Planning statement to accompany application for:

Hyders Farmhouse Bonnetts Lane Ifield RH11 0NY

Lawful development certificate to vary condition 8 of DC/24/0392 to confirm that other sustainable development of rural areas uses referred to in Policy 26 of the Horsham District Planning Framework (2015) **would not constitute a material change of use** of the building to cover existing sand school. The proposed uses in the alternative in this instance are:

1. Parking of horse boxes
2. Waste Transfer
3. Courier Depot

- Planning permission was granted on 16/09/2024 under DC/24/0392 for Erection of a building to cover existing sand school.
- The permission contained 8 planning conditions.
- **In terms of intensity of use it is important to note that no conditions were included to limit vehicle movements, size of horsebox movements or hours of use.**
- The approved site plan confirmed access through the commercial estate.



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8 **Regulatory Condition**: The development hereby permitted shall be used for private equestrian purposes only, and shall not be used for any commercial riding, livery or riding establishment or for any other business use.

Reason: The establishment of an additional independent operation would give rise to an overintensive use of the site contrary to **Policies 26** and 33 of the Horsham District Planning Framework (2015).

Comment – In the absence of hours of use, vehicle movement and size restrictions the baseline position is that the use of the building is unrestricted in these respects.

The reference to specific policy 26 engages an assessment as to whether the proposed 'other sustainable development of rural areas uses' would be materially different.

Our submissions are clearly that they would not be materially different and as such there would be no material change of use. For completeness the wording of policies 26 and 33 of the Horsham District Planning Framework (2015) are included in **APPENDIX 1. There can be no tension in respect of policy 33 as there are no changes proposed to the permitted building.**

Planning assessment

It is common ground that:

- The equestrian use of the building and proposed uses of the building in the alternative Parking of horse boxes, Waste Transfer and Courier Depot would all fall within suis generis use class.
- The equestrian use of the building qualifies as previously developed land.

In the same way that Class E - Commercial, Business and Service allows change of use without permission to the other uses listed below our submissions are that the proposed change as part of this application would not be materially different.

In 11 parts, Class E more broadly covers uses previously defined in the revoked Classes A1/2/3, B1, D1(a-b) and **'indoor sport'** from D2(e):

E(a) Display or retail sale of goods, other than hot food

E(b) Sale of food and drink for consumption (mostly) on the premises

E(c) Provision of:

E(c)(i) Financial services,

E(c)(ii) Professional services (other than health or medical services), or

E(c)(iii) Other appropriate services in a commercial, business or service locality

E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)

E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E(f) Creche, day nursery or day centre (not including a residential use)

E(g) Uses which can be carried out in a residential area ***without detriment to its amenity:***

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

The tests as to whether an alternative use of a building would be a material change of use have been established by the Courts.

The following extracts highlighted green from **'not materially different'** appeal decisions form the basis for discussion.

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distinguish in planning terms the use before and after 2006. The evidence of Mr Rice and Mr Bond was that the increase in throughput was not due to the capacity of the new fragmentiser but due to the changes in market conditions.

65. The parties also refer to the case of *R v (OAO) Eastleigh [2004] EWHC 1408*. In the *Eastleigh* case, it was submitted that the extension of the retail area in the building would be a material change of use, largely by reason of intensification of the use which it was said produced a material change because of the effects of that intensification on the town centre and traffic. It was said, in obiter, by Collins J: "*...the development plan, policies and so on may be relevant in deciding whether a change of use is a material change of use. It is not a question of considering the planning merits as such, that is clearly irrelevant, but it is necessary in deciding whether there has been a material change of use, to look at the effects of what has been done, and see whether those effects can be said to produce a materially different situation than previously existed.*"

66. Collins J did not need to have dealt with the issue, as it did not matter in that case whether there was a material change in use or not. However, he was satisfied that the Inspector had had full regard to the effects of what was being done in planning terms, in particular, on traffic and on the town centre. This indicates that he considered such impacts to be relevant to the question of whether there had been a material change of use, even though that case just involved an extension of floorspace in a supermarket.

67. The view expressed by Rebecca Tuley was that the site has changed from a scrap yard to a major recycling site. For the Council, Mr Leech likened it to a major heavy industrial process. The appellant criticises this latter description, as it is plainly equally appropriate to describe the '*before*' use in that way and there has been no substantial change in the type of activities taking place on the site. That is indeed correct, and the '*before*' and '*after*' uses cannot be attributed with distinctive descriptions, but are only distinguishable in terms of scale, and the impacts of that change in scale.

68. In the light of judicial pronouncements, and after considering the approaches of the parties, it seems to me that what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use. It is necessary to first look at the effects of what has been done at the site.

69. There is no evidence to indicate that any dust created by the site would cause a risk to human health. I have concluded there has been a material increase in dust experienced by local businesses which has emanated from the site since the increase in throughput occurred. However, there is no substantial evidence that the increase in dust identified by local residents at their homes derives specifically from the appeal site or can be directly attributable to the increase in throughput. The evidence also does not support the conclusion that the increase in throughput has materially changed the level of impact resulting from explosions at the site. There has been a significant increase in the number of HGV lorries going to and from the site and the size of those vehicles has increased. Nevertheless, the size of vehicles and the use of containers to

71. I concur with the appellant's general proposition that the primary way a planning authority should control the extent of any use is through the imposition of conditions. This site is a long established scrap metal yard which has been operating under an effectively unrestricted planning permission since the 1970s with no conditions attached to control matters such as the number of lorry movements or hours of operation. The effects of the intensification need to be such as to have caused a material change in the character of the use. There have been changes in the effects of the operation upon the surrounding area and, in some instances, the very substantial increase in throughput has been a contributory factor. However, many of the identified impacts upon local residents and businesses derive from extraneous factors and not the increase in throughput. I conclude that the increase in throughput has not had such materially different planning consequences as to take it, as a matter of fact and degree, beyond the normal fluctuations in activity that could reasonably be expected to be experienced by the business. It has not resulted in a change in planning effects of such magnitude so as to cause a material change in the definable character of the use of the land. I find, on the balance of probabilities, that the material change of use alleged by the corrected notice has not taken place. The appeal succeeds on ground (c).

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14. I recognise that the application provided little information as to the area of the site to be used but, since the main issue involved relates to the nature of the existing and proposed uses, I do not consider that such information was essential. The same applies to the lack of details as to any buildings that might be needed.

15. The fact that two uses are not within the same class of the UCO does not, of itself, necessarily mean that they are materially different in planning terms. However, in this case, based upon my conclusions as to the character of the existing and proposed uses, I am satisfied that the two uses would be materially different, irrespective of whether the existing use is regarded as a B2 or a "sui generis" use. Consequently, for the reasons given above, and having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC in respect of the use of part of the site as a materials recycling facility was well-founded. Accordingly I shall exercise the powers transferred to me in section 195(3) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

The extracts below from Development Control Practice notes form the basis for discussion.

Waste transfer activities often cause **considerable difficulty when it comes to determining whether development has occurred by reason of being materially different from previous uses of land.** The type of sites suitable for this use tend to have a chequered history, and often have been used for a variety of ill-defined and overlapping activities such as haulage or skip hire depots, scrap yards, and other open storage/industrial uses, some of which may be unlawful and others not. In such cases, definition of the correct planning unit, see 4.324 may be a particular problem, and in dealing with previous *sui generis* uses, the concept of intensification may come into play, see 4.327.

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Characterisation of alternative uses of building assessment

In common with the existing permitted use, all activity would take place within the building. No external storage. No activity outside building.

	Equestrian use of building	Use of building for parking of Horseboxes	Use of building for waste transfer	Use of building for courier depot
Use Class	Suis generis	Suis generis	Suis generis	Suis generis
Noise and odour	**All activity within building.**	**All activity would remain within building. No material change in effects**	**All activity would remain within building. No material change in effects**	**All activity would remain within building. No material change in effects**
Impact on Neighbouring Amenity	**Access permitted from commercial estate. Officer report confirmed, "no unacceptable harm by way of increase noise or disturbance would be anticipated"**	**Access would remain through commercial estate. No material change in Impact on Neighbouring Amenity**	**Access would remain through commercial estate. No material change in Impact on Neighbouring Amenity**	**Access would remain through commercial estate. No material change in Impact on Neighbouring Amenity**
Restriction of hours of operation	**None**	**No material change in effects.** **Applicant is agreeable to negotiating hours of operation as part of amended application description**	**No material change in effects.** **Applicant is agreeable to negotiating hours of operation as part of amended application description to**	**No material change in effects.** **Applicant is agreeable to negotiating hours of operation as part of amended application description**

		to create a Planning Betterment.	**create a Planning Betterment.**	**to create a Planning Betterment.**
Size of vehicle	**No restrictions.** **Existing permission allows for the use of *26 Tonne coach built horseboxes.***	**No material change in effects. Vehicles would be less than 26 tonne.**	**No material change in effects.Vehicles would be less than 26 tonne.**	**No material change in effects. Vehicles would be less than 26 tonne.**
Parking	**The officer report included assessment against Policy 41 – Parking; no concerns or planning conditions were included in that regard.**	**No material change in effects.**	**No material change in effects.**	**No material change in effects.**
Vehicle movements	**Unrestricted.** **Officer report accepted "The proposal would not though create any new equestrian activity at the site which could not already take place, albeit use during inclement weather may be more likely".**	No material change in effects. **Applicant is agreeable to negotiating restriction on vehicle movements as part of amended application description to create a Planning Betterment.**	No material change in effects. **Applicant is agreeable to negotiating restriction on vehicle movements as part of amended application description to create a Planning Betterment.**	No material change in effects. **Applicant is agreeable to negotiating restriction on vehicle movements as part of amended application description to create a Planning Betterment.**

Conclusion:

The permission that the proposals are to be compared against are unrestricted in terms of hours of use, vehicle size and movements.

The proposed uses of the building in the alternative Parking of horse boxes, Waste Transfer and Courier Depot would all fall within suis generis use class.

If we are wrong with regards to the equestrian use being suis generis on the basis that **'indoor sport'** would have been a D2 use class, it would now not be materially different from the permitted changes of use within Class E which allow E(g)(iii) Industrial processes under E(g) Uses which can be carried out in a residential area without detriment to its amenity.

Against the baseline position and the wording of Policy 26 there are clearly no changes in planning effects of a magnitude in terms of effect on amenity or otherwise so as to cause a material change of use in the definable character of the **use of the building.**

Even if we are wrong about alternative uses being within the same use class this does not in itself mean that there are materially different in planning terms.

The offer to amend the application description to include restrictions on hours of use, vehicle movements and sizes would make the alternative uses materially preferable.

The proposed alternative uses can therefore be controlled to ensure they would be **materially preferable** through lessening and abatement to ensure no concerns arise in terms of intensification.

Thank you in advance of your balanced consideration of the proposed application.

Please maintain a dialogue with myself and the applicants if you have any questions, concerns or matters that require further elaboration.

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APPENDIX 1

Policy 26 - Strategic Policy: Countryside Protection

Outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development. Any proposal must be essential to its countryside location, and in addition meet one of the following criteria:

1. Support the needs of agriculture or forestry;
2. Enable the extraction of minerals or the disposal of waste;
3. Provide for quiet informal recreational use; or
4. Enable the sustainable development of rural areas.

In addition, proposals must be of a scale appropriate to its countryside character and location. Development will be considered acceptable where it does not lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside, and protects, and/or conserves, and/or enhances, the key features and characteristics of the landscape character area in which it is located, including;

1. The development pattern of the area, its historical and ecological qualities, tranquillity and sensitivity to change;
2. The pattern of woodlands, fields, hedgerows, trees, waterbodies and other features; and
3. The landform of the area.

Policy 33 - Development Principles

In order to conserve and enhance the natural and built environment developments shall be required to:

1. Make efficient use of land, and prioritise the use of previously developed

land and buildings whilst respecting any constraints that exist;

2. Ensure that it is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development;

3. Ensure that the scale, massing and appearance of the development is of a high standard of design and layout and where relevant relates sympathetically with the built surroundings, landscape, open spaces and routes within and adjoining the site, including any impact on the skyline and important views;

4. Are locally distinctive in character, respect the character of the surrounding area (including its overall setting, townscape features, views and green corridors) and, where available and applicable, take account of the recommendations/policies of the relevant Design Statements and Character Assessments;

5. Use high standards of building materials, finishes and landscaping; and includes the provision of street furniture and public art where appropriate;

6. Presume in favour of the retention of existing important landscape and natural features, for example trees, hedges, banks and watercourses. Development must relate sympathetically to the local landscape and justify and mitigate against any losses that may occur through the development; and,

7. Ensure buildings and spaces are orientated to gain maximum benefit from sunlight and passive solar energy, unless this conflicts with the character of the surrounding townscape, landscape or topography where it is of good quality.

Proposals will also need to take the following into account where relevant:

8. Incorporate where appropriate convenient, safe and visually attractive areas for the parking of vehicles and cycles, and the storage of bins/recycling facilities without dominating the development or its

surroundings;

9. Incorporate measures to reduce any actual or perceived opportunities for crime or antisocial behaviour on the site and in the surrounding area; and create visually attractive frontages where adjoining streets and public spaces, including appropriate windows and doors to assist in the informal surveillance of public areas by occupants of the site;

10. Contribute to the removal of physical barriers; and,

11. Make a clear distinction between the public and private spaces within the site.

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