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A Planning Statement on behalf of Cox Group of Companies concerning the erection of a replacement portal framed industrial building for the repair, maintenance and storage of vehicles, plant and equipment along with the installation of a sealed tank on land at the Burleigh Oaks Farm Waste Transfer and Recycling Centre, East Street, Turners Hill, West Sussex RH10 4PZ

January 2023

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PREAMBLE

This planning statement has been prepared on behalf of the Cox Group of Companies, and accompanies an application seeking full planning permission for the erection of a replacement portal framed industrial building for the repair, maintenance and storage of vehicles, plant and equipment along with the installation of a sealed tank on land at the Burleigh Oaks Farm Waste Transfer and Recycling Centre, East Street, Turners Hill, West Sussex RH10 4PZ.

The purpose of this document is to set out a policy framework against which the current proposals are required to be considered by the Waste Planning Authority.

Chapter 1 commences with an examination of the application site forming part of a lawful built waste management facility, occupying a countryside location situated outside the High Weald AONB and any other national or locally designated area. A small number of isolated dwellings are located in the surrounding countryside, with the development management process allowing for appropriate mitigation where necessary, to protect the amenity of any adjoining residential occupiers, along with any short term impacts during construction of the replacement industrial building. It will be revealed that the replacement building is to be positioned between industrial buildings relating to the same waste transfer use.

The planning history associated with the Burleigh Oaks Farm Waste Transfer and Recycling Centre is considered in Chapter 2. It will be shown that an appeal against the refusal of planning permission and an appeal against an enforcement notice were both allowed on 13th January 1989 (PINS Reference Nos. T/APP/C/87/D3830/21-22/P6; T/APP/D3830/A/87/82838) for the repair, maintenance and storage of vehicles, plant and equipment taking place in the building which forms the subject of the current application, as well as in the immediately adjoining industrial building lying to the south west.

A portal framed industrial building was granted planning permission by Mid Sussex District Council on 24th August 1990 under Reference No. TH/033/90, to replace a former building occupying the same site which had taken on a dilapidated appearance and been partially demolished by the 16th October 1987 hurricane.

On 9th August 2021 Mid Sussex District Council issued a Certificate of Existing Lawful Use or Development under Reference No. DM/21/2248, confirming that a lawful commencement of the 24th August 1990 planning permission had occurred prior to the expiration of the planning permission relating to Application No TH/033/90. The material operation giving rise to the commencement of this development comprised the clearance of debris from the site, along with the digging of three trenches and the formation of three individual concrete padstones to create foundations associated with the south-west elevation of the replacement building.

An in-depth assessment of current national waste and "*development plan*" policy is the focus of attention in Chapter 3 of this planning statement. In this way, the erection of the replacement portal framed industrial building is assessed against National Planning Policy for Waste October 2014 (hereinafter referred to as the NPPW 2014), the Waste Management Plan for England January 2021 (hereinafter referred to as the WMPE 2021), and the Waste Hierarchy. Reference will be made to the 25 Year Environment Plan which commits us to being the first generation to leave the environment in a better state than we found it, as well as Our Resources and Waste Strategy published in 2018, outlining how to meet this commitment, moving towards a circular economy; before detailed consideration is given to the policies taken from the "*development plan*".

It will be revealed that case law requires a decision-taker when considering an application, to identify those "*most important*" policies set out in the "*development plan*", before examining each policy to see whether it is "*out-of-date*", and then finally to assess whether the basket of policies set out in the "*development plan*" which are "*most important*" to that development, as opposed to being simply relevant in the determination of the application, are "*out-of-date*" in respect of paragraph 11 of the NPPF 2021. It will be demonstrated that the policies "*most important*" in an adjudication of the current proposals are not "*out-of-date*," and on this basis alone, it is contended that what is now sought would accord with the "*development plan*" examined as a whole.

In terms of the "*development plan*", consideration will be given to countryside policy generally, and the importance to be afforded to safeguarding existing waste management sites and infrastructure. There are no transport implications arising from the proposed development, given that the intention is to replace an existing dilapidated and outdated industrial structure with a purpose-built industrial building to serve the same purposes,

whilst there no public health, amenity or cumulative impact issues associated with the current proposal. It will be demonstrated that there is no conflict between the proposed replacement industrial building and those “*most important*” “*development plan*” policies.

It is accepted that the provisions of Footnote 8 to paragraph 11d)(i) [hereinafter referred to as limb (i)] of the NPPF 2021 includes “*irreplaceable habitats*” which by virtue of paragraph 180c) of the Framework includes ancient woodland. To this end, the approach to be taken is that outlined in the High Court judgement involving “*Monkhill Limited*” which will be considered in Chapter 3 of this planning statement.

Chapter 4 focuses attention on character considerations, where waste development is not expected to have an unacceptable impact. It will be revealed that the current proposals should be seen as improving the existing infrastructure at the Burleigh Oaks Transfer and Recycling Centre, having taken into account topographical, landscape, noise and ecological considerations, with the replacement building having little or no impact on health, or users of the adjoining footpath network.

A set of conclusions is provided in Chapter 5 in which it will be shown that there are no other considerations which when addressed as part of the overall planning balance exercise dictate that planning permission should be withheld in respect of the proposed development.

1.00 THE APPLICATION SITE AND ITS LOCATION

- 1.01 The Burleigh Oaks Farm Waste Transfer and Recycling Centre comprises a predominantly flat, irregular shaped parcel of land amounting to approximately 1.13ha (2.79 acres), occupying a valley floor location, screened by Burleigh Arches Wood, an area of ancient woodland, with steeply rising ground levels found to the south, east and west. It is situated in the countryside, outside the High Weald AONB, and any other national or locally designated area.
- 1.02 A limited number of isolated dwellings are located in the surrounding rural area, with the same waste transfer facility remaining largely undetected from public views within the landscape. A combination of the presence of boundary hedgerows and trees; thick woodland belts to both the south of the waste transfer facility and to the north delineating the meandering River Medway; along with the nature of the steeply sloping topography, ensure that the waste related use taking place on the application site has minimal visual impact in this rural area.



Burleigh Oaks Farm Waste Transfer and Recycling Centre

- 1.03 The Burleigh Oaks Waste Transfer and Recycling Centre is found approximately 600m to the east of Turners Hill village centre, served by its own independent access comprising an 8m wide concrete road, meandering its entire length from a T-junction located on the northern side of East Street to the entrance to the same waste transfer and recycling facility.
- 1.04 The focal point of the waste transfer and recycling centre is a large steel portal framed industrial building, whose external elevations and roof are clad in identical grey profile metal sheeting comprising the waste transfer hall. The waste transfer hall has its own separate waste drainage system, with water supplied to 8 separate points within the building for dust suppression purposes. This industrial building has a gross external floorspace of 1,716 sq.m, enjoying an overall ridge height of 10.5m from existing ground level, being orientated in a north-westerly to south-westerly direction, where waste materials are deposited and sorted with the assistance of plant and a static Trommell 830 power screen – picking station. The power screen is used for the screening of commercial and industrial, as well as construction and demolition waste, to remove soils and fine aggregates with the aim of producing good quality soil from screened materials.
- 1.05 A mobile concrete crushing machine is placed in what is termed the inert materials processing area comprising part of the lawful waste transfer and recycling centre, where it is used to break up concrete, bricks and masonry etc, grinding the waste materials into smaller fines to achieve the desired finished product size for use as secondary aggregate. The operation of the mobile concrete crusher is carried out in accordance with the Environmental Permitting (England & Wales) Regulations 2016, permitting the crushing of waste tiles, bricks and concrete on the application site. The resultant waste material is stock piled in the inert materials processing area.
- 1.06 A separate compound for glass stored against a 4m high concrete wall; an area set aside for the receipt of bonded asbestos waste stored in a steel container; an area occupied by rejected fridges/freezers found in waste consignments, along with other lockable receptacles used for storing batteries, and gas bottles are all found in the same general location, the latter awaiting authorisation for collection to Messrs. Light Brothers at Greystone Quarry, Southerham, Lewis, East Sussex. A baler is

responsible for baling up waste plastic derived from mixed waste collections which are then sent off to a reputable source for recycling.

- 1.07 To the south west of the main waste transfer hall is a single storey pitched roof administrative office building with toilet facilities, comprising elevations constructed in brickwork beneath a patterned clay tiled roof. A weighbridge lies to the south east, separating the main administrative building from a smaller single storey pitched roof building clad in identical materials and used as a weighbridge office.
- 1.08 An existing tarmacadam surfaced staff car park is situated to the rear of the main administrative building, beyond which lies a three bedroom cottage style dwellinghouse, together with a separate single storey pitched roof building used for stabling and a tack room granted full planning permission by Mid Sussex District Council on 2nd September 1994 under Application No. TH/032/94. The three bedroom dwellinghouse and separate stable/tack room building are situated within their own separate curtilage, with access gained through the staff car park.
- 1.09 To the south west of the existing tarmacadam surfaced staff car park lies a tall pitched roof metal clad building with a predominantly open frontage behind a dwarf breeze block wall, along with a single storey lean-to. This outdated, unsightly building is the subject of the current application, having recently suffered wind damage, resulting in the demolition of the lean-to sections on the rear elevation. Previously, a similar sized industrial building was present on open land to the south west, having been partially demolished due to the 16th October 1987 hurricane.
- 1.10 The former building partially demolished by the 1987 hurricane, along with the existing building on the current application site, were the subject of appeals against the refusal of planning permission (Mid Sussex DC Ref. No. TH/020/87) and the issue of an enforcement notice by the same Authority. The resultant appeals (PINS Reference Nos. T/APP/C/87/D3830/21-22/P6; and T/APP/D3830/A/87/82838) were allowed with costs on 13th January 1989, both buildings being used for the repair, maintenance and storage of vehicles, plant and equipment, owned and

leased by Messrs. Cox Skips and Brophy Plant. Brophy Plant no longer occupy the application site, having ceased trading many years ago.

- 1.11 A subsequent application to replace the building destroyed by the 16th October 1987 hurricane was granted planning permission by Mid Sussex District Council on 24th August 1990 under Reference No. TH/033/90. On 9th August 2021 a Certificate of Existing Lawful Use or Development was issued by Mid Sussex District Council under Reference No. DM/21/2248, confirming that a material operation had taken place prior to 24th August 1995, involving the clearance of debris from the application site, the digging of three trenches, and the formation of three individual concrete padstones to create foundations associated with the south west elevation of the replacement building.
- 1.12 It follows that the proposed development should be seen as an improvement to the infrastructure of the Burleigh Oaks Farm Waste Transfer and Recycling Centre, with the replacement portal framed industrial building located amongst other buildings forming part of the existing built waste management facility.

2.00 PLANNING HISTORY

- 2.01 An account of each planning application lodged with both Mid Sussex District Council and West Sussex County Council concerning waste related developments on land at Burleigh Oaks Farm Waste Transfer and Recycling Centre, East Street, Turners Hill, West Sussex RH10 4PZ is provided in chronological order in Table 1 overleaf. Where certain factors arise which are considered significant to the development the subject of the current application, they have been highlighted in the conclusions drawn from the planning history set out in paragraph 2.17 below.
- 2.02 Table 1 does not include the development relating to the refusal of Application No. TH/020/87 along with the related enforcement notice EF/090/87 which were both allowed on appeal with costs on 13th January 1989. Furthermore, Table 1 does not include the subsequent application Reference No. TH/033/90 granted full planning permission by Mid Sussex DC on 24th August 1990 for a replacement building adjoining the south western elevation of the building which forms the subject of the current application, neither does it include the Certificate of Existing Lawful Use or Development issued by Mid Sussex District Council on 9th August 2021 under Reference No. DM/21/2248 confirming a lawful commencement of the development comprising Application No. TH/033/90. The details surrounding these three applications are set out below in this chapter.

I. Application No. TH/20/87 & Enforcement Notice No. EF/90/87

- 2.03 On 12th July 1987 a full application (Mid Sussex District Council Reference No. TH/20/87) was submitted by this company acting on behalf of Messrs Brophy Plant and Cox Skips (Mid Sussex DC Ref No. TH/20/87) seeking the use of land at Burleigh Oaks Farm, East Street, Turners Hill, West Sussex RH10 4PZ for the storage, maintenance and repair of three skip hire lorries owned by Messrs Cox Skips, together with the storage of occasional empty skips, and the storage, maintenance and repair of plant owned by and leased exclusively to Messrs. Brophy Plant.
- 2.04 Application No. TH/20/87 was refused planning permission at Mid Sussex District Council's Plans Sub-Committee No. 1 meeting held on 17th September 1987, contrary to the Case Officer's report and recommendation. The decision notice dated 2nd October 1987 contained the following reasons of refusal:-

TABLE 1

Sequence of Events in the Planning History of Land Known as The Burleigh Oaks Farm Waste Transfer and Recycling Centre, East Street, Turners Hill,
West Sussex RH10 4PZ Excluding Application Nos TH/020/87; TH/033/90 and DM/21/2248 together with the Current Proposals.

^ Denotes application submitted to West Sussex County Council * Denotes application submitted to Mid Sussex District Council

Application No.	Date of Submission to Relevant Authority	Proposed Development	Date & Nature of Decision	Other Comments Pertinent to the Development the Subject of the Current Appeal Proceeding
TH/005/91*	18.02.90	Alteration to existing access from East Street to industrial site at Burleigh Oaks Farm, having a lawful use for the repair, maintenance and storage of vehicles, plant and equipment FULL	Conditional Permission 18.04.91	-
TH/030/94*	01.07.94	Application under Section 73 of the Town & Country Planning Act 1990 (As Amended) to alter the number of skips stored, maintained and repaired at Burleigh Oaks Farm from 3 to 10 so as to accord with Operators Licence No. UK 2215163 issued by the South Eastern and Metropolitan Traffic Area on 27 th December 1993 SECTION 73 APPLICATION	Conditional Permission 02.09.94	-
TH/39/95^	18.07.95	Use of land for the mixed purposes of a waste transfer station for the importation and temporary storage of waste materials; sorting of waste materials, and bulking up of waste materials from small skips into larger containers [SUI GENERIS USE] CLEUD	Certificate of Existing Lawful Use or Development granted on 01.03.96	
TH/017/96*	22.05.96	Demolition of an existing reception/ administration building and erection of new reception/administration building, along with the provision of a steel weighbridge and ancillary car parking. FULL	Conditional Permission 12.07.96	-
TH/38/96^	03.07.96	Use of land for the temporary operation of a "mobile concrete crusher" and "mobile powerscreen" within the land edged in red on Drawing No. 95/60/01 dated November 1995 prepared by Douglas J.P. Edwards CLEUD	Refused 24.01.97 Appeal lodged on 10.02.97 Appeal Withdrawn on 30.04.97	-

TH/40/96^	03.09.96	Erection of a building and lockable storage container to accommodate the composite use the subject of the Lawful Development Certificate issued by West Sussex CC on 1 st March 1996 under Ref. No. TH/39/95; provision of new security fencing and sliding gates. FULL	Conditional Permission 25.04.97	
TH/41/96^	16.09.96	Use of land for the stationing of a "mobile crusher" and "mobile powerscreen" and "mobile woodchipper"; all to comprise an integral part of the facilities associated with the waste recycling centre occupying the same site. FULL	Conditional Permission 25.04.97	-
TH/35/97^	12.08.97	Continued use of the existing lawful waste recycling facility to accommodate stable waste along with a skip to temporarily store asbestos sheeting and guttering defined as special waste; a) in addition to the categories of waste set out in the Lawful Development Certificate issued by West Sussex CC on 1 st March 1996. FULL	Conditional Permission 27.03.98	
TH/36/97^	06.08.97	Minor amendment to Condition No. 4 attached to Application No. TH/41/96 granted conditional permission on 25 th April 1997 so as to allow "two mobile powerscreens" in place of one to be stationed and operated on the site at any time, together with a picking belt. FULL	Conditional Permission 27.03.98	-
TH/029/98*	14.07.98	Removal of mobile building used to accommodate weighbridge equipment and erection of replacement administration building to accommodate weighbridge equipment along with the provision of additional toilets and shower facilities FULL	Conditional Permission 25.09.98	
TH/043/98*	20.10.98	Minor amendment to Condition No. 5 (Working Hours) concerning the development granted full planning permission under Application No. TH/017/96 FULL	Conditional Permission 18.12.98	-

TH/00/00398 /FUL*	15.02.00	Alteration to existing access road from East Street to Burleigh Oaks Farm enjoying a lawful use as a waste recycling centre, along with the repair maintenance and storage of vehicles, plant and equipment along with landscaping works. FULL	Conditional Permission 24.11.00	This proposal sought planning permission for a deviation of the access road so that it was no longer dependent on crossing land in the ownership of Burleigh Oaks Farmhouse. In this regard, negotiations between the appellants and the owner of Burleigh Oaks Farmhouse had reached an impasse over financial considerations and hence discussions were curtailed. This appeal referred to as Appeal A sought the removal of all references to waste type permitted under earlier permissions. The Inspector's decision was the subject of challenge in the High Court <i>R (on the application of Cox Skips Ltd) v First Secretary of State and West Sussex CC (2006) EWHC 2626 (Admin)</i> dismissed on Friday 26 May 2006.
TH/285/04	12.01.04	Application under Section 73 of the Town & Country Planning Act 1990 (As Amended) seeking amendments to Condition No. 5 attached to Application No. TH/40/96 and Condition No. 2 attached to Application No. TH/35/97; both concerning the lawful use of the site as a waste transfer and recycling centre. SECTION 73 APPLICATION	Appeal lodged on 16.06.04 on the basis of non-determination of application. Appeal dismissed on 14.07.05 under PINS Ref. No. APP/P3800/A/04/1153453	
TH/286/04	12.01.04	Application under Section 73 of the Town & Country Planning Act 1990 (As Amended) seeking amendments to Condition No. 5 attached to Application No. TH/40/96 and Condition No. 2 attached to Application No. TH/35/97; both concerning the lawful use of the site as a waste transfer and recycling centre. SECTION 73 APPLICATION	Appeal lodged on 16.06.04 on the basis of non-determination of application. Appeal allowed on 14.07.905 under PINS Ref. No. APP/P3800/A/04/1153454	This appeal referred to as Appeal B sought to include food wastes and bonded asbestos wastes along with those already permitted under earlier permissions.
TH/2158/06	14.08.06	Application under Section 73 of the Town & Country Planning Act 1990 (As Amended) seeking amendment to Condition Nos 2, 3 & 6 of appeal decision DCLG Ref. No. APP/P3800/A/04/1153454(A) and Condition Nos 1, 2 & 6 of DCLG Ref. No. APP/P3800/A/04/1153454(B) allowed by The Planning Inspectorate on 14 June 2005 so as to allow for the deposit, storage and recycling of waste electrical and electronic equipment (WEEE) SECTION 73 APPLICATION	Conditional Permission 02.01.07	
TH/842/07	16.03.07	Erection of a building to accommodate a board room, ancillary offices, staff kitchen and canteen and toilets; modification to existing car parking layout and extension of the same facility along with landscaping works FULL	Conditional Permission 06.06.07	

1. The access is unsatisfactory to serve the proposed development by reason of inadequate visibility.
 2. The uses are detrimental to the amenities of neighbouring residential properties by reason of noise, disturbance and vehicular activity,
 3. The proposal is contrary to the countryside, employment and mobility policies of the Local Planning Authority in that the development has a detrimental impact on residential amenities and that access to the site is unsatisfactory.
- 2.05 On 17th November 1987 Mid Sussex District Council issued an enforcement notice (Reference No. EF/90/87), namely a breach of planning control concerning a material change of use of land from agriculture to a mixed use for purposes of agriculture, storage of vehicles, plant and equipment, and the carrying out of repairs and maintenance thereto.
- 2.06 The enforcement notice was to take effect on 21st December 1987 with a compliance period of six months. An appeal was lodged with The Planning Inspectorate under Section 88(2) (a), (e), (h) of the Town & Country Planning Act 1971 (As Amended).
- 2.07 A local public inquiry was held at Mid Sussex District Council's offices on Tuesday 27th September, Wednesday 28th September and Tuesday 14th October 1988 into the appeal against the refusal of Application No. TH/20/87 as well as the appeal against enforcement notice Reference No. EF/90/87, with a site inspection taking place on Monday 13th October 1988.
- 2.08 The resultant appeals were allowed on 13th January 1989 with a full award of costs to my clients (Appendix 1). The conclusions on the planning merits of the appeal against the refusal of planning permission and the Ground (a) appeal of the enforcement notice are set out in paragraphs 53 to 59 inclusive of the Inspector's decision letter. The locational, traffic and noise related considerations have not materially changed to the present day:-

“53. I find the site to have little visual impact. The yard and former agricultural buildings are well screened, both by the lay of the land and adjoining woods and trees. The site is constrained by no special landscape policies and is generally well suited to the type of activity at present being carried out. I have considered the various policies of restraint on rural development, unconnected with agriculture, contained in the 1988 West Sussex Structure Plan and the 1985 East Grinstead and Worth Local Plan. I note that structure plan policy ENV22 allows for the change of use of redundant buildings outside built up areas if there are no significant harmful environmental effects. There is no restriction on size, as contained in policy EG4/11 of the earlier local plan, which pre-dates the current climate of rural diversification.

54. In my opinion the uses accord in principle with government policy for the use of redundant agricultural buildings. This was recognised by the District Planning Officer in his report on the planning application.

55. I take particular account of Circular 16/84 which advises that disused agricultural buildings are often suitable for small scale industrial uses, which may give rise to no more traffic disturbance than their former use. I consider this to be particularly relevant, bearing in mind the traffic generated by the previous intensive rearing use. I also bear in mind the heavy traffic which used the access during the landfill operation. This was a temporary activity, but permission was renewed on 2 occasions, in 1982 and 1984, without objection from the highway authority or any other recorded objection.

56. I have considered the question of traffic from the site passing through Turners Hill. East Street and North Street are however both classified public highways and I do not regard the vehicles from the appeal site as a material addition to the present flow of heavy goods vehicles. Furthermore, I do not find this to be a site specific objection, since, even if the businesses were sited significantly further away, a proportion of their vehicles would probably still pass through the village en route to their destinations.

57. I have also noted the references to noise from the site being heard in the village. I accept that such noise may on occasion be audible but I have no evidence that it is of a level or frequency to be damaging to amenity. Restriction of operating hours would limit the times when this might occur.

58. The main problem, in land use terms, is clearly the proximity of the 2 dwellings formerly associated with the site. The occupier of the one having no objection and the owner of the other objecting strongly.

59. On the basis of L₁₀ (18 hour) standard for traffic noise in relation to dwellings the disturbance falls well within the recommended levels. Although these criteria are primarily designed for application in relation to public highways I find them a useful guide, in the absence of any contrary measured evidence.”

II. Application No. TH/033/90

- 2.09 On 13th July 1990 a full application was submitted by this company acting on behalf of Messrs. Cox Skips/Brophy Plant (Mid Sussex DC Ref No. TH/033/90) seeking the erection of a replacement building for the repair, maintenance and storage of vehicles, plant and equipment on land at Burleigh Oaks Farm, East Street, Turners Hill, West Sussex RH10 4PZ. The building had become a dilapidated and partially demolished structure at the time of submission of Application No. TH/033/90 as a direct consequence of the 16th October 1987 hurricane.
- 2.10 The application was accompanied by a floor layout plan and elevations of the replacement industrial building, which measured 468 sq.m. (5040 sq.ft.), with a maximum height from existing ground level to ridge of 6.5m. The replacement building was shown on a location plan which accompanied the full application, excluding the immediately adjoining building lying to the north east which now comprises the current proposals.
- 2.11 Application No. TH/033/90 was granted full planning permission by Mid Sussex District Council at its Development and Transport Plans Sub-Committee No. 2 meeting held on 23rd August 1990. The Case Officer's report stated:-
- "The commercial use is reasonably isolated but can be viewed by the public using the adjacent public footpath. The vehicular access is shared with two residential properties situated to the south and is gained from East Street.*
- The existing building was being used for commercial purposes prior to the storm damage. The damage is quite extensive and the majority of the roof has collapsed. From a visual amenity point of view, the site current detracts from the locality. To explain support for the application a statement and photographs have been submitted, these are on file and available for inspection...*
- The building will appear more bulky than the one it replaces and more industrial in appearance. However, with careful control over external materials it is felt that it would represent an improvement to the locality."*
- 2.12 A copy of the decision notice dated 24th August 1990 relating to Application No. TH/033/90 is enclosed at Appendix 2.

III. Application No. DM/21/2248

- 2.13 On 10th June 2021 an application seeking a Certificate of Existing Lawful Use or Development (hereinafter referred to as a CLEUD) under Section 191 of the Town & Country Planning Act 1990 (As Amended) was submitted to Mid Sussex District Council (Mid Sussex DC Ref. No. DM/21/2248) concerning land at Burleigh Oaks Farm, East Street, Turners Hill, West Sussex RH10 4PZ. The CLEUD application sought confirmation of a commencement of the development relating to the erection of a replacement building for the repair, maintenance and storage of =vehicles plant and equipment on the same site granted conditional permission under Ref. No. TH/033/90 on 24th August 1990.
- 2.14 The basis of this CLEUD application was that a commencement of development had occurred through the demolition of an existing partially destroyed building, along with the removal and clearance of debris from the application site; together with the digging of three trenches and the formation of three individual concrete padstones to create foundations associated with the south western elevation of the replacement building. These two events occurred prior to 24th August 1995 at which date the planning permission relating to Application No. TH/033/90 would otherwise have expired.
- 2.15 Application No. TH/033/90 was the subject of two “*conditions precedent*”. The first prevented development from being carried out prior to the submission to and approval in writing by Mid Sussex DC of a schedule of materials to be used in the external finishes of the replacement building. Secondly, all buildings and structures existing on the application site at the date of the permission were required to be demolished, the debris removed and the site cleared before development commenced.¹ The timing of when these “*conditions precedent*” were carried out and how they affected the lawfulness of the commencement of the development was a specific matter discussed in the covering letter of support, seen alongside recent judicial authority.

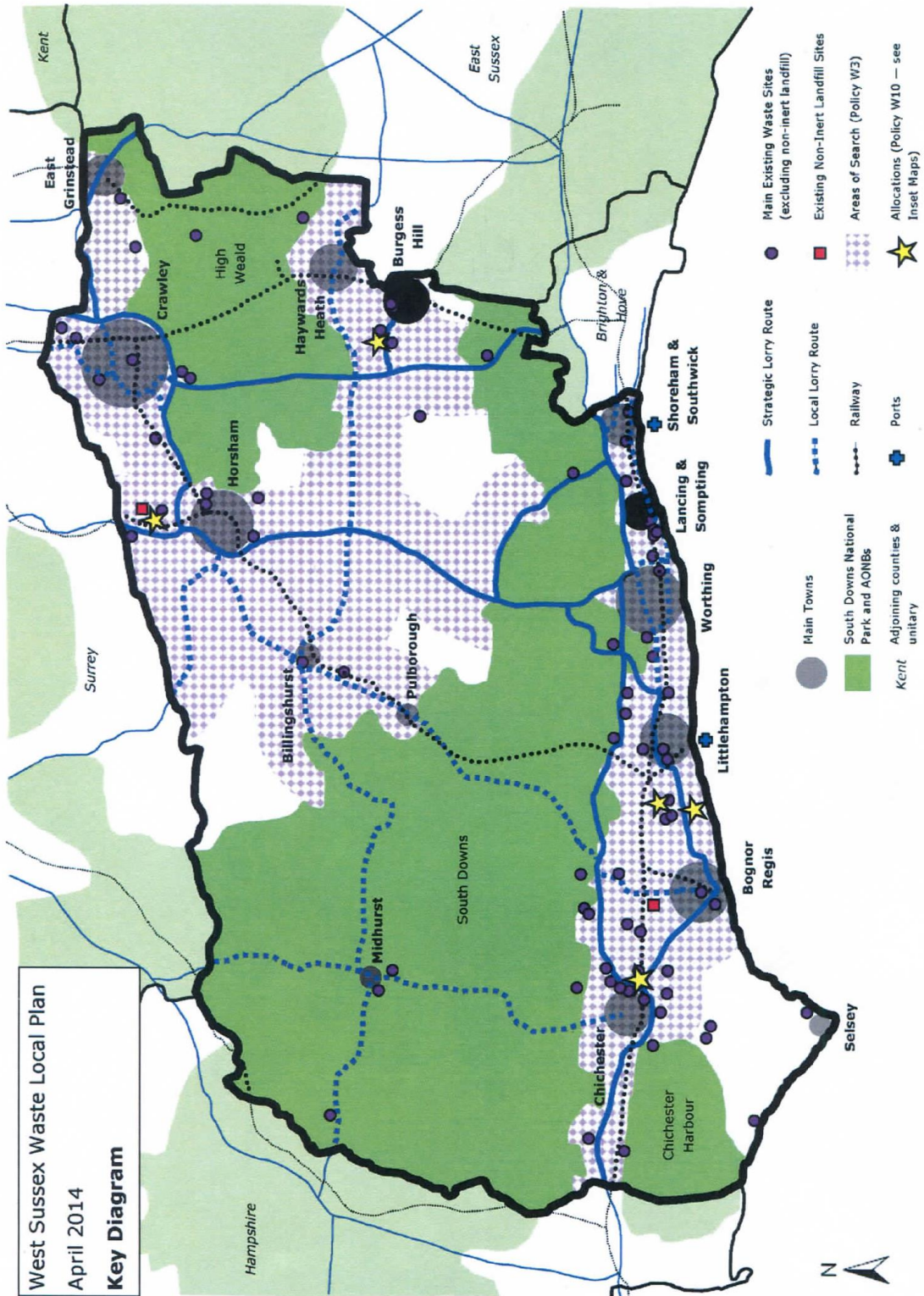
¹ The application site is edged in red on the submitted Location Plan forming part of the particulars accompanying Reference No. TH/033/90. For the avoidance of doubt, only the dilapidated building granted full planning permission on 24th August 1990 was included within the application site.

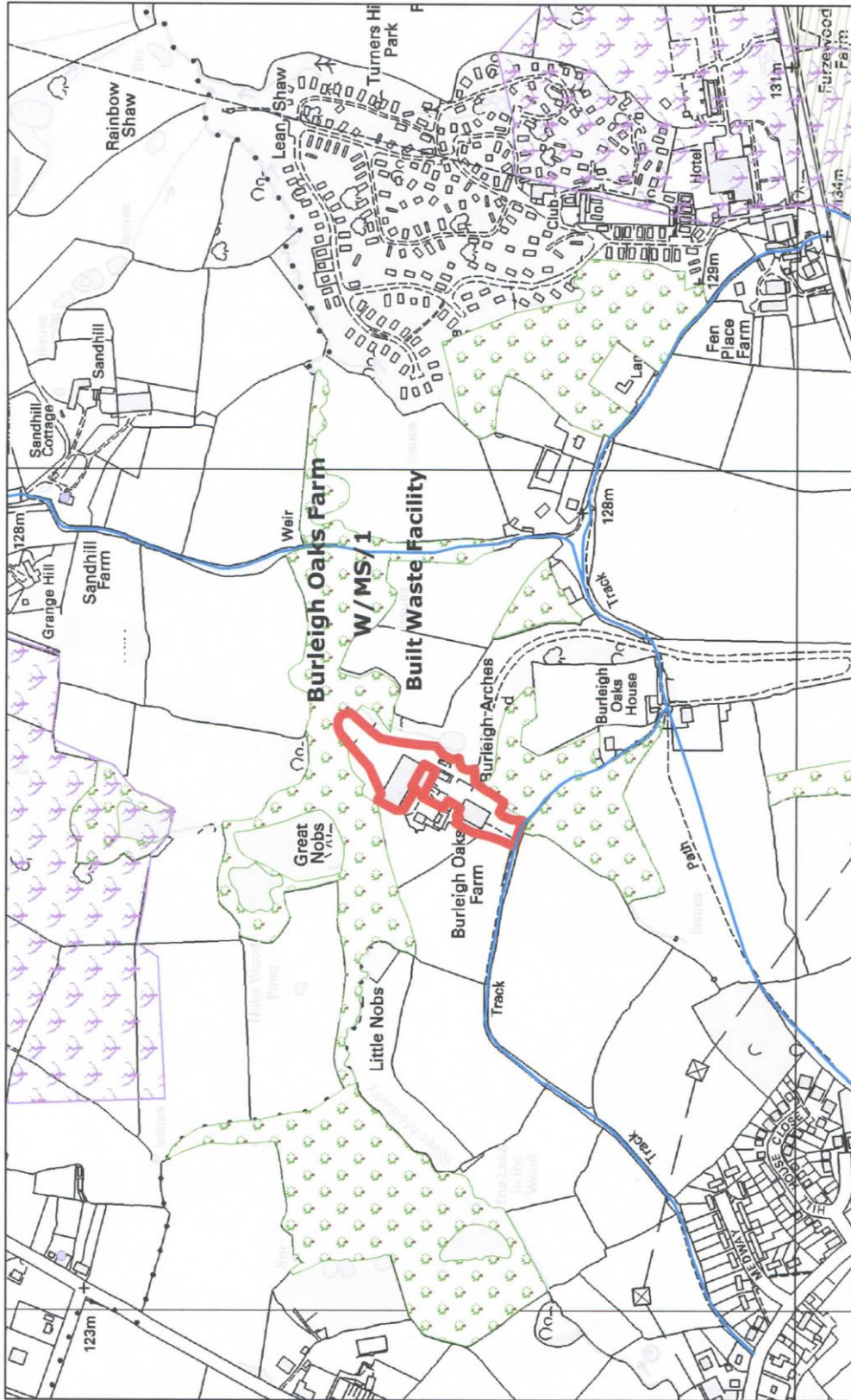
- 2.16 A Certificate of Existing Lawful Use or Development the subject of Application No. DM/21/2248 was granted by Mid Sussex District Council on 9th August 2021, a copy of the decision notice being set out at Appendix 3.

IV. Conclusions Drawn from the Planning History

- 2.17 Four conclusions emerge from the planning history relevant in a consideration of the proposed replacement building on the Burleigh Oaks Farm Waste Transfer and Recycling Centre.

- A.** The Burleigh Oaks Farm Waste Transfer and Recycling Centre can lawfully be used for materials arising from the construction, building, demolition, gardening and landscape industries; food wastes; waste electrical and electronic equipment; along with stable waste; and the temporary storage within a skip of asbestos sheeting and guttering, but excluding all other special wastes and liquid wastes. The same built waste management facility is operated in accordance with Environmental Permit No. EPR/CB3807XK/V002 issued on 16th July 2015, as amended by the Environment Agency under the Environmental Permitting (England & Wales) Regulations 2010.
- B.** There have been no planning applications seeking extensions to buildings, neither have there been any additional waste streams which can be lawfully accommodated at the same built waste management facility since the decision was taken to grant planning permission in respect of Application No. TH/847/07 on 6th June 2007.
- C.** The Burleigh Oaks Farm Waste Transfer & Recycling Centre is referred to as a "*main existing waste site*", situated within the Area of Search lying outside the High Weald AONB on the Key Diagram reproduced overleaf, comprising part of the adopted West Sussex Waste Local Plan April 2014.
- D.** The extent of the Burleigh Oaks Farm Waste Transfer and Recycling Centre Built Waste facility is edged in red on the plan set out on page 20, prepared by the Waste Planning Authority at the time of the Regulation 19 version of the Draft West Sussex Waste Local Plan.





Map 1 Mid Sussex - Turners Hill

1:6,238

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3.00 PLANNING POLICIES

I. Important Preliminary Considerations

- 3.01 The current proposals are not concerned with the recovery, treatment, storing, processing, sorting, transfer or deposit of waste, but relate to the construction of a replacement portal framed industrial building, to be used for the repair, maintenance and storage of vehicles, plant and equipment, along with the installation of a sealed tank, for purposes ancillary to the use of land at the lawful Burleigh Oaks Farm Waste Transfer and Recycling Centre. In this way, what is sought complies with Regulation 2(b) of the Town & Country Planning (Prescription of County Matters) (England) Regulations 2003, being a County Matter.
- 3.02 The proposals involve no increase in staff levels or transport movements. Similarly, no increase in waste streams is sought as a consequence of the proposed development, with waste throughput to accord with the latest version of the applicant's Waste Management Licence issued under the Environmental Permitting (England & Wales) Regulations 2010.
- 3.03 The adopted West Sussex Waste Local Plan April 2014 sets out the definition of "built waste facilities" in Appendix C: Glossary and Abbreviations, which for ease of reference is outlined below. It appears that the building for which planning permission is now being sought falls outside this definition.

"A waste facility contained within a building. These are waste management facilities that treat, recycled or transfer (bulk up) waste rather than landfill it. The size and scale, and therefore the appearance, of waste management buildings varies depending on the type of facility and the quantity of waste being managed."

- 3.04 The contents of paragraph 6.4.3 of the Written Statement to the adopted West Sussex Waste Local Plan April 2014 forms part of the amplification to Policy W3 entitled "Location of Built Waste Management Facilities". It states "Built waste facilities (including associated development such as open storage) may be required for different transfer, recycling and treatment uses and technologies." The wording in parenthesis implies that a replacement building for the repair, maintenance and storage of vehicles plant and equipment, may comprise associated development, being ancillary to a lawful waste transfer use. This would be contrary to the definition of

“built waste facilities” in Appendix C of the same Waste Local Plan. It is contended that given these circumstances, the definition in the glossary should prevail in the case of a conflict with the reasoned explanation to a specific waste related policy in a Local Plan.²

- 3.05 Irrespective of the approach adopted with respect to the definition of “built waste facilities”, it follows that the current proposals are considered to comprise an ancillary facility to the requirements of a lawful waste transfer and recycling centre, enabling the repair, maintenance and storage of vehicles, plant and equipment, where otherwise items of plant and equipment associated with the same waste management facility would have to be stored in the open due to the dilapidated condition of the existing building, with the rear lean-to having been demolished due to recent wind damage.

II. Current National Waste Policy

A. National Planning Policy for Waste October 2014 (NPPW 2014)

- 3.06 The NPPW 2014 required that when determining waste planning applications, Waste Planning Authorities should amongst other matters:
- 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 This explanation would accord with the Court of Appeal judgment *R (Cherkley Campaign Ltd) v Mole Valley District Council (2014) EWCA Civ 567* where in para 16 it was held that the supporting text consists of descriptive and explanatory matter in respect of the policies, and/or a reasoned justification of the policies. That text is plainly relevant to an interpretation of the policy to which it relates, but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. (my emphasis)

3.07 Appendix B of the NPPW 2014 states in determining planning applications, Waste Planning Authorities should consider the following factors, having regard to the type and scale of the existing built waste management facility.

A. Protection of water quality and resources and flood risk management

There is no evidence of the existing built waste management facility having had an adverse impact on water quality, whilst there is a drain/culvert near the site. It is not situated in an area of vulnerable surface or groundwater aquifers. The same site is situated within Flood Zone 1, with the result that the sequential test is passed with the proposed development being appropriate.

B. Land instability

There is no evidence that the Burleigh Oaks Farm Waste Transfer and Recycling Centre is situated on land which is found to be unstable.

C. Landscape and visual impacts

The proposed development is not situated in any particular designated area of national landscape importance, with the height of the proposed replacement portal framed building having no impact on airport safeguarding with respect to London Gatwick Airport. The site already comprises part of an existing built waste management facility, with appropriate mitigation controls available to safeguard the limited number of residential properties found in the surrounding area, and any potential short-term impacts arising from the construction of the replacement building. Public Footpath No 62 is situated to the south west of the replacement building granted full planning permission on 24th August 1990, for which a Lawful Development Certificate has proved conclusively that a commencement of the same development occurred before the 24th August 1995, effectively screening the replacement building now proposed from the same public right of way.

D. Nature conservation

The proposed development would have no adverse impact on any site of international importance for nature conservation, including the Ashdown Forest SPA/SAC, neither would it effect a site with a nationally recognised designation, including any nature improvement area, ecological network or protected species, nor

would it have a direct or indirect effect causing the loss or deterioration of ancile woodland.

E. Conserving the historic environment

The proposed development will not affect any designated heritage asset or non-designated heritage asset, including their settings, and therefore would not affect the historic environment.

F. Traffic and access

The planning history chapter reveals that the Burleigh Oaks Farm Waste Transfer and Recycling Centre is served by its own specific 8m wide access. The proposed development has no impact on the suitability of the adjoining road network and/or the Strategic Lorry Route Network, if only because no increases in traffic/lorry movements associated with the existing built waste management facility will arise as a result of the proposed replacement portal framed industrial building.

G. Air emissions including dust

The proposed development is not located within an Air Quality Management Area and does not involve any increase in traffic generation associated with the operation of the existing Burleigh Oaks Farm Waste Transfer and Recycling Centre. The development is likely to have a limited effect on existing air quality through its proximity to sensitive receptors, with the prospect of enhancing the same where it relates to ancient woodland and users of the adjoining Public Footpath 62. The indirect effects arising from the proposal associated with an existing waste transfer and recycling centre, will contribute to reduced greenhouse gas emissions, and an enhancement to air quality. This is as a consequence of the repair, maintenance and storage of vehicles, plant and equipment taking place in a modern, fully enclosed portal framed industrial building, where at present the existing structure occupying the same site has a dilapidated appearance with a predominantly open front elevation. The installation of a sealed tank to cater for any liquid spillage from the workshop floor, where no equivalent facility is in evidence, should be seen as a protective measure in respect of the ancient woodland of Burleigh Arches Wood, reducing any potential water and soil pollution, as well as avoiding damage and hence harm to habitats.

To the extent that no increases in traffic emissions arise as a consequence of the proposed development means that atmospheric pollution on Burleigh Arches Wood and on the Ashdown Forest SPA/SAC will not occur from acid deposition and eutrophication by nitrogen deposition and NO_x concentrations. High levels of nitrogen may detrimentally affect the composition of an ecosystem and lead to loss of species, whilst high levels of NO_x concentrations may lead to leaf damages and reduced growth.

H. Odours

In comparison with the existing predominantly open building, the proposed replacement building will reduce any odour emissions arising from the repair and maintenance of vehicles, plant and equipment, as such operations will take place in a fully enclosed building.

I. Vermin and birds

The proposed development will not lead to any putrescible waste likely to attract birds and other vermin, and as a consequence there will be no increased hazards caused by the proposed development on sensitive receptors.

J. Noise, light and vibration

The issue of noise is considered in the following chapter of this planning statement, based on an acoustic report prepared by Sharps Acoustics LLP. It is suffice to say that there will an improvement to the local noise climate through the construction of the replacement fully enclosed portal framed industrial building, compared with the same use which takes place in an outdated dilapidated partially open structure, which has been the subject of recent wind damage. No external lighting is envisaged, with all lighting being internal in the replacement building.

K. Litter

The proposed development will involve no litter beyond that associated with the existing waste management facility.

L. Potential land use conflict

The proposed development will take place at an existing built waste management facility operating as a waste transfer and recycling centre, which the policies contained in the adopted West Sussex Waste Local Plan April 2014 seek to safeguard.

B. Waste Management Plan for England January 2021 (WMPE 2021)

3.08 The WMPE 2021 refers to the 25 Year Environment Plan in which the Government has pledged to leave the environment in a better condition for the next generation. The Resources and Waste Strategy published in 2018 sets out how the Government intends to preserve material resources by minimising waste; promoting resource efficiency, and moving towards a circular economy in England.

1. The Waste Hierarchy

3.09 The intention in this respect is to move waste up the waste hierarchy and minimise the types and amounts of waste reaching the lower tiers of recovery and disposal, thereby enabling a reduction in carbon emissions from the waste sector. The Resources and Waste Strategy identifies five strategic ambitions:-

- To work towards all plastic packaging placed on the market being recyclable, reusable or compostable by 2025.
- To work towards eliminating food waste to landfill by 2030;
- To eliminate avoidable³ plastic waste over the lifetime of the 25 Year Environment Plan;
- To double resource productivity⁴ by 2050; and
- To eliminate avoidable waste of all kinds by 2050.

3.10 In England the waste hierarchy is both a guide to sustainable waste management and a legal requirement, establishing law through the Waste (England and Wales) Regulations 2011. The waste hierarchy ranks options for management, with priority going to prevent the creation of waste in the first place, followed by preparing waste for re-use; recycling; and then recovery. Disposal – in landfill for example – is

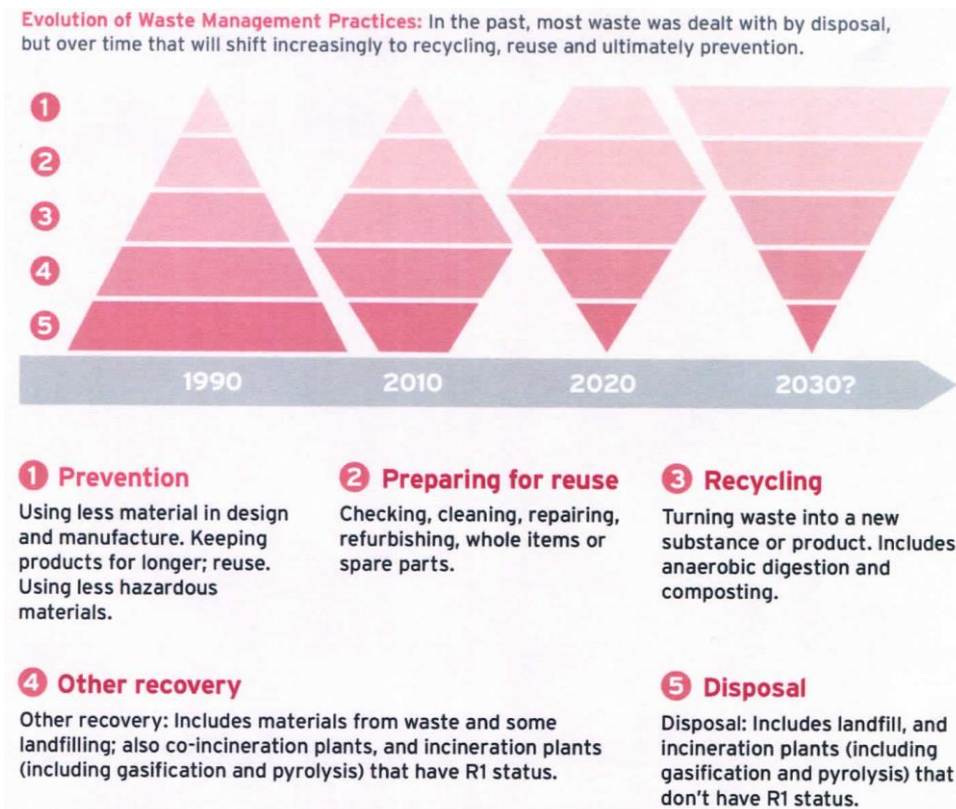
³ We talk about plastic waste being “avoidable” when the plastic could have been reused or recycled; when a reusable or recyclable alternative could have been used instead; or when it could have been composted or biodegraded in the open environment.

⁴ Resource productivity is a measure of the value (in terms of GDP) we generated per unit of raw material reused in the economy.

regarded as the worst option. Although rates of recovery and recycling have increased with energy generated from waste material; the focus is on moving waste up the hierarchy to minimise the amount of waste produced through improvements to resource efficiency, and keeping products in circulation longer, so that they do not become waste.

3.11 In this regard, reference should be made to paragraph 009 Reference ID: 28-009-20141016 of the NPPG in answer to the question, how is the Waste Hierarchy delivered through Local Plans and in planning decisions? In answer, it is said *“National waste planning policy is capable of being a material consideration in decisions on planning applications for waste management facilities.”*

3.12 The evolution of waste management practices seen from the perspective of the waste hierarchy is set out at Figure 2 of the WMPE 2021, having been reproduced below. In accordance with Article 4 of Directive 2008/98/EC the waste hierarchy is to be applied as a priority order in waste prevention and management legislation.



- 3.13 The importance of the shift to recycling and re-use, and ultimately prevention, in accordance with the evolution of waste management practices, to which the current proposals have an indirect effect, lies in the fact that your Authority's latest Joint Minerals Local Plan and Waste Local Plan Monitoring Report 2020/21 reveals that the proportion of commercial and industrial waste (C&I waste) being sent for recycling or other management has been increasing since 2013 in line with your own adopted West Sussex Waste Local Plan 2014 aspirations to achieve "zero waste to landfill by 2031". In terms of commercial demolition and excavation waste (CD&E waste), the trend has been broadly upwards, save for 2020/21 due to the Covid 19 pandemic, with CD&E waste arisings under an updated high growth forecast, being 297,000 tonnes higher at 1,346,000 tonnes, compared to the original high growth forecast that underpinned the adopted West Sussex Waste Local Plan 2014 (1,049,000 tonnes).

III. Legislative Framework

- 3.14 When making a determination, decision-makers are required to follow the correct legislative process which comprises two parts. The first part is concerned with Section 70(2) of the Town & Country Planning Act 1990 (As Amended) which requires the decision-maker to "... have regard to (a) the provisions of the development plan, so far as material to the application, (b) any local finance considerations, so far as material to the application, and (c) any other material considerations." This identifies those matters which must be taken into account by the decision-maker for the purposes of a lawful determination.
- 3.15 The second part is concerned with Section 38(6) of the Planning & Compulsory Purchase Act 2004 which has been reproduced below. In the context of the current application, the "development plan" refers to an adopted or saved plan or "made" neighbourhood plan in accordance with Section 38(3) of the Planning & Compulsory Purchase Act 2004.

"(6) 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."

- 3.16 The meaning of the requirement in Section 38(6) of the Planning & Compulsory Purchase Act 2004 that “...the determination shall be in accordance with the plan...” was considered by Ouseley J. in the High Court case Cummins v Camden LB Council (2002) JPL 1147, where the Judge noted that “*the ‘accordance’ of this determination has to be ‘with the plan’; it is not in accordance with each relevant policy in the plan.*” Ouseley J went on to quote with approval from the High Court judgement of Sullivan J (as he was then known) in Regina v Rochdale LBC Ex Parte Milne (2012) Env LR 22 where the Judge had said:-

“It is not at all unusual for development plans to pull in different directions. A proposed development may be in accordance with development plan policy which for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: ‘Is this proposal in accordance with the plan?’ The local planning authority has to make a judgement bearing in mind such factors as the importance of the policies which are being complied with or infringed, and the extent of compliance or breach.” (my emphasis)

C. The Relationship Between the National Planning Policy Framework and the Development Plan

- 3.17 Paragraph 2 of the National Planning Policy Framework published on 20th July 2021 (hereinafter referred to as the NPPF 2021 or Framework), confirms that applications for planning permission are required to be determined in accordance with the development plan unless material considerations indicate otherwise, before adding that the Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions.
- 3.18 Paragraph 218 of the NPPF 2021 reaffirms the status of the Framework and its relationship to Local Plans. It states:

“218. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made.”

- 3.19 The degree of consistency between existing policies set out in a Local Plan and the policies set out in the Framework, is an important material consideration in the

redetermination of the current application, as can be seen from paragraph 219 of the NPPF 2021:-

“219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

D. Paragraph 11 of the NPPF 2021

3.20 The NPPF 2021 refers to the presumption in favour of sustainable development in paragraph 11, setting out the procedure which should be adopted when adjudicating upon individual proposals:-

“11. Plans and decisions should apply a presumption in favour of sustainable development.

*For **plan-making** this means that:*

- a) All plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas⁵, unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area⁶; 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;**

⁵ As established through statements of common ground (see paragraph 27) [**Referred to as Footnote 6 in the NPPF 2021**]

⁶ The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change. [**Referred to as Footnote 7 policies in the NPPF 2021**]

For **decision-taking** this means:

- c) *approving development proposals that accord with an up to date development plan without delay; or*
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:
 - i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁴; 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.”**

3.21 It is accepted that the provisions of Footnote 8 to paragraph 11d)(i) [hereinafter referred to as limb (i)] of the NPPF 2021 includes “*irreplaceable habitats*” which by virtue of paragraph 180c) of the Framework includes ancient woodland. Accordingly, consideration is required to be given to the provisions of limb (i) as part of the current application.

3.22 The provisions of Footnote 8 in the NPPF 2021 where it relates to paragraph 11b)(i) was first introduced in the NPPF 2019 as Footnote 6, to reverse the observations of paragraphs 14 and 85 of the Supreme Court decision in *Suffolk Coastal District Council v Hopkins Homes Ltd & Another; Richborough Estates Partnership LLP and Another v Cheshire East Borough Council (2017) UKSC 37* delivered on 10th May 2017. This is a matter confirmed in paragraph 60 of the High Court decision *Gladman Developments Ltd v Secretary of State for Housing Communities and Local Government and Corby Borough Council and Gladman Developments Ltd v Secretary of State for Housing Communities and Local Government and Uttlesford District Council (2020) EWHC 518 (Admin)*.

“60 Footnote 6 in the 2019 NPPF was introduced to reverse the observations at [14] and [85] of Hopkins, in other words to restrict the consideration of policies to those contained in the NPPF and to exclude in particular development plan policies. But the NPPF is expressed so that footnote 6 applies solely to paragraphs 11(b)(i) and 11(d)(i). The exclusion of development plan

⁷ This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. **[Referred to as Footnote 8 in the NPPF 2021]**

policies from Footnote 6 does not apply to paragraph 11(d)(ii) (or 11(b)(ii)). Given that 11(d) is to be interpreted within the context of the plan-led system, there is nothing in limb (ii) which purports to disregard any relevant policy of the development plan. This is a straightforward reading of the NPPF which does not involve adding or reading in any additional language."

E. The High Court and Court of Appeal Judgments involving "Monkhill Ltd"

3.23 The starting point with respect to the applicant's case is based on paragraph 45 of the High Court judgment Monkhill v Secretary of State for Housing, Communities and Local Government and Waverley BC (2019) EWHC 1993 (Admin) delivered on 24 July 2019, in which Mr Justice Holgate outlined the interpretation to be given to paragraph 11 of the Framework: *"The following practical summary may assist practitioners in the field so long as it is borne in mind that this does not detract from the more detailed analysis set out above."*⁸

- *"It is of course necessary to apply s.38(6) in any event;*
- *If the proposal accords with the policies of an up-to-date development plan taken as a whole, then unless other considerations indicate otherwise, planning permission should be granted without delay (paragraph 11(c) of the NPPF);*
- *If the case does not fall within paragraph 11(c), the next step is to consider whether paragraph 11(d) applies. This requires examining whether there are no relevant development plan policies or whether the most important development plan policies for determining the application are out-of-date;*
- *If paragraph 11(d) does apply, then the next question is whether one or more "Footnote 6" policies are relevant to the determination of the application or appeal (limb (i));*
- *If there are no relevant "Footnote 6" policies so that limb (i) does not apply, the decision-taker should proceed to limb (ii) and determine the application by applying the tilted balance (and s.38(6));*
- *If limb (i) does apply, the decision-taker must consider whether the application of the relevant "Footnote 6" policy (or policies) provides a clear reason to refuse permission for the development;*
- *If it does, then permission should be refused (subject to applying s.38(6) as explained in paragraph 39 (11) to (13) above. Limb (ii) is irrelevant in this situation and must not be applied;*

⁸ Paragraph 45 of the High Court judgment was not dissented from in the subsequent Court of Appeal involving Monkhill Ltd v Secretary of State for Housing Communities and Local Government and Waverley BC (2021) EWCA Civ 74.

- *If it does not, then the decision-taker should proceed to limb (ii) and determine the application by applying the tilted balance (and s.38(6)).*" (my emphasis)

3.24 The 6th, 7th and 8th bullet points taken from paragraph 45 of the "Monkhill" High Court judgment referred to above are required to be considered in the context of the current application. The approach which should be taken in circumstances where limb (i) of paragraph 11d) of the Framework is applicable, requires consideration to be made to sub-paragraph 10 of paragraph 39 of the "Monkhill" High Court judgement, in which Mr Justice Holgate said:-

"10) Under limb (i) the test is whether the application of one or more 'Footnote 6 policies' provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy limb (i). Whether or not limb (i) is met depends on the outcome of applying the relevant 'Footnote 6' policies (addressing the issue on paragraph 4 of NPPF 2012 which was left open in R (Watermead Parish Council) v Aylesbury District Council [2018] PTSR 43 at [45] and subsequently resolved in East Staffordshire at [22(2)])." (my emphasis)

3.25 The Court of Appeal judgment involving Barwood Strategic Land II LLP v East Staffordshire Borough Council and Secretary of State for Communities and Local Government (2017) EWCA Civ 893 confirmed at paragraph 22(2):-

"22(2) ... Once identified, the specific policy in question has to be applied - and, where that specific policy requires it, planning judgment exercised - before the decision-maker can ascertain whether the 'presumption in favour of sustainable development' is available to the proposal in hand ..." (my emphasis)

F. What is Meant by Up-to-Date/Out-of-Date Development Plan Policies

3.26 The application of "development plan" policies to see whether they are "up-to-date" in accordance with paragraph 11c), or whether they are "out-of-date" having regard to paragraph 11d) of the Framework, was a matter explored by Mr Justice Dove at paragraph 58 of the High Court judgement "Wavendon Properties Ltd v Secretary of State for Housing, Communities and Local Government and Milton Keynes Council (2019) EWHC 1524 (Admin)."

"58. ... In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date and applying the current Framework and the approach set out in the Bloor

case, an overall judgment must be formed as to whether or not, taken as a whole, these policies are to [sic] regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-taking process should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole..." (my emphasis)

3.27 The "*Wavendon Properties Ltd*" High Court judgment reveals that the **first task** for the decision-taker in adjudicating on the current application is to identify those "*most important*" policies set out in the "*development plan*". In this regard, reference should be made to a recent appeal decision involving Wokingham Borough Council⁹ in Berkshire, where it was held that "*most important*" does not mean all relevant policies. This exercise is a matter of judgement in which the decision-taker decides which are the "*most important*" policies.

3.28 The **second task** referred to in the same High Court judgment is concerned with examining each of the "*most important*" policies referred to, to see whether they are "*out-of-date*". Mr Justice Lindblom (as he was then) set out in paragraph 45 of the High Court judgement *Bloor Homes v Secretary of State for Communities and Local Government and Hinckley and Bosworth District Council (2014) EWHC 754 (Admin)* what was meant by "*out-of-date*" seen in the context of the phrase found in paragraph 14 of the earlier version of the NPPF 2012, viz: "*Whether the development plan is absent, silent, or relevant policies are out-of-date*".

"45. These are three distinct concepts. A development plan will be "absent" if none of it has been adopted for the relevant area and the relevant period. If there is such a plan, it may be "silent" because it lacks policy relevance to the overall project under consideration, and if the plan does have relevant policies, these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out of date". Absence will be a matter of fact. Silence will be either a matter of fact or a matter of construction, or both, and the question of whether relevant policies are no longer up to date will be either a matter of fact or perhaps a matter of fact and judgment." (my emphasis)

3.29 The **third task** required by the "*Wavendon Properties Ltd*" case requires an assessment of the basket of policies set out in the "*development plan*" which are

⁹ PINS Ref No APP/X0360/W/19/3238048 paragraph 11 – Land north of Nine Mile Ride, Finchampstead, Berkshire.

“most important”, as opposed to being simply relevant in determining an application or appeal in accordance with paragraph 11 of the Framework. The purpose in this respect is to reach a conclusion on whether, taken overall, they can be concluded to be *“up-of-date”* or *“out-of-date”* with respect to paragraph 11 of the NPPF 2021.

- 3.30 Whether *“development plan”* policies are *“up-to-date”* in terms of paragraph 11c) of the Framework is a matter dependent on their degree of consistency with the NPPF 2021. Those policies considered to be the *“most important”* in determining the current application are considered in paragraphs 3.34 and 3.35 of this planning statement under the titles *“The West Sussex Waste Local Plan 2014”* and the *“Mid Sussex District Plan 2014-2031”*. It is contended that these policies are *“up-to-date”* applying the Framework. The basket of *“most important”* policies are also *“up-to-date”*, when considered in the context of the proposed development and locational characteristics of the application site. An assessment of planning policy has been carried out in the remainder of this chapter, and the following chapter of this planning statement. Whether adverse impacts which would significantly and demonstrably outweigh the benefits arising from the proposed development is the subject of discussion in Chapter 5.

IV. Current Development Plan

- 3.31 The *“development plan”* for the purposes of the proposed development on the application site and Section 38(6) of the Planning & Compulsory Purchase Act 2004 comprise the policies contained in the adopted West Sussex Waste Local Plan April 2014; the Mid Sussex District Plan 2014-2031 adopted in March 2018; the Site Allocations Development Plan Document prepared by Mid Sussex District Council and adopted in June 2022, along with the Turners Hill Neighbourhood Plan 2014-2031 made in January 2016.
- 3.32 As one would expect, there are no specific policies dealing with waste in the adopted Mid Sussex District Plan 2014-2031, and the same situation arises in respect of the *“made”* Turners Hill Neighbourhood Plan 2014-2031.
- 3.33 Policy SA34 of the adopted Site Allocations DPD June 2022 is found under the title *“Existing Employment Sites”* being those classified in Use Classes E(g): Business; B2:

General Industrial or B8: Storage or Distribution, being set out in Appendix A and on the Policies Map to the same Local Plan. The proposed use of the Burleigh Oaks Waste Transfer and Recycling Centre is a sui generis use, and does not fall within any of the three Use Classes to which Policy SA34 relates, nor is the same site retained as an existing employment site in Appendix A to the same Local Plan.

- 3.34 Policy SA38 of the adopted Site Allocations DPD June 2022 is concerned with air quality and replaces Policy DP29 of the adopted Mid Sussex District Plan 2014-2031 where it relates to the topic of air pollution. The amplification to Policy SA38 states that a detailed air quality assessment will be required where the proposal is of a large scale and/or likely to have a significant or cumulative impact on air quality, particularly where development is located in, or within relevant proximity to an Air Quality Management Area.
- 3.35 The proposal is not of a large scale, neither is it likely to have a significant or cumulative effect on air quality, being a replacement building on the same footprint, to be used for the same lawful purposes as the existing building, whilst the Burleigh Oaks Farm Waste Transfer and Recycling Centre is not located in an Air Quality Management Area. In the light of these provisions, no unacceptable impact on air quality is likely to arise, nor would the current proposals adversely affect Burleigh Arches, an ancient woodland, or the Ashdown Forest SPA/SAC seen from an air quality perspective, as no increase in traffic movements arises.

V. West Sussex Waste Local Plan April 2014

- 3.36 Three important points arise from the adopted West Sussex Waste Local Plan April 2014, which are relevant when examining the current proposals on land at the Burleigh Oaks Farm Waste Transfer and Recycling Centre. Firstly, the same Waste Local Plan includes strategies for waste planning and use-specific policies to deliver those strategies, together with generic management policies against which proposals for waste development will be assessed. Secondly, the current network of waste management facilities will be safeguarded and the provision of suitable and well-located new facilities will be enabled to maximise opportunities to re-use, compost, recycle and treat waste. Thirdly, Policies W11 to W24 are designed to ensure that there will be no unacceptable harm to amenity, character, and the

environment, or to other material considerations arising from waste development proposals.

3.37 In examining the current proposals in the context of Section 38(6) of the Planning & Compulsory Purchase Act 2004, the following policies taken from the adopted West Sussex Waste Local Plan April 2014 fall into the category of being “most important” policies; their contents having been included in Appendix 4 to this planning statement.

- (a) Policy W2 – “Safeguarding Waste Management Sites and Infrastructure”. This is a “most important” policy, ensuring that existing waste sites or infrastructure that make an important contribution to the transfer of waste are not prevented and prejudiced by other development. Without a safeguarding policy, sites and facilities needed to achieve a sustainable distribution of waste management facilities are likely to be lost to other developments.
- (b) Policy W3 – “Location of Built Waste Management Facilities”. The proposed development is to take place on an unallocated site, assisting the transfer, recycling and recovery of waste. Burleigh Oaks Farm Waste Transfer and Recycling Centre is situated within an Area of Search in the north of the county, as identified on the Key Diagram. It is located on previously developed land outside a built-up area, where the continued use of the site for waste management purposes has not been declared unacceptable in terms of its impact on local communities, and/or the environment. Policy W3 is therefore a “most important” policy.
- (c) Policy W11 – “Character”. This comprises a “most important” policy in that waste development (which is not defined) is expected to be permitted where it would not have an “unacceptable” impact on the character, distinctiveness and sense of place of different areas of the County, whilst at the same time maintaining the separate identity of settlements and the distinctive character of towns and villages. The contents of Chapter 4 of this planning statement considers the scale, appearance and activity associated with the proposed replacement industrial building, and shows that the separate identity, character and setting of Turners Hill village will remain unaffected.
- (d) Policy W12 – “High Quality Developments”. Chapter 4 of this planning statement will demonstrate that the scale, form and design of the proposed replacement industrial building is of a high quality, having been successfully integrated with other built infrastructure associated with the Burleigh Oaks Farm Waste Transfer and Recycling Centre. It will be revealed that regard has been paid to the local context, seen in terms of topographical and landscape factors, along with views into and out of the same waste management facility. For these reasons, it is also a “most important” policy.

- (e) Policy W14 - *"Biodiversity and Geodiversity"*. This is also a *"most important"* policy, with the proposed replacement industrial building ensuring that areas or sites of international biodiversity importance are protected. Local biodiversity has been taken into account in the preparation of the current proposals, ensuring the protection and enhancement of habitats, ecological networks and ecosystems, whilst delivering a net biodiversity gain in excess of 10%. An ecological assessment prepared by Ecology Solutions Limited accompanies the application particulars which will be referred to in the following chapter of this planning statement.
- (f) Policy W18 - *"Transport"*. This is a *"most important"* policy, with the proposed development forming part of a lawful waste transfer and recycling centre situated in close proximity to the strategic road network. The proposed replacement industrial building and its use for the repair, maintenance and storage of vehicles, plant and equipment, reflects the use taking place in an existing building on the same site. Vehicle movements and means of access onto the highway network remain unaffected by the proposed development, with the proposed development ensures optimal use is made of the applicant's vehicle fleet.
- (g) Policy W19 - *"Public Health and Amenity"*. This comprises a *"most important"* policy, in that the current proposals involve replacing an existing building on the same site consisting of a dilapidated part wooden part concrete framed structure with a predominantly open front elevation beneath a corrugated metal roof, which has suffered recent wind damage, resulting in the demolition of its rear lean-to sections. The proposed development will result in noise being effectively attenuated, with other emissions prevented from filtering into the surrounding countryside. The conclusions drawn from an acoustic assessment prepared by Sharps Acoustics LLP will be considered in the following chapter of this planning statement. The amenity of the surrounding rural area will be improved, with no unacceptable impact on users of nearby Public Footpath 62 on public health grounds.
- (h) Policy W21 - *"Cumulative Impact"*. The primary objective associated with the proposed development is to lessen levels of disturbance on the environment and any closely situated residential property, allowing for the continued repair, maintenance and storage of vehicles, plant and equipment in a modern building, of a scale consistent with that which is to be replaced. It is therefore a *"most important"* policy.

VI. The Mid Sussex District Plan 2014-2031

- 3.38 The following policies taken from the adopted Mid Sussex District Plan 2014-2031 are considered to fall into the category of *"most important"*, as opposed to being relevant policies, against which the current proposal from a *"development plan"* perspective is expected to be judged. The same policies are set out in Appendix 5 to this planning statement.

- (i) Policy DP12 – *“Protection and Enhancement of Countryside”*. This planning policy seeks to protect the countryside in recognition of its intrinsic character and beauty, with the countryside defined as the area outside of built-up area boundaries on the Policies Map. The aim in this respect is to maintain or where possible enhance the quality of the rural and landscape character of the district, subject to the particular proposal being supported by a specific policy reference in a Development Plan Document. Policy W3 of the West Sussex Waste Local Plan April 2014 is concerned with the location of built waste management facilities, with which the current proposal complies. The following chapter of this planning statement assesses the impact of the proposed development on the surrounding landscape. It is for this reason that Policy DP12 is considered to be a *“most important”* policy.
- (j) Policy DP13 – *“Preventing Coalescence”*. This policy is required to be considered alongside Policy W11 of the adopted West Sussex Waste Local Plan April 2014 found under the title *“Character”*. An important element of Policy W11 is the requirement to maintain the separate identity of settlements, which is similarly pursued in Policy DP13 where the aim is directed at preventing the coalescence of settlements and the resultant loss of their separate identity. Chapter 4 of this planning statement will address this issue in the context of the current proposals. Policy DP13 is therefore a *“most important”* policy.
- (k) Policy DP21 – *“Transport”*. This is a *“most important”* policy, with the proposed replacement industrial building and its use for the repair, maintenance and storage of vehicles, plant and equipment reflecting the same use taking place in an existing building on the same built waste management facility. Appropriate opportunities to facilitate and promote the increase use of alternative means of transport to the private car are available, whilst no change in staff levels or car parking provision is envisaged. The proposals have no impact on the strategic road network; protect the safety of road users and pedestrians, whilst at the same time having no effect on traffic congestion.
- (l) Policy DP26 – *“Character and Design”*. This is a *“most important”* policy reflecting the provisions of Policies W11 and W12 of the adopted West Sussex Waste Local Plan April 2014. The proposed replacement industrial building is of a high-quality design and layout, appearing sensitive to the character and scale of immediately adjoining buildings occupying the same waste management facility, as well as its countryside location. No loss or deterioration of trees forming part of Burleigh Arches Wood arises as a consequence of the proposed development, neither would there be any significant harm caused to the amenities of neighbouring residential properties by virtue of a loss of privacy or outlook; a reduction in sunlight and daylight, noise or air quality. The proposed development will optimise the potential of the site to accommodate development.
- (m) Policy DP29 – *“Noise and Light Pollution”*. That part of Policy DP29 relating to air pollution has been replaced by Policy SA38 of the adopted Site Allocations DPD June 2022, but for reasons indicated earlier in paragraphs 3.31 and 3.32, Policy SA38 is not considered relevant to the current

proposals. Policy DP29 in respect of noise and light pollution reflects the provisions of Policies W14 and W19 of the adopted West Sussex Waste Local Plan April 2014, and hence it is also a “most important” policy. No unacceptable levels of noise or light pollution will affect the environment, including any nationally designated environmental sites, areas of nature conservation or geological interest, or wildlife habitats, neither will the proposed development generate significant levels of noise likely to have an adverse impact on the health and quality of life of neighbouring properties. No external lighting is proposed. These matters will be considered in Chapter 4 of this planning statement.

- (n) Policy DP37 - “Trees, Woodland and Hedgerows”. This “most important” policy seeks to support the protection and enhancement of trees, woodland and hedgerows, particularly ancient woodland and aged or veteran trees, with development positioned as far as possible from ancient woodland, with a suggested minimum buffer of 15m between ancient woodland and the development boundary.
- (o) Policy DP38 - “Biodiversity”. This is a “most important” policy whose objectives are commensurate with Policy W14 of the adopted West Sussex Waste Local Plan April 2014. In this way, the proposed replacement industrial building ensures that areas or sites of international biodiversity importance are protected. Local biodiversity has been taken into account in the preparation of the current proposals, ensuring the protection and enhancement of habitats, ecological networks and ecosystems, whilst delivering a net biodiversity gain in excess of 10%. An ecological assessment prepared by Ecology Solutions Limited accompanies the application particulars which will be referred to in the following chapter of this planning statement.

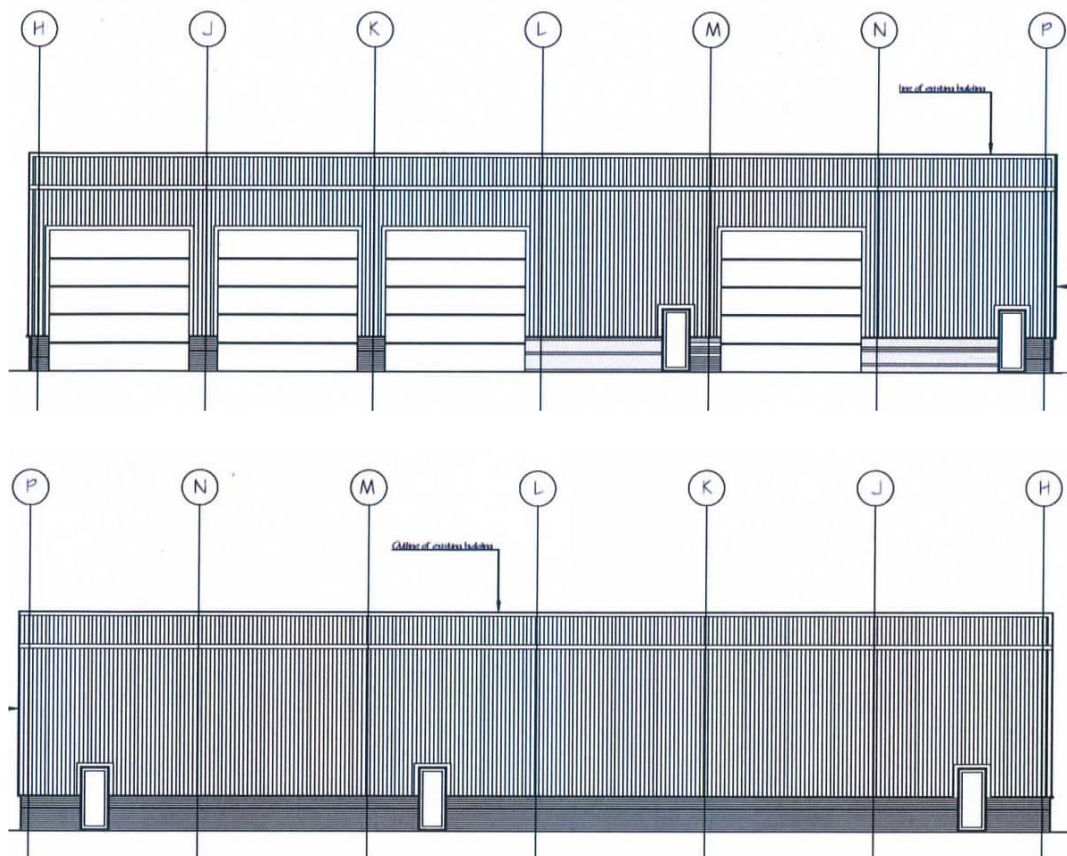
4.00 AN ASSESSMENT OF THE PLANNING MERITS OF THE PROPOSED DEVELOPMENT

I. Scale, Design & Appearance Considerations

A. The Proposed Replacement Building

4.01 The replacement industrial building is to be used for the same lawful use as the existing structure occupying the same land, namely for the repair, maintenance and storage of vehicles, plant and equipment associated with the Burleigh Oaks Farm Waste Transfer and Recycling Centre owned and operated by the Cox Group of Companies.

4.02 It is to comprise 6 x 6m bays, having a gross external floor area of 821.25sq.m (8840 sq.ft) and a gross internal floorspace of 774.69 sq.m (8839 sq.ft), with a ridge height of 6.8m and an eaves height of 6.15m. The building is to be fully enclosed comprising a 1.2m dwarf blockwork wall, with the elevations and roof consisting of dark green powder coated metal sheeting with an internal 2m high wall constructed of 150mm precast concrete panels.



Front and Rear Elevations of Proposed Replacement Building

- 4.03 A sealed tank in the form of a Klargester STS 02810 built of composite GRP, being light, watertight and chemically resistant, as well as waterproof and durable, is to cater for any liquid spillage from the workshop floor of the replacement industrial building. The existing waste transfer and recycling centre already comprises three sealed drainage systems, which are inspected daily with the sealed sumps emptied at no less than 6 month intervals. The sealed sumps and interceptor tank are emptied simultaneously, with the residue removed under the hazardous waste regulations by Sweeptech Environmental Services Ltd, being categorised as oily water, with disposal taking place at F M Conway's premises at Dartford. The same emptying and disposal arrangements are intended to take place with regard to the liquid spoilage contained in the proposed Klargester.



Typical 2800 litre Klargester KLSTS02810

B. The Existing Building

- 4.04 An existing Atcost building is to be replaced, standing on the same parcel of land, having a gross external floor area measuring 805.03sq.m. (8665 sq.ft), consisting of 7 bays of different sizes, five of which on the south east front elevation are predominantly open, found behind a 1.8m high dwarf breezeblock wall. The remaining elevations comprise corrugated metal sheeting, grey or light green in colour. The structure has a ridge height of 6.8m commensurate with that of the proposed replacement building which forms the subject of the current application, with an eaves height of 4.65m.
- 4.05 The original building has taken on an unsightly and dilapidated appearance, having lean-to sections attached to a concrete frame on both the front and rear elevations which are constructed with timber posts. The lean-to on the rear

elevation has recently collapsed, caused by severe wind, resulting in an open aspect to the rear elevation of the same building.

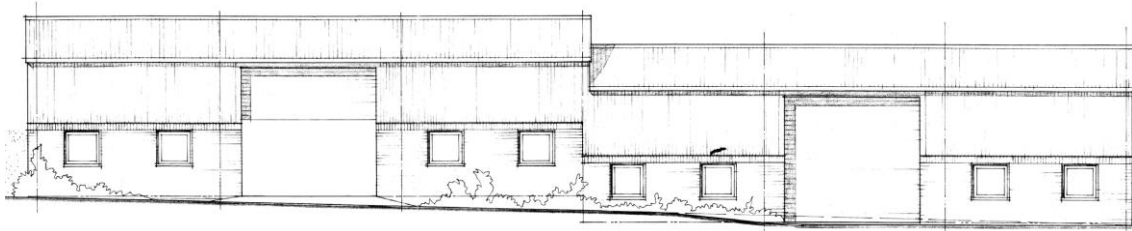
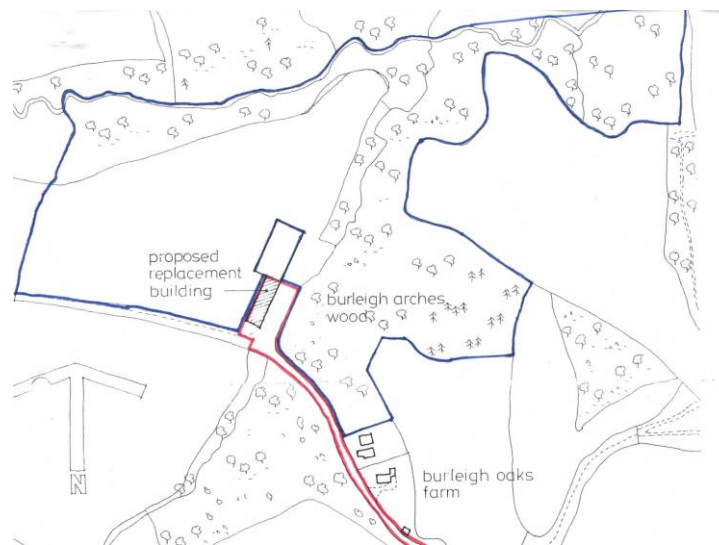


Front and Rear Elevations of Existing Building to be Replaced

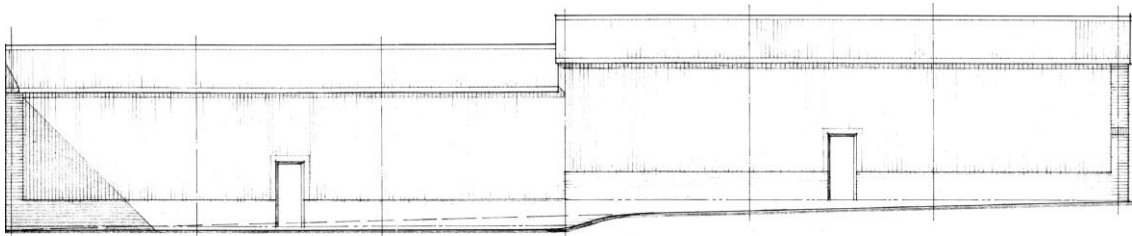
II. Locational Considerations

- 4.06 The proposed replacement building is to be constructed between a separate structure granted full planning permission by Mid Sussex District Council on 24th August 1990 under Reference No. TH/033/90; and a detached building whose elevations are constructed of reddish-brown brickwork beneath a clay tiled roof granted full planning permission on 6th June 2007 under Reference No. TH/842/07.

4.07 A Lawful Development Certificate under Reference No. DM/22/2248 has been obtained from Mid Sussex District Council, conclusively proving that a material operation took place within the requisite 5-year period following the grant of planning permission on 24th August 1990. The building has a varied ridge height between 6.8m and 6.1m due to a difference in existing ground levels. The building constructed of brickwork granted planning permission on 6th June 2007 is in use as a boardroom, ancillary offices, staff kitchen, canteen and toilets, with modifications to the existing car park having formed part of the same application.



SOUTH · EAST ELEVATION



NORTH · WEST ELEVATION

**Front and Rear Elevations of Adjoining Building Granted Planning
Permission Under Reference No. TH/033/90**

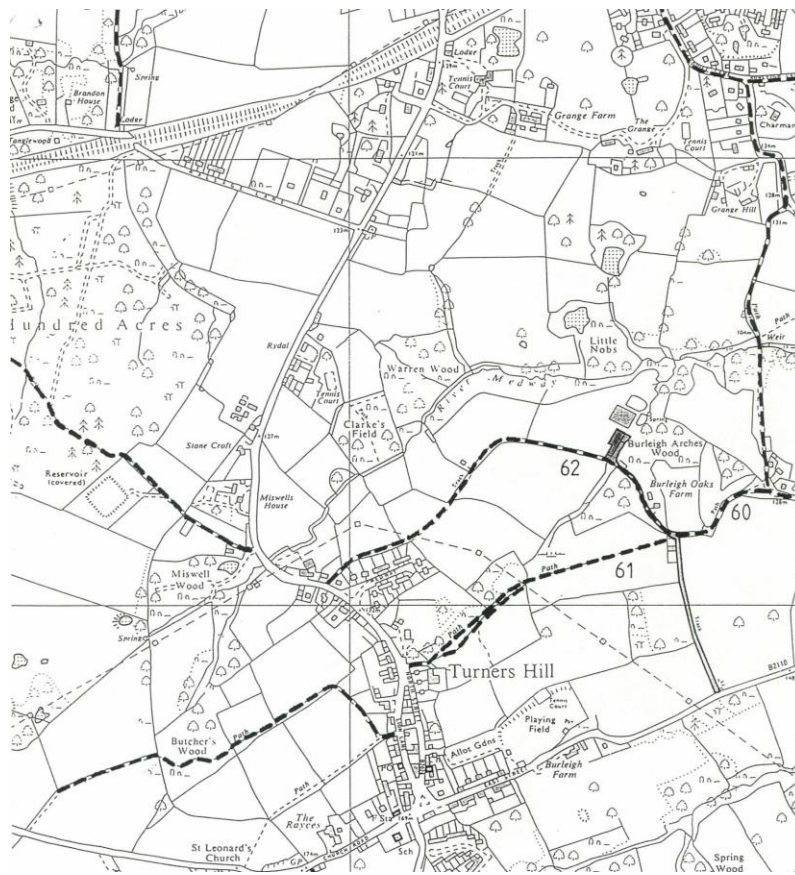
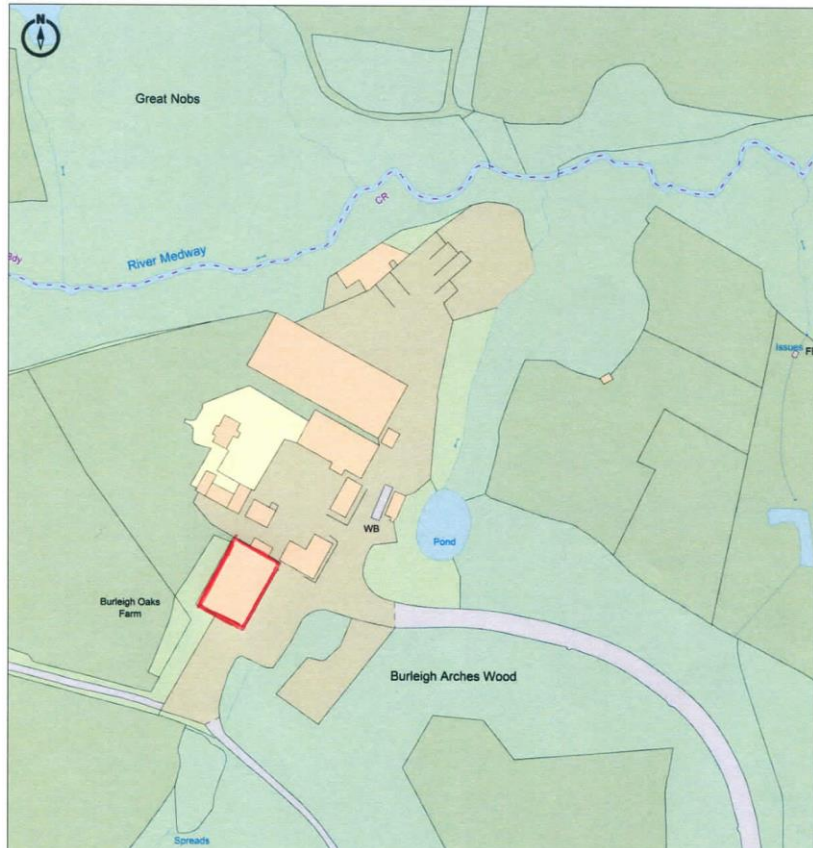
4.08 It follows that what is now sought is found amongst buildings used for, or ancillary to a built waste management facility operated by the applicant. The inherent locational characteristics associated with the current proposal will not result in the coalescence of settlements, neither will it harm the separate identity of Turners Hill village. On the contrary the proposed replacement industrial building will be of a high-quality form of development, visually sensitive to the scale and appearance of existing buildings occupying the same waste management facility, leading to an improvement in the appearance of the site.

4.09 In this way, the replacement industrial building represents a benefit beyond the current situation, seen in terms of the amenities enjoyed by occupiers of Burleigh Oaks House and Burleigh Oaks Farmhouse. These two nearest residential properties are situated on higher ground, located over 150m away from the proposed development, with the occupants unrelated to the waste transfer and recycling centre business, from which they are separated by the ancient woodland comprising Burleigh Arches Wood. The replacement building should also be seen as offering a visual improvement to the users of Public Footpath No. 62 forming part of the local public footpath network.

III. Landscape and Topographical Considerations

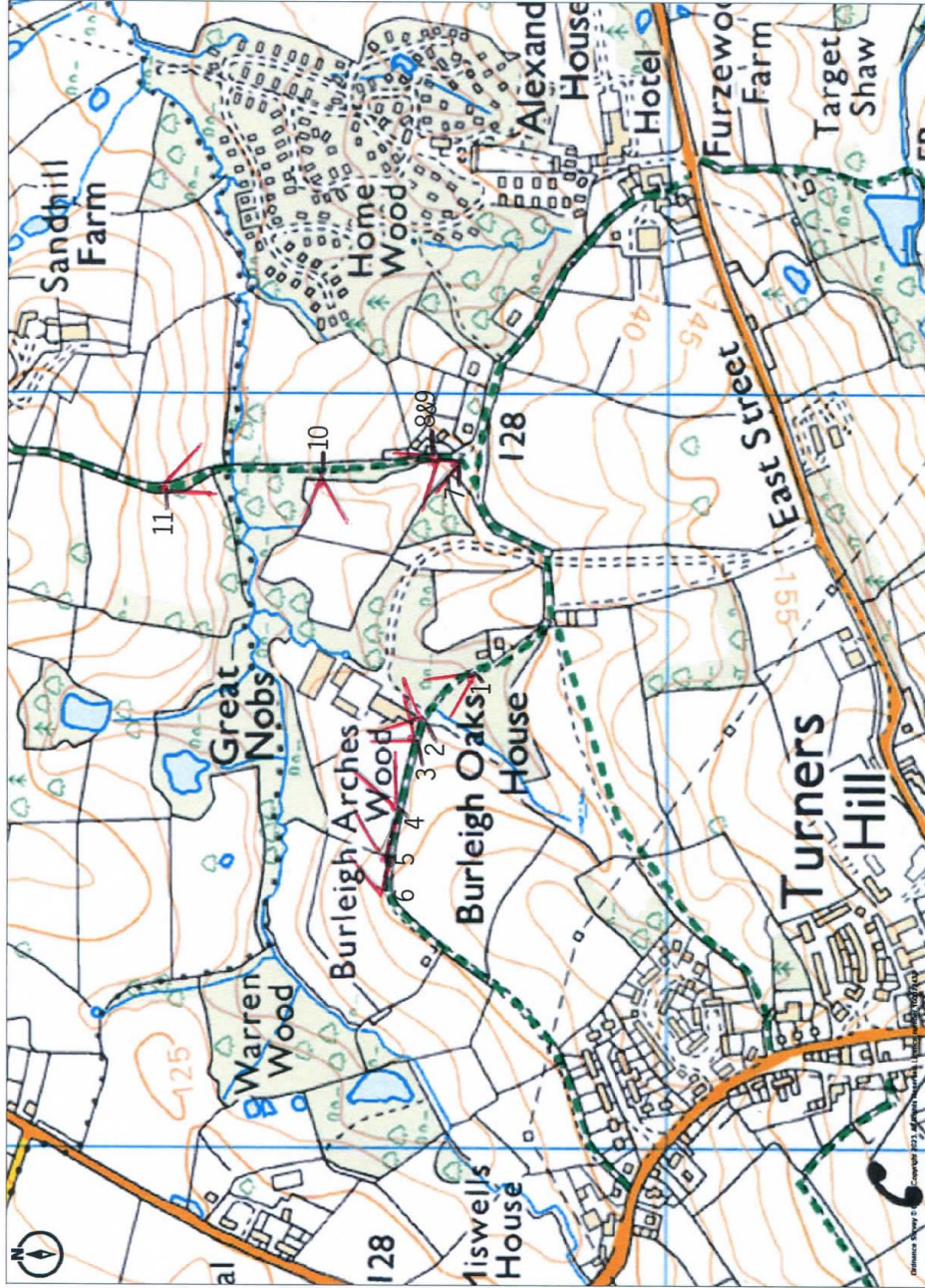
4.10 I have set out on page 44 a drawing showing the location of views from positions along the adjoining public footpath network. The presence of dense woodland belts, lying to the north, east and south of the Burleigh Oaks Farm Waste Transfer and Recycling Centre, seen in conjunction with the well screened nature of the local public footpath network and the characteristic steeply sloping nature of the topography, combine to ensure that irrespective of its valley floor location, the same waste management facility remains undetected within the countryside.

4.11 Two features comprising Great Nobs Wood which delineate the course of the River Medway found to the north of the application site, together with ancient woodland of Burleigh Arches Wood lying to the east and south, limit the visual sensitivity of the landscape, conferring a sense of intimacy and seclusion. These features are required to be seen against a pattern of small irregular shaped fields, which in certain instances are used for equestrian purposes, with alterations having occurred to the surrounding landscape through the provision of maneges.



Plan Showing Adjoining Public Footpath Network

Burleigh Oaks Farm Waste Transfer & Recycling Centre



Promap
LANDMARK INFORMATION
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Licence number 100022432.
Plotted Scale - 1:9000. Paper Size - A4

Views from Adjoining Footpaths

C. Public Footpath 62

- 4.12 Public Footpath No. 62 lies closest to the Burleigh Oaks Farm Waste Transfer and Recycling Centre, following a generally north westerly direction before abruptly changing course to take on a south westerly route before emerging on the eastern side of North Street, to the south of the village centre.
- 4.13 Filtered views from positions to the south of Burleigh Oaks House through the tree canopies of Burleigh Arches Wood reveal that even during winter months, only selective glimpses of the waste transfer and recycling centre are evident. It is only at a point where the same public right of way leaves Burleigh Arches Wood proceeding in a north westerly direction, that the open expanse of the same built waste management facility becomes immediately apparent, with views largely taken up by the presence of empty skips, along with the side elevations of two buildings, the first occupying the application site, and the second consisting of the more recently constructed brick built administrative offices, kitchen and canteen.



**1. View from a Position South of Burleigh Oaks House, Looking Northwards
Towards Burleigh Oaks Farm Waste Transfer and Recycling Centre**



2. View of Burleigh Oaks Farm Waste Transfer and Recycling Centre from a Position Where Public Footpath 62 Emerges from Burleigh Arches Wood

4.14 From the position where photograph 2 was taken, Public Footpath 62 rises to follow a general north westerly route, being incised into the landscape, with only the apex of the roof of the existing Atcost building and empty skips being visible.



3. Views from Public Footpath 62 Incised into the Landscape Looking Eastwards

4.15 Public Footpath 62 then rises, reflecting the surrounding topography, so that it is only from selected positions that elements of the waste transfer and recycling use are visible. Even then, the observer's view is focused on the stark appearance of the elevations of the main buildings comprising the existing waste transfer and recycling centre, accentuated by the well-treed surroundings of Burleigh Arches Wood. In contrast, the location where the proposed replacement building is to be constructed remains screened behind boundary trees.



4. Selected View from Public Footpath 62 Looking in an Easterly Direction towards Buildings Occupying the Burleigh Oaks Farm Waste Transfer and Recycling Centre

4.16 Proceeding further to the north west towards the valley ridge, results in wider panoramic views becoming available, in which the valley slope dictates that only the roofs of the buildings present on the Burleigh Oaks Farm Waste Transfer and Recycling Centre are visible. The same structures are able to be more easily assimilated into the surrounding landscape as a direct result of being situated at a lower ground level, with the imposing backcloth of trees comprising the ancient woodland of Burleigh Arches Wood adopting a more prominent role as a consequence of a lack of intervening vegetation.



5. Panoramic View Taken from the Valley Ridge Looking South Eastward Towards the Burleigh Oaks Farm Waste Transfer and Recycling Centre



6. View Taken from Public Footpath 62 Looking South Eastwards Beyond a Mature Tree Line Boundary Delineating the Valley Ridge

- 4.17 The same built waste management facility disappears from view once past a field boundary depicted by a line of mature trees delineating the valley ridge. The only physical manifestation of the site is a momentary glimpse of part of the rear elevation of the dwellinghouse lying to the rear of the car park. It is at this point that Public Footpath 62 changes direction, effectively doubling back on itself to follow a westerly route, until the eastern side of North Street is reached, at a location to the south of the village crossroads.

D. Public Footpath 61

- 4.18 Public Footpath 61 commences on the eastern side of North Street, opposite its junction with Lion Lane, closer to the village centre than Public Footpath 62. It follows a general westerly to easterly orientation extending to a point north of Burleigh Oaks Farmhouse. The footpath emerges past a recent residential development constructed by Shanley Homes, before passing a number of irregularly shaped field, predominantly used for horse grazing purposes. No views of the Burleigh Oaks Farm Waste Transfer and Recycling Centre are visible along its entire length as a direct consequence of its elevated position within the landscape and the intervening presence of Burleigh Arches Wood.

E. Public Footpath 60

- 4.19 Public Footpath 60 forms a natural extension to Public Footpath 61, commencing from a position where the tarmacadamed road lying to the north of Burleigh Oaks Farmhouse, before following a generally westerly to easterly alignment extending to the 8m wide concrete access road serving the Burleigh Oaks Farm Waste Transfer and Recycling Centre. The same footpath then proceeds to meander over a short section, before abruptly changing direction to adopt a revised northerly alignment following the rising topography towards Sandhill Farm in the general direction of Crawley Down.
- 4.20 Public Footpath 60 is well enclosed by tree-lined boundaries throughout the majority of its length, reducing views over the surrounding landscape. It is this factor, coupled with the presence of Burleigh Arches Wood acting a woodland barrier to the existing built waste management facility, which collectively severely restricts any view of the same waste related use, to the extent of being virtually undetectable. This is in spite of the intervening area between Public Footpath 60

and Burleigh Arches Wood consisting of a single open, undulating, irregular shaped field devoted to horse grazing.

- 4.21 One of the limited number of views over the surrounding landscape is that shown in Photograph 7 over an existing open yard situated on the south eastern boundaries of the large undulating, irregular shaped field, marking the point where the same footpath changes direction to follow a northerly alignment.



7. View Looking to the North Over an Existing Equestrian Yard from a Position Where Public Footpath 60 Abruptly Changes Direction to a Northerly Alignment

- 4.22 The two photographs depicted on the following page of this planning statement reveal the full extent of the same undulating irregular shaped field from a position on the adjoining Public Footpath 60, looking in a north westerly direction towards the outer boundaries of Burleigh Arches Wood. Photograph 8 reveals the presence of a manege in the foreground, comprising a manicured feature inconsistent with the surrounding land form. Photograph 9 is taken from the same position, but incorporates the tree-lined boundaries to Public Footpath 60, where the Silhouette of a Brick Built Building on the Burleigh Oaks Waste Transfer and Recycling Centre is barely visible.



8. View over undulating, irregular shaped to the north-west, towards the outer boundaries of Burleigh Arches Wood



9. View from the Same Position as Photograph 8, But Incorporating the Well-Enclosed Tree Lined Boundaries to Public Footpath 60, and the Silhouette of a Brick Built Building on the Burleigh Oaks Waste Transfer and Recycling Centre.

- 4.23 Where a gap occurs in the trees screen delineating Public Footpath 60, the observer is able to discern part of the same brick built building occupying the waste management facility owned by the applicant. In this view looking directly westwards, the focal point is the ancient woodland of Burleigh Arches Wood, even during winter months.



10. View Looking in a Westerly Direction from Public Footpath 60 where a Limited Gap is Apparent in the Tree screen Boundary to the same Right of Way

- 4.24 It is evident from photograph 11 on the following page that whether walking in a northerly or southerly direction along Public Footpath 60, whether leading to or from Sandhill Farm, that the user attention is deflected away from the topography of the surrounding landscape as a consequence of the tree-lined nature of the same right of way.
- 4.25 The conclusions derived from this visual assessment of views from the surrounding public footpath network is that the proposed development will remain largely undetected in the surrounding landscape. The scale, appearance and proposed use of the replacement industrial building on the application site will not result in the coalescence of settlements, but retain the separate identity, character and setting of Turners Hill Village. Furthermore, the same visual assessment reveals that what is

now sought by the Cox Group of Companies causes no harm to the amenities of occupiers of the nearest residential dwellings, and there would be no adverse cumulative impact on the environment as a consequence of the current proposals.



11. Photograph Showing Tree-Lined Avenue Delineating Public Footpath 60

IV. Biodiversity Considerations

4.26 The applicant has commissioned an Ecological Assessment from a well-respected company of qualified ecologists, Ecology Solutions Ltd, based around an extended Phase I Survey Methodology, as recommended by Natural England in April 2022, with separate specific surveys undertaken within the application site concerning bats, badgers and great crested newts. The conclusions set out in the Ecological Assessment are reproduced below.

“7.4. There are not considered to be any significant adverse effects on any other statutory and non-statutory sites of nature conservation interest from the development proposals. However, an Ancient Woodland is located adjacent to the south of the site and this will be given a 15m buffer from any development.

7.5. No trees or buildings within the site were observed to have features to support roosting bats and no evidence of any roosting bats was identified within the buildings. The inclusion of bat boxes within the site will provide new roosting opportunities for bats.

7.6. There is no evidence of Badgers utilising the site, however precautionary mitigation/safeguards have been recommended.

7.7. The recommendation of new native planting as part of the landscape proposals will provide enhanced opportunities for birds, while the erection of bird boxes within the site will also provide new nesting opportunities for birds.

7.8. Given the habitats present it is likely an assemblage of common invertebrate species would be present within the site, although there is no evidence to suggest any notable / protected invertebrates would be present. The recommendation of new native planting as part of the landscape proposals would provide new and enhanced opportunities for a range of invertebrate.

7.9. In conclusion, through the implementation of the safeguards and recommendations set out within this report it is considered that the proposals accord with planning policy with regard to nature conservation at all administrative levels."

- 4.27 The same company of ecologists were instructed to prepare a Biodiversity Impact Assessment (BIA) of the application site, with the aim being i) to ascertain the baseline habitat value of the site ii) determine the likely "biodiversity impact" of the proposed development, and iii) to assess the opportunities of generating biodiversity enhancements within the application site. The biodiversity impact in this instance has relied on the DEFRA Biodiversity Metric v3.1, as a way of measuring and accounting for biodiversity losses and gains resulting from development.
- 4.28 Whilst the Environment Act 2021 in Schedule 14 of Section 92 introduced a mandatory requirement for biodiversity net gain as a condition of planning permission in England; at the present time we are currently within the 2-year implementation period, in effect meaning that a net gain of 10% is not intended to be a mandatory requirement until it comes into force in Winter 2023. In effect, secondary legislation is required for it to be implemented. Therefore, it is important to state that the 10% biodiversity net gain requirement set out in the Environment Act 2021 is not yet law and is not applicable to the current application.
- 4.29 At present the provisions of paragraph 174d) of the NPPF 2021 seek a net gain in biodiversity without identifying a specific percentage. To this end a net gain of just 1% would be policy compliant, which can be secured by a planning obligation. This is a matter which has been accepted in three co-joined appeal decisions

involving land at Filands Road/Jenner Lane and Whychurch Farm, Malmesbury, Wiltshire SN16 9HZ¹⁰.

- 4.30 With these conclusions in mind, what is now offered in terms of a 10.25% biodiversity net gain through the proposed development is not only in excess of the 10% required but not yet mandatory through the recent Environment Act 2021, but is in excess of the minimum which would otherwise be policy compliant in accordance with paragraph 174d) of the Framework.

V. Ancient Woodland

- 4.31 The contents of paragraph 180c) of the NPPF 2021 state that in the event that a development results in the loss or deterioration of ancient woodland, and unless there are i) wholly exceptional reasons, and ii) there is a suitable compensation strategy in place; planning permission should be refused.
- 4.32 No loss of trees or deterioration of the ancient woodland comprising Burleigh Arches Wood arises as a consequence of the proposed development on the application site. There is no need to consider wholly exceptional reasons and a suitable compensation strategy of the type set out in paragraphs 033 and 034 under the title “*Natural Environment*” taken from the NPPG. The answer to the question “*How can local planning authorities assess the potential impact of development proposals on ancient woodland and ancient or veteran trees?*” is provided in paragraph 033 being of relevance to the current proposals, viz:-

“Local planning authorities need to consider both the direct and indirect impacts on ancient woodland and ancient or veteran trees when assessing development proposals and the scope for avoiding or mitigating adverse impacts. Their existing condition is not something that ought to affect the local planning authority’s consideration of such proposals (and it should be borne in mind that woodland condition can usually be improved with good management).”

- 4.33 Natural England has an Assessment Guide on ancient woodland, ancient and veteran trees, where the intention is to assist in decision-making in considerations where ancient woodland is involved. The template to the Assessment Guide has 12

¹⁰ Appeal decisions dated 5th January 2022 PINS Ref. Nos APP/Y3940/W/21/3278256; 3278923 and 3282365 at paragraph 41

sections, and these have been carefully addressed in considering the current proposals advanced by the Cox Group of Companies.

4.34 ***Section 1: Has the developer provided all relevant information for you to make a decision?***

A separate Ecological Assessment and an Environmental Noise Impact Assessment, along with a detailed examination of the impact of the current proposals on the surrounding landscape, forming part of this planning statement, comprise the application particulars. These details are considered proportionate given that there is no loss or deterioration of ancient woodland forming part of the Burleigh Arches Wood as a consequence of the proposed replacement industrial building, which is to occupy the same footprint on the same land as an existing former Atcost building.

4.35 ***Section 2: Is there an alternative location for the proposal?***

There is no alternative or more suitable location for the replacement industrial building on the application site to be used for same purposes as an existing building occupying the same land, comprising an ancillary use to the lawful Burleigh Oaks Farm Waste Transfer and Recycling Centre. Any alternative location would have to be sited closer to the ancient woodland of Burleigh Arches Wood with obvious harmful consequences, having an adverse impact on the surrounding landscape, and the potential to cause greater harm to the enjoyment of users of the surrounding public footpath network. It follows that the current location is the best available to avoid any loss or deterioration of the ancient woodland of Burleigh Arches Wood and its natural habitats.

4.36 ***Section 3: To what extent would the development proposal affect ancient woodland, ancient and veteran trees?***

There is no loss or damage to ancient woodland whether looked at in terms of hectareage, percentage as a whole, or number of ancient trees affected, with the existing trees forming part of Burleigh Arches Wood providing habitat connections for woodland plants, birds and animals.

4.37 ***Section 4: How well connected is the ancient woodland, ancient and veteran trees to the surrounding landscape?***

The development proposals will not damage the connectivity between Burleigh Arches Wood and other areas of ancient woodland, including Great Nobs Wood, and neither will the proposed replacement industrial building result in any loss of connecting habitats such as hedgerows and copses, or lead to the loss of semi-adjacent natural habitats or buffers with the same ancient woodland.

4.38 ***Section 5: Has the developer included a protected species survey with their application?***

The following avoidance/mitigation measures form part of the application particulars. There are no protected species affected by the proposed replacement industrial building on the application site, a matter confirmed in the submitted Ecological Assessment. The submitted Environmental Noise Impact Assessment confirms that during the proposed operational day-time periods, the cumulative sound rating level of the proposed development is predicted to be well below the BS4142 background level at both of the closest noise sensitive receptors. The standards state that where the rating level does not exceed the background level, this is an indication of the specific sound source having a low impact, depending on the context. To these considerations should be added that no external lighting is involved, with any lighting confined to the interior of the replacement industrial building. On the contrary, any light pollution is likely to arise from the existing building occupying the same site, whose front and rear elevations are predominately open with a potentially adverse impacts on habitats reliant on same ancient woodland.

4.39 ***Section 6: Will the construction or operation of the development proposal directly or indirectly affect ancient woodland, ancient and veteran trees?***

The proposed replacement industrial building on the application site will involve **NO** changes to:-

- i) woodland and tree habitats, including understorey, ground flora and roots;
- ii) functional habitat connections;
- iii) soils including compaction;
- iv) air quality as a consequence of traffic or other pollution [**the current proposals involve no changes in terms of traffic generation**];

- v) groundwater from pollutants or changes in hydrology [the current proposals result in an improvement as a consequence of a new sealed tank to collect liquid spillage from the workshop where no comparable system is in operation];
- vi) increased light pollution [the current proposals will lead to an improvement for the reasons set out in Section 5];
- vii) increased noise and vibration [the current proposals will involve an improvement in the noise and vibration climate beyond the current position as a consequence of the building being enclosed on all its elevations];
- viii) damage to archaeological features or heritage assets;
- ix) changes to landscape character [the current proposals involve an improvement to the landscape character of the area beyond the current position where the existing building consist of an unsightly, outdated and has partially collapsed structure];
- x) risk of garden encroachment, including potential invasive species [this is not relevant given the location of the application site]
- xi) risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration [no damage to people or property has occurred during recent years, the only occurrence being on 16th October 1987 as a consequence of hurricane].

4.40 *Section 7: Will the proposal increase formal or informal public access to ancient woodland, ancient and veteran trees?*

The current proposals do not have the potential to lead to Burleigh Arches Wood being damaged by residents, visitors, domestic pets or the formation of new gardens. The same ancient woodland is wholly owned by Cox Group of Companies, and no outside access is permitted. As such, there will be no disturbance to wild birds and other protected species; predation and soil enrichment from domestic pets; trampling of woodland flora and/or compaction of soil around tree roots, or incidences involving fly tipping and vandalism.

4.41 *Section 8: Does the development proposals include an appropriate buffer of semi-natural habitats between ancient woodland, ancient and veteran trees and the development?*

A distance in excess of approximately 20m separates the front elevation of the proposed replacement building along with the new sealed tank from the boundary of Burleigh Arches Wood. The intervening area with Burleigh Arches Wood

comprises a long established lawful tarmacadamed area used for ancillary purposes in conjunction with the waste transfer and recycling centre. In this way, the replacement industrial building would not affect the purpose or intention of a buffer zone, being to avoid root damage to the ancient woodland, and in particular the root protection area of trees, at the same time providing a valuable habitat for woodland wildlife, i.e. feeding bats and birds. No sustainable drainage schemes are involved as a consequence of the proposed development, and neither would there be a change in the water table which otherwise would negatively impact on the ancient woodland of Burleigh Arches Wood.

4.42 ***Section 9: Does the proposal include a landscaping scheme?***

The Ecological Assessment reveals a series of recommendations, including new native planting as part of landscaping proposals to provide enhanced opportunities for birds, with the erection of bird boxes within the application site to provide new nesting opportunities for birds. These measures have to be seen alongside the fact that what is proposed would result in an overall increase of 10.24% in terms of Biodiversity Net Gain.

4.43 ***Section 10: What is the current condition of the ancient woodland or ancient and veteran trees and can it be improved?***

The current proposals do not lead to any deterioration of trees comprising Burleigh Arches Wood. My clients are willing to accept a condition to improve Burleigh Arches Wood, by providing for native broadleafed trees and shrubs within the ancient woodland, including where considered appropriate removing other trees where they may otherwise have an adverse impact on ancient trees within the same woodland area.

4.44 ***Section 11: Have all opportunities for enhancement been considered?***

Yes, see answer to Section 12.

4.45 ***Section 12: Summary of Assessment***

The current proposals have to be seen in context in that what is sought is the replacement of an unsightly outworn building used for the repair, maintenance and storage of vehicles, plant and equipment with a modern industrial building of an

equivalent size and height on the same footprint, involving the same use, with its elevations and roof consisting of dark green powder coated metal sheeting.

- 4.46 There will be improvements to drainage provision; light pollution, along with additional planting, at the same time resulting in a Biodiversity Net Gain in excess of 10%. No loss or deterioration of trees forming part of the ancient woodland of Burleigh Arches Wood will occur, and neither will the proposal have any adverse impact on important ecological considerations, including protective species, with the appearance of the lawful waste transfer and recycling centre enhanced through the erection of a modern industrial building, clad in materials sympathetic to its landscape surroundings, meeting today's waste management needs.

VI. Noise

- 4.47 An Acoustic Report accompanies this planning application prepared by Sharps Acoustics LLP, which found that BS4142 comprised the most suitable methodology to assess noise from the proposed development, if only because the noise sources present fall within the scope of that standard.
- 4.48 An environmental noise survey was undertaken between approximately 0700hrs and 1800 on Thursday 5th January 2023, with a summary of the noise survey results measured in terms of the average day-time and night-time L_{Aeq} and L_{A90} and L_{AFmax} . L_{Aeq} is the continuous noise level, being a method of averaging the varying noise level over the measurement period into a single figure value. The L_{Aeq} has the same sound energy as the fluctuating level over that period. It is known as the “ambient level” and in BS4142, the L_{Aeq} in the absence of the proposed development sound, is known as the “residual level”. L_{Amax} is the highest level over the measurement period, whilst L_{A90} is the noise level exceeded for 90% of the time, referred to as the background noise level.
- 4.49 The prediction and assessment of noise generated by the proposed development was fully assessed by a qualified acoustic consultant, having regard to the proposed construction of the building along with calculated internal noise levels. The predicted noise generated by the proposed development was calculated having regard to the closest noise-sensitive receptors. In accordance with BS4142, the specific sound level was corrected for tonal, impulsive, intermittent or other

acoustic characteristics, which may be present at the receptor, to determine the sound rating level.

- 4.50 The acoustic report confirms that during the proposed operational day-time periods, the cumulative sound rating level of the proposed development is predicted to be well below the BS4142 background level at both of the closest noise sensitive receptors. The standards states that where the rating level does not exceed the background level, this is an indication of the specific sound source having a low impact, depending on the context.
- 4.51 BS4142 states that where the initial estimate of impact needs to be modified due to the context, all pertinent factors should be taken into consideration, including i) the absolute level of sound; ii) the character and level of the residual sound; and iii) the sensitivity of the receptor.
- 4.52 It was found having regard to these criteria relating to context, that it should not affect the initial estimate of impact, with noise emanating from the proposed development having a low impact when assessed in accordance with the same noise methodology during proposed operating periods. On this basis, the acoustic consultants were able to confirm that no further noise attenuation measures would be required.

5.00 CONCLUSIONS

- 5.01 The Burleigh Oaks Farm Waste Transfer and Recycling Centre is situated in the countryside, outside the High Weald AONB and any other national or locally designated area. There are a limited number of isolated dwellings located in the surrounding rural area, with the same waste transfer facilities remaining largely undetected from public views within the landscape. A combination of the presence of boundary hedgerows and trees; ancient woodland to both the south of the waste transfer facility and to the north delineating the meandering River Medway; along with the nature of the steeply sloping topography, ensure that the waste management use taking place on the application site has minimal visual impact in the rural area.
- 5.02 The Burleigh Oaks Farm Waste Transfer and Recycling Centre can lawfully be used for materials arising from the construction, building, demolition, gardening and landscape industries; food wastes; waste electrical and electronic equipment; along with stable waste; and the temporary storage within a skip of asbestos sheeting and guttering, but excluding all other special wastes and liquid wastes. The same built waste management facility is operated in accordance with Environmental Permit No. EPR/CB3807XK/V002 issued on 16th July 2015, as amended by the Environment Agency under the Environmental Permitting (England & Wales) Regulations 2010.
- 5.03 The application site is referred to as a “*main existing waste site*”, situated within the Area of Search lying outside the High Weald AONB on the Key Diagram, comprising part of the adopted West Sussex Waste Local Plan April 2014.
- 5.04 The current proposals are not concerned with the recovery, treatment, storing, processing, sorting, transfer or deposit of waste, but relate to the construction of a replacement portal framed industrial building, to be used for the repair, maintenance and storage of vehicles, plant and equipment, along with the installation of a sealed tank, for purposes ancillary to the use of land at the lawful Burleigh Oaks Farm Waste Transfer and Recycling Centre
- 5.05 The proposed development involves no increase in staff levels or transport movements. Similarly, no increase in waste streams is sought as a consequence of

the proposed development, with waste throughput to accord with the latest version of the applicant's Waste Management Licence issued under the Environmental Permitting (England & Wales) Regulations 2010.

- 5.06 In the light of the foregoing paragraphs, what is now sought comprises an ancillary facility to the requirements of a lawful waste transfer and recycling centre, enabling the repair, maintenance and storage of vehicles, plant and equipment, where otherwise items of plant and equipment associated with the same waste management facility would have to be stored in the open due to the dilapidated condition of the existing building, with the rear lean-to having been demolished due to recent wind damage.
- 5.07 No conflict arises when assessing the proposed development against the various factors set out in Appendix B of the NPPW 2014. On the contrary the erection of a replacement portal framed industrial building for the repair, maintenance and storage of vehicles, plant and equipment along with the installation of a sealed tank, assists in the recycling of waste materials undertaken from the application site, whilst at the same time resulting in benefits to Burleigh Arches Wood, an area of ancient woodland, as well as enhancing the landscape character of the surrounding area.
- 5.08 The "*development plan*" for the purposes of the proposed development on the application site and Section 38(6) of the Planning & Compulsory Purchase Act 2004 comprise the policies contained in the adopted West Sussex Waste Local Plan April 2014; the Mid Sussex District Plan 2014-2031 adopted in March 2018; the Site Allocations Development Plan Document prepared by Mid Sussex District Council and adopted in June 2022, along with the Turners Hill Neighbourhood Plan 2014-2031 made in January 2016.
- 5.09 I have set out in paragraphs 3.36 and 3.37 of this planning statement those "*most important*" "*development plan*" policies taken from the adopted West Sussex Waste Local Plan April 2014, along with the adopted Mid Sussex District Local Plan 2014-2031.

- 5.10 It is accepted that the provisions of Footnote 8 to paragraph 11d)(i) [hereinafter referred to as limb (i)] of the NPPF 2021 includes “*irreplaceable habitats*” which by virtue of paragraph 180c) of the Framework includes ancient woodland. The approach which should be taken in circumstances where limb (i) of paragraph 11d) of the Framework is applicable requires consideration to be made to sub-paragraph 10 of paragraph 39 of the “*Monkhill*” High Court judgment. The mere fact that such policy is engaged is insufficient to satisfy limb (i). Whether or not limb (i) is met is a question of planning judgement, depending on the outcome of applying the relevant Footnote 8 policy
- 5.11 The replacement industrial building is to be used for the same lawful use as the existing structure occupying the same land. It will comprise 6 x 6m bays having a gross external floor area of 821.25 sq.m. (8840 sq.ft), which closely compares with the same building occupying the same site of 805.03 sq.m. (8665 sq.ft.). The ridge height of both the existing and proposed buildings measures 6.8m, although the existing structure has an eaves height of 4.65m compared with an eaves height of the replacement building of 6.15m.
- 5.12 The proposed replacement building will be fully enclosed comprising a 1.2m blockwork wall, with the elevations and roof consisting of dark green powder coated metal sheeting, with an internal 2m high wall constructed of 150mm pre-cast concrete panels. It will comprise a portal framed industrial structure in place of the building occupying the same site, which has taken on an unsightly and dilapidated appearance, having lean-to sections attached to a concrete frame on both front and rear elevations constructed of timber. The lean-to on the rear elevation has recently collapsed, caused by severe wind, resulting in an open aspect to the rear elevation of the same building.
- 5.13 The proposed development is to be constructed between a separate structure granted full planning permission by Mid Sussex District Council on 24th August 1990 under Reference No. TH/033/90; and a detached building whose elevations are constructed of reddish-brown brickwork beneath a clay tiled roof granted full planning permission on 6th June 2007 under Reference No. TH/842/07. A Lawful Development Certificate under Reference No. DM/22/2248 has been obtained from Mid Sussex District Council, conclusively proving that a material operation took

place within the requisite 5-year period following the grant of planning permission on 24th August 1990.

- 5.14 The building the subject of the planning permission for which a lawful start has been made, lies to the south west of the proposed replacement industrial, having a varied ridge height between 6.8m and 6.1m, due to differences in existing ground levels. The existing building constructed of brickwork granted planning permission on 6th June 2007 is in use as a boardroom, ancillary offices, staff kitchen, canteen and toilets, with modifications to the existing car park having formed part of the same application.
- 5.15 Two features comprising Great Nobs Wood which delineate the course of the River Medway found to the north of the application site, together with ancient woodland of Burleigh Arches Wood lying to the east and south, limit the visual sensitivity of the landscape, conferring a sense of intimacy and seclusion. These features are required to be seen against a pattern of small irregular shaped fields, which in certain instances are used for equestrian purposes, with alterations having occurred to the surrounding landscape through the provision of maneges.
- 5.16 An assessment of the impact of the proposed development seen in landscape terms from Public Footpath 62 reveals that there are only limited filtered views of the proposed replacement building, during even winter months, with the observer's eye focusing on the elevations of the main transfer and recycling centre, as opposed to that part of the site where the replacement building is to be constructed. There are no views of the Burleigh Oaks Waste Transfer and Recycling Centre from Public Footpath 61. Similarly, the presence of Burleigh Arches Wood acts as a woodland barrier to the existing built waste management facility, which remains virtually undetectable from various positions along Public Footpath 60, with no views of that part of the same waste management site where the replacement industrial building is to be constructed.
- 5.17 An Ecological Assessment prepared by a company of qualified ecologists has revealed that there are no significant adverse effects arising from the proposed development on any statutory or non-statutory sites of nature conservation interest. No trees or buildings within the application site were observed to have features to

support roosting bats, and no evidence of roosting bats was identified within the building. No evidence of badgers using the site was recorded, and given the habitats present, it is likely an assemblage of common invertebrate species would be present within the site, although there is no evidence to suggest notable/protected invertebrates would be present.

- 5.18 A series of recommendations forming part of the Ecological Assessment are set out, along with a Biodiversity Impact Assessment relying of the DEFRA Biodiversity Metric of v3.1 as a way of measuring and accounting for biodiversity losses and gains resulting from the proposals. Although not yet law, a 10% Biodiversity Net Gain requirement has been demonstrated to be achieved, complying with paragraph 174d) of the NPPF 2021. Indeed, what is proposed offers a Biodiversity Net Gain of 10.25%, being in excess of the mandatory requirement set out in the Environment Act 2021.
- 5.19 This planning statement has demonstrated that no loss of trees or deterioration of the ancient woodland comprising Burleigh Arches Wood arises as a consequence of the proposed development on the application site. As a result, there is no need to consider wholly exceptional reasons and a suitable compensation strategy of the type set out in paragraphs 033 and 034 found under the title "*Natural Environment*" taken from the NPPG.
- 5.20 Natural England's own Assessment Guide on ancient woodland, ancient and veteran trees has been examined, being to assist decision-making in considerations where ancient woodland is involved. Twelve individual sections have been individually analysed, resulting in the conclusion being reached that the current proposals have to be seen in context, in that what is sought is the replacement of an unsightly, outworn building used for the repair, maintenance and storage of vehicles, plant and equipment, with a modern industrial building of an equivalent size and height, on the same footprint involving the same use, with its elevations and roof consisting of dark green powder coated metal sheeting.
- 5.21 There will be improvements to drainage provision; light pollution, along with additional planting, at the same time resulting in a Biodiversity Net Gain in excess of 10%. No loss or deterioration of trees forming part of the ancient woodland of

Burleigh Arches Wood will occur, and neither will the proposal have any adverse impact on important ecological considerations, including protective species, with the appearance of the lawful waste transfer and recycling centre enhanced through the erection of a modern industrial building, clad in materials sympathetic to its landscape surroundings, meeting today's waste management needs.

- 5.22 An acoustic report accompanies the application, in which reliance is placed on BS4142, being the most suitable methodology to assess noise from the proposed development. An environmental noise survey was conducted between approximately 0700hrs and 1800hrs on Thursday 5th January 2023, with a summary of the noise survey results measured in terms of the average day-time and night-time L_{Aeq} and L_{A90} and L_{AFmax} .
- 5.23 The prediction and assessment of noise generated by the proposed development was fully assessed by a qualified acoustic consultant, having regard to the proposed construction of the building along with calculated internal noise levels. The predicted noise generated by the proposed development was calculated having regard to the closest noise-sensitive receptors. In accordance with BS4142, the specific sound level was corrected for tonal, impulsive, intermittent or other acoustic characteristics, which may be present at the receptor, to determine the sound rating level.
- 5.24 The acoustic report confirms that during the proposed operational day-time periods, the cumulative sound rating level of the proposed development is predicted to be well below the BS4142 background level at both of the closest noise sensitive receptors. The standards states that where the rating level does not exceed the background level, this is an indication of the specific sound source having a low impact, depending on the context.
- 5.25 BS4142 states that where the initial estimate of impact needs to be modified due to the context, all pertinent factors should be taken into consideration, including i) the absolute level of sound; ii) the character and level of the residual sound; and iii) the sensitivity of the receptor.

- 5.26 It was found having regard to these criteria relating to context, that it should not affect the initial estimate of impact, with noise emanating from the proposed development having a low impact when assessed in accordance with the same noise methodology during proposed operating periods. On this basis, the acoustic consultants were able to confirm that no further noise attenuation measures would be required.
- 5.27 Accordingly, for the reasons set out in this planning statement, planning permission should be granted for the proposed development.

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