the appeal site has taken place without any regard to achieving a satisfactory appearance or respecting character. Use of shipping containers, fencing and netting (in poor condition) around part of the perimeter of the site is particularly stark and detracts from views of the site for those working nearby, driving past or walking/cycling on the adjoining footpath/cycle network. The stockpiles and plant/machinery are often visible above the boundary and add to the discordant appearance of the site.

4.19 The general character of the this area is industrial, but the area has been subject in recent years to significant improvement to the environment through well designed new buildings, streets and footpaths as well as promotion of the recreational asset of the river and green open spaces around. The area will be further enhanced by provision of seating areas immediately south of the appeal site. 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. As part of the change of use of the site, no landscaping has been provided where the London Plan requires Urban Greening (Policy G5).

4.20 The poor visual quality of the development is clearly contrary to paragraphs 130 and 131 of the NPPF, London Plan Policies SI8 and G5, Local Plan Policies 19, 26 and 27 and JWDPD Policy W5 and, in itself, provides sufficient grounds for refusing planning permission.

Effect on the Highway Network

4.21 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. Without a transport assessment, it is not possible to assess the position with regard to highway impact. Should the highway impacts be shown to be acceptable, such a conclusion would normally be on the basis of suggested mitigation measures such as controls on throughput, lorry movements and restriction on movements during peak periods. No details have been provided for me to add further comments on the issue of traffic.

4.22 Furthermore, it does not appear that there are any wheel washing facilities on the site. If they are, they are not completely effective as mud is evident on the roads in the vicinity of the site (See Exhibit ST8) presenting a danger to other road users as well as being unattractive and further demonstrating that the development is unable to operate in a way that is acceptable.

4.23 The transport impacts and inability to attach suitable conditions carries significant weight against the granting of planning permission through being contrary to London Plan Policies T4, SI15 and SI16, Local Plan Policies 23 and 31 and JWDPD Policy W5.

Delivery of Biodiversity and Public Amenity Enhancements

4.23 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.

4.24 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 SI16 of the London Plan and Policy 31 of the Local Plan.

Benefits - Business Growth

4.25 Paragraph 81 of the NPPF states that planning decisions should help create the conditions in which businesses can invest, expand and adapt with significant weight placed on the need to support economic growth and productivity. Policy 19 of the Havering Local Plan seeks to build a strong economy and business growth through protecting designated sites.

4.26 No evidence of the needs of the business on the site has been provided by the Appellant. Given the apparent conflict with policy in relation to the principle of development, and the harms identified above, there should have been at least some exploration by the appellant of whether the operation (or parts of it) could be carried out elsewhere or in a way which accords with planning policies, including a fully enclosed process.

4.27 Whilst the expansion of businesses is noted and carries some weight, to the extent it is demonstrated in evidence, the haphazard nature of just placing inappropriate structures and importing material for processing causes harm for the reasons outlined in the preceding paragraphs and therefore carries only limited weight in this case.

5. Conclusion

5.1 The unauthorised development of the site and use for which planning permission has now been sought is considered to be unacceptable for the reasons set out in the enforcement officer's report, the Council's Statement of case and as reiterated in this Proof. The development is clearly contrary to the policies identified in this proof and in accordance with S38, is not in accordance with the Development Plan.

5.2 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) appeals must fail.

5.3 For these reasons, the Inspector is respectfully requested to dismiss the appeal.

6. Exhibits

Ref	Title
ST1	Aerial Photograph 2013
ST2	Aerial Photograph August 2014
ST3	Aerial Photograph August 2018
ST4	Aerial Photograph May 2021
ST5	Recent Google Map Aerial Photograph
ST6	Extract from London Riverside BID Website
ST7	Ordnance Survey Extract
ST8	Photos of Site from Easter Industrial Park and Harbour House
ST9	Photos of Mud on Road

Declaration

I understand that my duty is to the Inquiry and confirm that the opinions expressed in this Proof of Evidence are my true and professional opinions.