

STATEMENT OF CASE

Section 78 Appeal: Site of West Green Recycling, West Green Way, Monk Bretton, Barnsley, S71 5SN

On behalf of Eric Lidster (E J Lidster (Sales) Ltd)



Against the refusal of planning permission for development described as:

Installation of aggregate wash plant, erection of store, erection of enclosure for external pipework, laying of concrete slab and construction of boundary treatment (retrospective); and cladding to exterior of structure for filter presses for treatment and management of non-hazardous waste.

Town & Country Planning Act 1990 (as amended)

Planning and Compulsory Purchase Act 2004

Document Control

Issue	Date	Author	Comment
DV	17 July 2025	STC	
SV	21 July 2025	STC	

QUESTION	ANSWER
Name of LPA	<i>Barnsley Metropolitan Borough Council</i>
LPA reference number	<i>2023/0758</i>
Date of the application	<i>21 December 2023</i>
Did the LPA validate and register your application?	<i>Yes / No</i>
Did the LPA issue a decision?	<i>Yes / No</i>
Is the address of the affected land the same as the appellant's address?	<i>Yes / No</i>
Does the appeal relate to an existing property?	<i>Yes / No</i>
Is the appeal site within a Green Belt?	<i>Yes / No</i>
Are there any health and safety issues at, or near, the site which the Inspector would need to take into account?	<i>Yes / No</i> <i>If yes, please explain: The appeal site is a working waste (aggregate) recycling facility in attendance at which the Inspector will need to have access to PPE.</i>
Has the description of the development changed from that stated on the application form?	<i>Yes / No</i> <i>Please enter details of the proposed development.</i>
Area (in hectares) of the whole appeal site	<i>1.51 ha</i>
Area of floor space of proposed development	<i>Various, Statement of Case refers</i>
Does the proposal include demolition of non-listed buildings within a conservation area?	<i>Yes / No</i>

QUESTION	ANSWER
Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land?	Yes / No If yes, please explain: To ensure that the Inspector is able to take account of all material considerations.
Is it essential for the Inspector to enter the site to check measurements or other relevant facts?	Yes / No If yes, please explain: To ensure that the Inspector is able to take account of all material considerations and the site is inset from public areas and significantly screened by vegetation.
Which site ownership certificate applies?	Certificate A Certificate B Certificate C and D
Have you sent other appeals for this or nearby sites to us which have not yet been decided?	Yes / No If yes, please explain:
Do you have a separate list of appendices to accompany your full Statement of Case?	Yes / No
Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?	Yes / No
Have you made a costs application with this appeal?	Yes / No
Does the appeal site form part of an agricultural holding?	Yes / No
Which procedure does the appeal follow?	<ol style="list-style-type: none"> 1. Written Representations 2. Hearing 3. Inquiry

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1 INTRODUCTION

- 1.1.1 HERA Planning are instructed by Eric Lidster (the “Appellant”) to prepare this Statement of Case in connection with their planning appeal, submitted in accordance with Section 78 of the Town and Country Planning Act 1990 and concerns land at West Green Way, Monk Bretton, Barnsley, S71 5SN (the “appeal site”).
- 1.1.2 The Appellant owns the appeal site as shown edged red on the Site Location Plan¹, and occupies and operates (in the name of the Appellant’s company E J Lidster (Sales) Ltd) the appeal site for the purposes of recycling waste (aggregates). The appeal site operates in association with and as part of a wider use on land owned by the Appellant including waste recycling, and storage (including scrap and other material unrelated to waste recycling) edged blue on the Site Location Plan. Taken together and from herein land contained within the red and the blue lines will be referred to together as the “wider site”.
- 1.1.3 The appeal follows the refusal of planning application reference: 2023/0758 (the “planning application”), by Barnsley Metropolitan Borough Local Authority (the “Local Authority”) for development (the “appeal proposal”) described as:
- Installation of aggregate wash plant , erection of store, erection of enclosure for external pipework, laying of concrete slab, and construction of boundary treatment (retrospective); and cladding to exterior of structure for filter presses for treatment and management of non-hazardous waste.*
- 1.1.4 This Statement of Case is submitted pursuant to the Town and Country Planning (Hearings Procedures) (England) Rules 2000.

¹ Promap - Submitted with the Appeal

2 APPEAL PROCEDURE

2.1.1 With reference to the Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals², the Appellant considers matters are best addressed by way of the Hearings Procedure, allowing for the main issues to be properly interrogated through the process of questioning, because, as their evidence will demonstrate:

- The issues are complex, given the nature of the Local Authority's reasons for refusal and relevant policies, and the Inspector is likely to need to test the evidence by questioning or to clarify matters in order to obtain a proper understanding of the appeal issues and reach a properly informed decision.
- There is a significant risk of the Inspector not clearly and properly understanding the appeal issues from the appeal documents and a site inspection alone.
- The case has generated a level of local interest appropriate for an informal hearing, with some local interest, but not of a level justifying a public inquiry.
- The Local Authority has an adopted policy for delivering a regeneration framework across a strategic allocation which includes the appeal site (as contained within Policy MU3 of the Barnsley Local Plan). This would see the appeal site given over to *housing and green space*. However according to the objectives of the employment chapter of the Barnsley Local Plan, the appeal site is expected to be retained for employment use (as per Policy E4). However, in the circumstances of the development proposed, the provisions of policy MU3 read together with policy GD1 do not override the employment policy E4, which is an issue that will need to be fully explored through the Inspector questioning and clarifying with the parties and carefully interrogating the evidence and professional opinions on the subject. Furthermore, the delivery of MU3 is uncertain, and the timeframe for delivering the appeal site and surrounding MU3 land in the immediate vicinity to which the Local Authority's reasons for refusal on the subject principally relate is a long way off and the Inspector will have to question and clarify with the parties

² <https://www.gov.uk/government/publications/criteria-for-determining-the-procedure-for-planning-enforcement-advertisement-and-discontinuance-notice-appeals/criteria-for-determining-the-procedure-for-planning-enforcement-advertisement-and-discontinuance-notice-appeals>

and interrogate evidence on the realistic timescales for delivery of the relevant MU3 development to have a proper understanding. At present E4 supports the retention and continued use of the site as an employment site, in view of which a refusal of planning permission is unreasonable.

- There is a need for the Inspector to question and clarify the prospects of MU3 development being delivered on surrounding land in the immediate vicinity (including the realistic likely timing) and the complexity associated with that.
- The balancing exercise, which has been undertaken by the Local Authority is weighted in favour of the objectives of Policy MU3, together with Policy GD1. No consideration has been given to the objectives of Policy E4 in so far as they relate to the appeal site. This is contrary to the provisions of s38(6) of the Planning and Compulsory Purchase Act of 2004 (the “Act”), which requires development to be considered against the development plan when read as a whole and this requires a hearing for the Inspector to question and clarify with the parties’ their views for proper understanding, including interrogating the professional opinions.
- The complexities of the overlapping policy objectives in so far as they apply to the appeal site, as employment land, when read together with the Local Authority’s strategic waste objectives (which predict a shortfall in the provision of waste recycling and treatment facilities) and the objectives of MU3, together with Policy GD1, need to be addressed at a hearing for the parties’ views to be questioned, fully expressed and properly understood by the Inspector.
- When determining the effect of the appeal proposal including its effect on the delivery of MU3, the Local Authority has not weighed in the balance the effect of the Appellant’s existing lawful use rights, at the appeal site, which are well established and this requires a hearing for the parties’ views to be questioned, fully expressed and properly understood by the Inspector.
- The matter of the impact of the appeal proposal on future residents of MU3, when the delivery of MU3 is at best a long way off is complex and there is a need for the Inspector to clarify the issues and interrogate the evidence.

2.1.2 Whilst matters are complex, the Appellant is content that the issues can be thoroughly and adequately examined and considered by the Inspector questioning and clarifying the matters in issue with the parties and the parties can present their cases supported by professional witnesses without the need for cross examination.

3 THE APPEAL PROPOSAL

- 3.1.1 The appeal proposal seeks permission to install additional infrastructure at the site in the form of an aggregate wash plant with filter presses (the “Wash Plant”), store, an enclosure for external pipework, a concrete slab and boundary treatment.
- 3.1.2 The Wash Plant made up of three component parts, namely the filter presses (x2), and two washing systems (Scrubtec, and Aggretec). The tallest component of the group reaches a maximum height of 10.56m. Otherwise the components occupy various footprints:
- Filter press - 40m (l) x 5m (d) x 10.56 (h)
 - Scrubtec - 25.51m (l) x circa 5m (d) x 9.15m (h)
 - Aggretec – 46.21m (l) x 2.6m (d) x 7.65 (h)
- 3.1.3 The concrete slab, on which the Scrubtec and Aggretec components are seated occupies an area measuring approximately 217sqm in area.
- 3.1.4 The filter presses are supported off 14 x square concrete pads each measuring 450mm x 450mm and are to be clad in a system of powder coated aluminium cladding attached to a steel frame (fixed to the frame at and above the level of the platform on which the filter presses are to be sited). The cladding is specified within drawings submitted with the planning application³. In terms of the colour treatment to the panels, roof panels are to be finished in a Goosewing Grey, with side panels being finished in an Olive Green.
- 3.1.5 Beneath the raised platform level, are situated concrete storage bays .
- 3.1.6 The alterations to the boundary treatment include, replacing historic perimeter concrete walls (circa 2m in height) with concrete walls set to a height of approximately 2.4m along the southwest, southeast and eastern boundaries of the appeal site.
- 3.1.7 The store is single storey with a mono-pitch roof and occupies a footprint of 23.1sqm. The enclosure for the external pipework is single storey, occupying a footprint of 22.6sqm.

³ Drawing number: 002 Proposed Elevations submitted with the appeal refers

3.1.8 Having installed the plant, the Appellant still has a throughput operating capacity of 75,000 tonnes per annum based on its current Environmental Permit restrictions⁴ and associated rules and the Appellant continues to operate in accordance with the capacity limit. If it were possible for this to be increased, the waste recycling with the appeal plant and machinery could in theory operate at a capacity to process 150,000 tonnes of waste material per annum. There is no material difference in the number of staff present on the site at any given time.

3.1.9 At present there are approximately 2 x two way HGV movements per hour generated in association with the use. The effect of an uplift to the maximum throughput in the event this were increased would, according to the Transport Statement, result in an increase in two way HGV movements onto and off West Green Way to 6 per hour – described within the Transport Statement submitted with the planning application as *modest*. The Appellant is at pains to confirm that it is unlikely they will ever be able to exploit the full capabilities of the Wash Plant.

3.2 Amendments to the Appeal Proposal during the lifetime of the Application

3.2.1 The proposed site plan was amended, to take account of the need to introduce additional storage bays within the area of the appeal site, during the lifetime of the application⁵ and submitted to the Local Authority in November 2024.

3.2.2 In a subsequent email (dated 4 December 2024) addressed to the Appellant's agent, the case officer questioned the detail of the amendments stating that as they didn't have *details of the design of [the] aggregate storage bays*, they couldn't deal with the matter of the amendment on the basis of the site plan alone. On 13 January 2025, the Appellant's agent responded explaining that the amendments to the proposed site plan were necessary to address the requirements of the Environment Agency. The agent confirmed that the additional storage bays were of the same design and construction as elsewhere on the appeal site and identified on the previous iteration of the proposed site plan

⁴ Appendix 15

⁵ Drawing number: 010 Rev D dated October 2024, and submitted with the appeal, refers

(reference: 010 Rev B August 2024). The agent qualified their response by stating: *if you need any further clarification on the changes please let me know.*

3.2.3 The Appellant can confirm, and the Local Authority agrees, that no further clarification on the matter was sought ahead of the decision to refuse planning permission.

3.2.4 Otherwise the appeal proposal was amended to take account of:

- The removal of a substation – granted consent in its own right under a separate application (reference: 2024/0329)
- The inclusion of cladding to the Filter Press on the roof and sides; and
- The introduction of additional concrete storage bays beneath the Filter Press

3.3 The offer of a S106 in relation to Landscaping

3.3.1 At the application stage in an attempt, understandably, to satisfy the Local Authority and avoid a planning dispute between the parties and the need for a planning appeal, the Appellant proposed to the Local Authority the idea of a S106 obligation for additional landscaping on the 5-6m bund land adjoining the Appeal site to the south west. Given the Local Authority's reasons for refusal and its view expressed in the Committee Report to its Planning Regulatory Board that *landscaping outside the site would sterilize additional land within the MU3 allocation, contrary to Local Plan policy which seeks to secure housing development on the land on and adjacent to the application site*⁶, the Appellant has not entered further discussions with the Local Authority regarding additional landscaping on this land adjoining to the west because it is considered there is no realistic prospect that the Local Authority would agree.

3.3.2 However, in any event, noting the findings of the Landscape and Visual Impact Assessment (prepared by Mr Carl Taylor of TPM and submitted with the planning application) and taking into consideration the additional evidence provided within the Technical Note prepared by Mr Carl Taylor to support this appeal (see Section 8 of this Statement of Case)

⁶ As per the case officer's report to the Planning Regulatory Board, page 15

which conclude that the appeal proposal has no notable/significant landscape or visual effects; the provision of landscaping 'outside' of the appeal site is not necessary for the grant of planning permission.

- 3.3.3 The Appellant notes that in their addendum to the Noise Impact Assessment, produced by the Appellant's noise consultant (Mr Andy Green) refers to the fact that the area of existing landscaping association to the southwest of the appeal site may need to be supplemented as part of any future noise control measures associated with development on land adjoining under MU3. This particular matter is addressed at section 11, Paragraph 11.5.9 of this Statement of Case.

3.4 The Benefits of Installing the Wash Plant

- 3.4.1 As stated within the Planning, Design and Access Statement submitted in support of the planning application⁷:

4.1.1 The [Wash Plant] is intended to enhance the site's current operation (specifically its treatment and management of non-hazardous construction and demolition waste). Until recently the inert waste being processed at the facility was considered incapable of being recycled.

4.1.2 The plant (which adopts new technology and is set to play an important role in ensuring the future of sustainable construction methods) will enable the Applicant to treat and wash construction and demolition waste, extracting sand and gravel fractions. In simple terms, the plant deconstructs an inert waste into its component parts.

- 3.4.2 And:

4.1.9 The outputs of the plant are capable of being re-used and put back to the construction market and so will provide a valuable local source of recycled sand, gravel, and aggregates. Subject to the quality of the 'cake' this can be recycled back to agriculture with even a possibility of mixing with compost to provide a topsoil .

⁷ Planning Design and Access Statement, Section 4, Page 11, submitted with the appeal

- 3.4.3 The Appellant's initial focus is to work on 'washing' and recycling the existing material on site, including the existing, historic, spoil heaps.
- 3.4.4 In summary the Wash Plant has been installed to support the existing operation at the appeal site.

4 THE MAIN ISSUES

4.1.1 The planning application was validated on 21 December 2023, it was determined by the Local Authority's Planning Regulatory Board on 21 January 2025; the decision notice (dated 22 January 2025) contains four reasons for refusal ("RfRs") as follows:

- 1. The proposed development introduces significant new development that appears to be required to facilitate the intensification of the existing use on the site. This is contrary to the mixed-use allocation policy MU3, General Development Policy GD1 and the adopted Carlton Masterplan Framework in that the proposal is not for residential development, is not ancillary to the housing elements and would not provide a service or other facility for local residents and would frustrate the Local Authority's strategic objectives for the application site and the wider allocation. It is also contrary to the NPPF policy which required the strategic policies of Local Plans to identify land to provide a minimum of five years' worth of housing against their housing requirement or local housing need and has the potential to undermine the delivery of the Local Plan*
- 2. The development is at odds with the Local Plan (2019), the Joint Waste Plan (2012), the Carlton Masterplan Framework and the NPPF (2024) which seek to ensure that developments function well, add to the overall quality of the area, are visually attractive, sympathetic to local character, establish a strong sense of place, and create safe, inclusive and accessible places that promote health and well-being. The development has resulted in incongruous features that have an unacceptable visual impact in the landscape because of their height, scale, design and prominence and lack of existing or proposed landscaping to relieve their impact and is considered to be contrary to Local Plan policies GD1 and D1, Joint Waste Plan policies WCS4 and WCS6 and NPPF policy at para 135.*
- 3. The development conflicts with Local Plan policies GD1 (General Development) and Poll1 (Pollution Control and Protection) which seek to ensure that development is compatible with neighbouring land and will not significantly prejudice the future use of neighbouring land or adversely affect the potential development of a wider area of land; and will not cause unacceptable levels of noise, dust or other pollution to local residents. The visual impact on surrounding land and the likelihood of noise and dust*

unacceptably affecting the living conditions and residential amenity of future residents results in conflict with these Local Plan policies.

4. *The applicant has failed to respond to the request to submit further information relating to the aggregate storage bays and a quarantined/rejected load bay shown on the amended proposed site plan. In the absence of this information, it is not possible to conclude that these elements would be of satisfactory appearance and use and the proposal is therefore considered to be in conflict with Local Plan policies GD1 and D1, Joint Waste Plan policies WCS4 and WCS6 and NPPF policy at para 135.*

4.1.2 The main issues arising from the RfRs are as follows:

- Whether the appeal proposal accords with the development plan (consisting of the Local Plan and the Joint Waste Plan) as a whole;
- Whether the appeal proposal would significantly prejudice the strategic objectives of the Local Authority's Local Plan, including by way of the MU3 allocation and maintaining a five year supply of housing;
- Whether the appeal proposal by way of its visual impact causes significant harm;
- Whether the appeal proposal would significantly adversely affect the living conditions of future residents;
- Whether information submitted in support of the planning application is sufficient to determine the impact of the appeal proposal.

4.1.3 In summary, having considered the main issues, the appeal proposal accords with the development plan when read as a whole, plus the appeal proposal is also supported by 'other material considerations' as explained in this Statement of Case.

4.1.4 However, in the alternative, even if the Inspector were to determine to the contrary, the 'other material considerations' in this instance weigh heavily in favour of granting planning permission contrary to the development plan (if the Inspector were to determine the latter).

4.1.5 As such the grant of planning permission would be in accordance with s.38(6) of the 2004 Act on either basis set out above.

5 SITE AND SURROUNDING AREA

5.1 The Appeal site

- 5.1.1 The appeal site is within the Appellant's ownership, is located within the administrative boundary of Barnsley Metropolitan Borough Council, and is situated to the northeast of West Green Way (between its junction with Far Field Lane to the northwest and Pontefract Road to the southeast). The appeal site is served by a dedicated access directly off West Green Way.
- 5.1.2 The appeal site is defined by the red line identified on the Site Location Plan. Additional land owned and operated by the Appellant, as the wider site, is contained within the area of the blue line shown on the Site Location Plan.
- 5.1.3 Occupied by the Appellant's company E J Lidster (Sales) Ltd, the appeal site is in industrial use, as a waste management facility, in the manner of treating and managing non-hazardous construction and demolition waste.
- 5.1.4 It functions as part of a wider use - waste management facility with additional storage (materials including scrap metal) - which extends beyond the limits of the appeal site. The wider waste management facility and storage function, including storage of materials unrelated to waste recycling, takes place on land that is also within the Appellant's ownership.
- 5.1.5 Land with the northwestern portion of the wider site contains spoil heaps, which are being processed; it includes an area given over to storage (container and other materials, part of which is used co-extensively with the waste recycling process to store materials retrieved during the recycling process, and which must be taken to landfill); and an area which has been recontoured, originally for use as a motorcycle/quad bike track, but now used in association with the waste management facility.
- 5.1.6 Land adjacent to the south and west of the appeal site is within the Local Authority's ownership, and is laid to grass with tree and shrub planting. This adjoining parcel, which is currently being grazed, terminates at West Green Way. Within the vicinity of the Wash Plant, which is the subject of this appeal and within the appeal site, there exists a concrete
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wall (the “wall”), which according to historic mapping data, has been in existence since before 1999.

5.1.7 Land immediately adjacent the west/southwest of the wall and following the line of the wall contains an area of landscaping, to a depth of approximately 5m.

5.1.8 The wider site terminates at its northwestern extent at the boundary with the live rail line, which provides services between the urban areas of Barnsley and Wakefield.

5.1.9 To the northeast/southeast lies the disused railway, and a site of a Site of Special Scientific Interest (“SSSI”) referred to as the Dearne Valley Wetlands SSSI. No Public Rights of Way (“PRoWs”) run through the SSSI.

5.1.10 Cudworth Beck, a tributary of the River Dearne is located running along southeastern corner of the appeal site, situated at a level some 5m+ below the level of the appeal site.

5.2 The Surrounding Area

5.2.1 There is nothing distinctive about the context immediate to the appeal site. It is embedded within a wider landscape that is, in terms of its origins, industrial in nature. Much of the landscape comprises reclaimed land.

5.2.2 Land west/south west of West Green Way, with which the appeal site has a visual connection, is home to the Ardagh Glass Packaging plant (enclosed by West Green Way, Burton Road, Fish Dam Lane and Far Field Lane). This industrial complex (the “complex”) occupies a site measuring approximately 30ha in area and it has a strong visual presence in the landscape particularly in views at the junction (roundabout) of Far Field Lane with West Green Parkway some 500m northwest of the appeal site, and in views from far Field Lane. Within the areas of Fish Dam Lane (to the southwest), and Burton Road, this industrial operation sits directly adjacent housing.

5.2.3 The complex is made up of a series of buildings/structures comprising portal framed, metal clad ‘sheds’ laid out on large rectangular footprints, silos, external storage bays, other storage compounds, pipework, flues, water tanks, water treatment facilities; and parking, loading, and turning facilities.

- 5.2.4 The complex has a strong industrial aesthetic, there is little within it that might be described as being visually attractive. The layout is less planned and more a result of the natural evolution and growth of the operation over time, and as a result the complex is not legible. Landscaping to the perimeters is most effective on West Green Way. There is little permeability.
- 5.2.5 There is, in addition, a small industrial site located off Grace Street operating a reclamation and recovery business which appears to co-existing with an equestrian use, and which is in direct proximity to residential properties. The site contains an assortment of 'sheds' clad in corrugated metal sheeting which, in terms of their visual impact, are detracting features, albeit with their visual effect limited to the immediate context.
- 5.2.6 Situated approximately 1km northwest of the appeal site (as the crow flies) and within the same landscape character area there is situated another industrial development (Premier Foods, Carlton Bakery) with access of Fish Dam Lane. This too has a strong visual presence and possesses a strong industrial aesthetic; and sits adjacent housing.
- 5.2.7 Located approximately 1km north of the appeal site (as the crow flies) there exists another industrial site, containing various operations including vehicle dismantling. Like the others, this industrial pocket has a strong industrial aesthetic and a strong visual presence in the landscape.
- 5.2.8 Bleach Croft Farm is located directly east of the appeal site, operating as a pig farm until an arson attack in 2018, the farm occupies the site of Midland Bleach Works which itself was built in the mid 19th Century; the freestanding chimney associated with the former industrial use is still in situ. It isn't clear whether the land is still being put to agricultural use. Regardless the structures that remain on site are in varying stages of dilapidation and collapse, and the visual effect of the group is as a detractor in the landscape.
- 5.2.9 The industrial context is acknowledged within Local Authority planning documents that are relevant to the appeal site, and which are designed to support and guide development within the wider area (Section 8 of this Statement of Case refers).
- 5.2.10 Otherwise the wider area is given over to 'green space'.
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6 PLANNING HISTORY

Table 1

Application Number	Description	Date Decided	Decision
B/92/1021/BA	Use of land for plant/vehicle storage and waste transfer station	28/01/1993	Granted
B/93/0210/BA	Erection of storage shed for timber pallets	13/05/93	Granted
B/93/1144/BA	Use of land for temporary siting of soil screener and materials selection	13/01/1994	Granted
B/95/1181/BA	Erection of industrial unit	03/02/1997	Granted

Application Number	Description	Date Decided	Decision
B/98/1134/BA	Use of haulage depot for distribution of coal, sand, gravel and topsoil and storage of skips in conjunction with haulage business	09/02/1999	Granted
B/01/0635/BA	Use of land for siting of mobile soil screener & crusher/ancillary processing of imported inert waste & storage of recycled products	23/10/2001	Granted
B/03/0349/BA	To contour land to form motor-quad and motorcycle track for leisure purpose	21/10/2003 (yet the application is recorded as having been received on 31/08/2004)	Refused
B/05/1234/HR	Construction of a new highway, road and rail bridges, pedestrian, equestrian underpasses, drainage, landscape and associated works Only part of the Appellant's wider site for the new access to and within the land was included in the application (so far as the Appellant's land was concerned)	December 2005	Granted

Application Number	Description	Date Decided	Decision
2024/0329	Erection of substation for purposes ancillary to the waste recycling facility (retrospective)	June 2024	Granted

- 6.1.1 The land defined by the planning permission granted under application reference: B/01/0635 is described within the Local Authority’s mapping data as a former *Ash Tip*. The contouring of the land was undertaken and is evident within the historic mapping data attached to the Appellant’s Sworn Statutory Declaration, which has been prepared in support of and submitted with the appeal⁸.
- 6.1.2 According to the Local Authority’s mapping data, application reference: B/05/1234/HR granted consent for works to create an access to the appeal site directly off West Green Way, and included the laying out of the existing access within the appeal site.
- 6.1.3 Application reference: 2024/0329 granted planning permission for the erection of a substation at the appeal site; the substation is required to power the operation of the washing plant. The substation has been completed and is in operation.
- 6.1.4 In granting permission for the substation⁹, the Local Authority stated that the proposal would not frustrate the objectives of the DP, specifically Policies D1, GD1, MU3 and Poll1 on the grounds that its purpose was to support the operation of the existing use; and that it would have a *neutral effect on the appearance of the wider area, the development of the residential phase [led by MU3] and the living conditions of future residents*.
- 6.1.5 In light of the decision arrived at on application reference: 2024/0329 the Appellant is comfortable that the Local Authority does not object, in principle, to further development in support of the existing use within the appeal site.

⁸ Attached at Appendix 1

⁹ Attached at Appendix 2

7 MATERIAL CONSIDERATIONS

7.1 Existing Established Use

7.1.1 Planning permission¹⁰ was granted under application reference: B/01/0635 on 23 October 2001 (the “original permission”) for development described as:

Use of land for siting of mobile soil screener and crusher/ancillary processing of imported inert waste and storage of recycled products.

7.1.2 The permission was made personal to be used only for the storage of hardcore, soil material, inert demolition and construction waste material arising from the operations undertaken by the Appellant’s company E J Lidster Construction Ltd. The appeal site has operated in the name of the Appellant’s company E J Lidster (Sales) Ltd since approximately March 2013.

7.1.3 The area of land and its use as defined by the original permission is not coextensive with the appeal site although it is contained within the appeal site extending over part of the wider site. The original permission enclosed a much smaller parcel of land (the “smaller site”)¹¹. Access to the smaller site was originally taken off Cudworth Parkway to the south.

7.1.4 The Appellant has held an environmental permit for the processing of waste at the wider site since 31 January 1994, under license no: 60546¹², with an associated throughput capacity of 75,000 tonnes per annum.

7.1.5 According to the Sworn Statutory Declaration signed by the Appellant¹³, mobile crushing and screening machinery was moved onto land contained by the smaller site on 31 January 1994 (in line with permission granted under a temporary consent (B/93/1144)).

7.1.6 In 2007 (3 August 2007) the Local Authority, in a letter to the Appellant¹⁴, acknowledged that materials were being stored on site not in accordance with the provisions of Condition 2 of the original permission; it acknowledged the deposit of additional waste materials on

¹⁰ Attached at Appendix 3

¹¹ Attached at Appendix 4

¹² Appendix 15

¹³ Appendix 1

¹⁴ Attached at Appendix 5

land outside of the application site; and it acknowledged the fact that the land in the northwestern portion of the wider site had been recontoured to form a motorcycle track.

- 7.1.7 In 2008, and as evidenced within the Appellant's Sworn Statutory Declaration, the wider site was in operation in association with the processing of waste aggregates and storage. The waste recycling included by way of processing the waste contained within a series of spoil heaps located in the northwestern portion of the site (described by the Local Authority in a separate application as a former *Ash Tip* and used for the deposit of waste into the latter half of the 20th Century). At this time land within the area of the Ash tip had also been recontoured to create a motorcycle/quad bike track, but was never used in light of the Council's letter of 3 August 2007.
- 7.1.8 Between approximately late 2008 and December 2010 (at the latest), as stated within the Appellant's Sworn Statutory Declaration, the western part of the wider site was used by the Local Authority as a storage and construction compound in association with the construction of West Green Way (granted planning permission under application reference: B/05/1234/HR). Only part of the Appellant's wider site for the new access to and within that land was included in the planning application (so far as the Appellant's land was concerned). The recycling of aggregates continued throughout the period of its construction, and it was agreed with the Local Authority that construction spoil left on the wider site post completion of the highway works would be processed by the Appellant.
- 7.1.9 The recycling of waste aggregates and storage use on the wider site (including storage associated with the recycling of waste; and the storage of scrap and other material unrelated to the recycling facility) has continued continuously without cessation since.
- 7.1.10 The Appellant's company E J Lidster (Sales) Ltd continues to operate from within the wider site pursuant to the permit since approximately March 2013, including complying with its 75,000 tonnage per annum capacity.
- 7.1.11 Whilst the storage element functions, in part, operate in a manner that is ancillary to the waste recycling use it also operates as an unrelated to storage to the waste recycling function.
- 7.1.12 According to the evidence contained within the Appellant's Sworn Statutory Declaration, the general extent of the storage function within the wider site has remained similar since
-

approximately 2004 until the present time. The extent of the waste recycling function within the wider site has remained flexible, but similar as spoil heaps have been worked on/relocated, and the historic spoil recontoured from approximately 2004 until the present time.

7.1.13 Although there was the Local Authority's contractor's compound and storage activity took place on the land between approximately late 2008 to December 2010 (at the latest), according to the Appellant's Sworn Statutory Declaration, the nature and extent of the waste recycling and storage use of the wider site operated continuously and similar throughout for more than 10 years from approximately late 2008 up to January 2023 (when the appeal proposal plant was installed) (including a 10 year period after the Local Authority's contractor's storage and compound activity ceased in December 2010 at the latest) and the throughput of 75,000 tonnes per annum of material capacity associated to the environmental permit was not exceeded during late 2008 up to January 2023. As such that waste recycling and storage use is lawful by virtue of the expiry of the relevant 10 year enforcement period set out in S171B of the Town and Country Planning Act 1990.

7.1.14 Construction of the Wash Plant commenced in January 2023 and it was operational shortly afterwards. However, its installation constituted only operational development for the works to install it on the Appeal site for use as part of the existing recycling facility that had acquired lawfulness under planning legislation as part of the existing lawful use prior to the installation of the plant and machinery.

7.1.15 Since the point at which the appeal proposal was introduced and has become operational, the character of the use of the wider site has not altered. The waste input has not changed, including not exceeding the permitted throughput of the environmental permit of 75,000 tonnes per annum, however, the material produced from the recycling process is more distinct in terms of its component parts allowing it to be put to wider use within the construction industry and now extending to the horticulture/agriculture industry.

7.1.16 According to the Appellant's Sworn Statutory Declaration, the lawful use has operated continuously and in a similar manner since January 2024 (when the appeal plant and machinery were installed) up to the present time.

7.1.17 In summary, the appeal site, co-extensively with the wider site, has been used for purposes of waste recycling and storage use across the whole of the Appellant's wider site, for a

period of more than 10 years, and, as a result, its use is lawful by way of the passage of time under S171B of the Town and Country Planning Act 1990.

- 7.1.18 For the purposes of planning law and policy, the Appellant's wider site, including the Appeal site, is classed as a site that is in lawful waste recycling and storage (*sui generis*) owing to the mixed nature of those primary activities.

7.2 Fallback Position

- 7.2.1 Irrespective of whether or not permission is granted for the retention of the Wash Plant it is entirely open to the Appellant to continue operating from the site using the plant and equipment, including a mobile crusher, mobile trommel, and hydraulic pecker that remains on the appeal site and pre-existed the Wash Plant and associated infrastructure the subject of this appeal that was installed January 2023.
- 7.2.2 The Appellant confirms in a letter addressed dated 17 July 2025 to the Planning Inspectorate¹⁵ that whilst they have invested heavily in the appeal proposal, so as to allow them to process inert waste to the highest possible standards, were planning permission for the appeal proposal to be refused, they would still have a viable waste recycling business and they would be capable of delivering a waste recycling function in accordance with the terms of their Environment Agency permit (including the associated rules), and their contractual obligations, albeit the performance and sustainability credentials of the waste recycling, including the recycled material produced, will not be to the best possible standards.
- 7.2.3 Furthermore, this is how the Appellant through his companies operated the Appeal site continuously and in a similar manner for many years from approximately 2004 up to January 2023 prior to the installation of the appeal plant and machinery. The Appellant will continue to operate the lawful waste recycling and storage use from the wider site even if the appeal proposal is refused. There is little doubt about that.

¹⁵ Attached at Appendix 6

7.3 The Extent of the Existing Landscape Bund

- 7.3.1 According to the planning application forms prepared and submitted for the original permission, the Appellant owned all of the land to which the application related. A position accepted by the Local Authority.
- 7.3.2 According to the plans relied upon to grant the original permission (with specific reference to drawing number: R/232/2a dated March 2001) (the “Landscape Drawing”), land adjacent the western/southwestern boundary within the Appellant’s ownership, and within the application site boundary (the “red line”) was identified as a landscape bund.
- 7.3.3 According to the Landscape Drawing the ‘bund’ would measure a depth of 5m and would sit tight to the southern west side of the existing *conc wall* on the appeal site (“concrete wall”) (ie the 5m bund sits outside of the appeal site). To the western extent of this bund, it was expected that there would be erected a *stockproof/rabbit proof fence* (the “fence”).
- 7.3.4 The original permission was granted contingent upon the implementation of the landscape scheme (the “landscape scheme”) contained within the Landscape Drawing (Condition 11 of the original permission refers).
- 7.3.5 Having undertaken a regressive mapping exercise it seems the landscape scheme with stock proof fencing was implemented and had started to mature by 2008, the data attached to the Appellant’s Statutory Declaration refers. Measuring off aerial mapping data, the landscape scheme was planted to a depth of circa 5m.

7.4 The Wash Plant with Infrastructure as a Stand Alone Element

- 7.4.1 As part of the appeal proposal the Appellant is seeking retrospective consent for the retention of the existing Wash Plant for use in association with the existing lawful use of the site. The planning application for the appeal proposal was invited by the Local Authority following an investigation into the breach of planning control. This invitation was issued to the Appellant on 30 March 2023 (reference: 2023/ENQ/00122 (the “correspondence”))¹⁶.

¹⁶ Attached at Appendix 7

7.4.2 It seems that the Local Authority's position, at the time of the investigation was that, but for the fact the plant is located within 5m of the perimeter boundary of the appeal site, its installation would have benefited from the express consent of Class L to Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the "Order")¹⁷ – the Planning, Design and Access Statement (prepared in support of the planning application) refers to this matter from Section 3.

7.4.3 In arriving at this judgement it seems that the Local Authority assumed the perimeter boundary for the appeal site coincided with the position of the concrete wall.

7.4.4 Notwithstanding, the Appellant does not see how the provisions of Class L to Part 7 of Schedule 2 of the Order apply. Class L states:

Permitted Development

Development carried out on land used for the purposes of a waste management facility consisting of-

(a) The extension or alteration of a building; and

(b) The installation of replacement plant or machinery

7.4.5 The appeal proposal does not include the extension or alteration of a building; and it is not replacing existing aggregate washing equipment; it cannot therefore benefit from the consent of the Order as it relates to development at waste management facilities.

¹⁷ Planning, Design and Access Statement, Section 3, refers

8 TECHNICAL DOCUMENTS SUBMITTED WITH PLANNING APPLICATION SUMMARY

8.1.1 The planning application was supported by a suite of technical documents as follows:

- Flood Risk Assessment (CD: 25.008.FRA)
- Drainage Strategy (CD: 25.008.Drainage)
- Noise Impact Assessment (CD: 25.008.NIA)
- Tree Survey with Impact Assessment (CD: 25.008.AIA)
- Preliminary Ecological Appraisal (CD: 25.008.PEA)
- Dust and Emission Management Plan (CD: 25.008.DEMP)
- Transport Statement (CD:25.008.TS)
- Landscape and Visual Impact (CD:25.008.LVIA)

8.2 Statutory & internal Council consultees

8.2.1 No objections were received to the planning application from those statutory or internal Council consultees recorded within the Local Authority's Publicly Accessible Database as having been consulted during the lifetime of the planning application.

8.3 Flood Risk Assessment

8.3.1 The appeal site does not exceed 0.5ha in area and the majority of it is located within Flood Risk Zone 1 ("FRZ 1"). However development (in the form of the storage building) has taken place on land that is located within Flood Risk Zone 3 ("FRZ3"). The Appellant commissioned a Flood Risk Assessment (the "FRA") to support the planning application. Owing to the nature of the appeal proposal a sequential test was not undertaken.

8.3.2 The FRA addressed itself to the FRZ3 portion of the site and recommended a minimum threshold of 41.6m Above Ordnance Survey Data ("AOD") for finished floor levels within the storage building. The storage building has been constructed with a finished floor level set at 42.259m AOD.

8.3.3 There is no RfR centred on the matter of the appeal proposal and flood risk and the Environment Agency raises no objection to the appeal proposal.

8.4 Drainage Strategy

8.4.1 Having assessed the drainage infrastructure serving the appeal proposal, and taking into consideration the ground conditions and site levels, the report concluded that the drainage requirements of the appeal proposal are adequately served by the presence of a subterranean storage tank (2.4m (w) x 2.4m (h) x 2.4m (l) located adjacent to the wash plant and sand stockpiles (where the majority of the water used in association with the ‘washing’ process is recovered), and an interceptor tank which together, when taking into consideration the ground conditions within the vicinity of the plant and machinery, will result in no additional surface water run off. On the matter of foul water drainage, no sewage is set to be released from the appeal site.

8.4.2 There is no RfR centred on the matter of the appeal proposal and drainage and the Local Authority’s Drainage Team raises no objection to the appeal proposal.

8.5 Noise Impact

8.5.1 The Noise Impact Assessment dated 23 October 2023 submitted with the planning application (“NIA”) produced by Spire Environmental (Mr Andy Green (“Mr Green”)) concludes that *in accordance with the Noise Policy Statement for England (NPSE), site operations are predicted to be at the No Observed Effect Level (NOEL).*

8.5.2 The Appellant’s noise consultant has advised that a revised version of the NIA was prepared and submitted to the Local Authority in December 2024. The revisions to the NIA were confined to revisions to the assessment methodology, there was no otherwise no change. The Local Authority’s Planning Application Database does not record the revised NIA. The revised NIA is appended to this Statement of Case¹⁸.

8.5.3 In summary, the predicted noise levels of the Wash Plant *combined with the operation of a hydraulic pecker, mobile crusher, mobile trommel screen and associated mobile plant movements are below the existing background noise levels* measured at various receptors,

¹⁸ Attached at Appendix 14A

namely 3 existing residential receptors south of West Green Way and Bleach Croft Farm to the east. This was carried out on the basis of collating survey data to provide Mr Green, with a reasonable data base to understand the noise environment in the locality of the appeal proposal for the purposes of forming a professional judgement, based on his expertise and experience, on the noise impacts associated to the appeal proposal and to, specifically, assess the impact on existing sensitive noise receptors.

- 8.5.4 RfR3 claims the appeal proposal is likely to generate an amount of noise which would have an unacceptable effect on the living conditions and residential amenity of **future**¹⁹ residents (unspecified).

8.6 Tree Survey with Impact Assessment

- 8.6.1 No trees have been removed or pruned to facilitate the appeal proposal and the appeal proposal will have no direct impact on trees. Otherwise the report concludes that the appeal proposal will have no discernible effect, long term, on adjacent hedgerows/tress.
- 8.6.2 There is no RfR centred on the matter of the appeal proposal and its impact on trees or other landscaping features of note and the Local Authority's s tree officer raises no objection to the appeal proposal.

8.7 Biodiversity

- 8.7.1 The Preliminary Ecological Appraisal concluded that there is no priority habitat within the appeal site boundary; that the appeal proposal would not have a direct effect on the adjacent SSSI; and that there would be no direct impact on adjacent habitats including Cudworth Dike.
- 8.7.2 There is no RfR centred on the matter of the appeal proposal and its impact on biodiversity and the Local Authority's Ecology Team has raised no objection to the proposal.

¹⁹ Appellant's emphasis

8.8 Dust and Emissions Management Plan

8.8.1 The Dust and Emissions Management Plan proposed a mitigation strategy to ensure an appropriate level of dust management at the appeal site.

8.8.2 RfR3 claims the appeal proposal would result in the generation of dust in an amount likely to harm the residential amenity of **future** residents (unspecified), albeit the Local Authority's Pollution Control Team raises no objection to the appeal proposal subject to a condition requiring the dust and emissions management plan to be implemented and retained.

8.9 LVIA

8.9.1 The Landscape and Visual Impact Assessment produced by TPM Landscape (Mr Carl Taylor ("Mr Taylor")) concludes that the appeal proposal would result in a small change in wider landscape character but noticeable change in an area of established industrial activity. The change will not significantly alter the overall visual character of the area noting that:

- *The site has established elements of industrial activity which are visually prominent and contribute to the existing baseline; and*
- *The proposals when visible are almost always seen against a backdrop of existing large scale industry and settlement.*

8.9.2 On the matter of impact on the character of the existing landscape, the LVIA further states:

In addition the capacity of this landscape to accept substantial change appears to have been tested through the allocation of land that includes the proposal site for housing development²⁰

8.9.3 With reference visual impact the LVIA concludes that existing residential receptors will experience a slight adverse effect noting that *generally the proposals are not visible from residential areas²¹*. In terms of the effect of the appeal proposal on pedestrian receptors,

²⁰ 25.008.LVIA, Page 22, Paragraph 6.8, refers

²¹ 25.008.LVIA, Page 27, Paragraph 7.6, refers

these are recorded as being *less than notable or significant*²². As to the impact on vehicle receptors these are set to *experience no notable change*²³.

8.9.4 Furthermore, the LVIA notes that the judgement regarding the level of visual effect and impact needs to also consider the lawful waste recycling and storage use of the wider site which includes the storage of recycled materials. It is the difference between the existing baseline, that includes these large storage mounds and other recycling operations and the appeal proposals that is the change to be assessed. The site is not a greenfield site and the change is the addition of recycling plant and machinery as set against the existing baseline of a lawful industrial site with machinery and storage mounds that were (are) visible in the local landscape. The resulting impact is judged to be acceptable.

8.9.5 From a landscape and visual perspective and from a design and strategic masterplanning perspective, the LVIA concludes the appeal proposal complies with Local Plan and National Policy.

²² As above

²³ As Above

9 APPELLANT’S CASE – MATERIAL CONSIDERATIONS

9.1 Planning Policy

9.1.1 For the purposes of s38(6) of the Planning and Compulsory Purchase Act of 2004 (the “Act”), the development plan in respect of this appeal comprises the Barnsley Local Plan (the “BLP”) and the Joint Waste Plan (taken together referred to as the “DP”)²⁴. None of the Borough’s Neighbourhood Development Plans apply to the appeal site.

9.1.2 The BLP is made to address the period from 2014 to 2033. It has been reviewed by the Local Authority, which decided (on 24 November 2022) that no update to it was required.

9.1.3 The Local Authority’s review of the DP was not subject to an independent examination and it utilised an evidence base that itself is criticised for being out of date.

9.1.4 With reference to where development should be focussed, the DP encourages a hierarchical approach²⁵. The appeal site is located within Urban Barnsley, the first tier classification, which according to the DP:

Incorporates the main built up area [and where] most development should take place in order to enhance Barnsley’s role as a sub-regional town within the Sheffield and Leeds City Regions²⁶.

9.1.5 The DP policies referred to in the RfRs are:

- D1
- GD1
- MU3
- Poll1
- WCS4; and
- WCS6

²⁴ Relevant planning policies attached at Appendix 8

²⁵ Barnsley Local Plan, Page 18, as per the table inserted beneath Paragraph 5.9

²⁶ Barnsley Local Plan, Page 19, Paragraph 5.11

9.2 Policy D1

9.2.1 Policy D1 – High Quality Design and Place Making - expects development *through its layout and design* to be of a high quality taking advantage of and reinforcing the *distinctive, local character and features of Barnsley*.

9.2.2 According to the text supporting D1²⁷:

The components of a development, including its integration with its surroundings and its mix, layout and form, will be assessed to ensure that development makes a positive contribution to achieving the qualities of a successful place.

9.2.3 Development is expected to take account of relevant design standards and guidance including Supplementary Planning Documents.

9.3 Policy GD1

9.3.1 Policy GD1 is considered to be the *starting point for making decisions on all proposals*. Policy GD1 supports proposals for development where:

They are compatible with neighbouring land and will not significantly prejudice the current or future use of the neighbouring land;

They will not adversely affect the potential development of a wider area of land which could otherwise be available for development and safeguards access to adjacent land.

9.3.2 According to the text supporting GD1, its purpose is to:

- Ensure good design
- Protect the living conditions and amenity of residents (existing and future); and
- Encourage landscaping for its biodiversity benefits, and its contribution to climate change resilience and carbon absorption.

²⁷ Barnsley Local Plan, Chapter 13, Page 153, Paragraph 13.4

9.4 Policy MU3

9.4.1 Policy MU3²⁸ Land off Shaw Lane Carlton allocates land for housing and green space. The allocation, extending to approximately 117.2ha in area includes the appeal site. The housing delivery figure promoted within MU3 (1,683 dwellings) is included within the cumulative housing delivery targets for Urban Barnsley.

9.4.2 According to Policy MU3:

The development will be subject to the production of a phased Masterplan Framework covering the entire site to ensure that development is brought forward in a comprehensive manner.

9.4.3 The Masterplan Framework was published in November 2021, together with a Delivery Strategy appended.

9.4.4 The objectives of MU3 are amplified within the document entitled the Carlton Masterplan Framework adopted November 2021 (the “CMF”), which in turn is reliant upon the Delivery Strategy (Appendix 2 of the CMF)²⁹. In addition to the MU3 allocation the CMF addresses itself to the matter of MU2 (another mixed use allocation located to the west and northwest of MU3). The CMF downgrades the housing figures promoted within MU3, suggesting that only 1500 dwellings are capable of being delivered across MU2 and MU3 together. This revision to the numbers was not adopted as part of the review of the DP.

9.4.5 Neither the CMF nor the Delivery Strategy are Supplementary Planning Documents; and the Delivery Strategy has not been subject to public consultation.

9.4.6 Within the extent of the MU3 allocation, the presence of the wider site as an operational employment site is not acknowledged, except by mistaken reference to it as a *landfill*.

9.4.7 With the exception of an existing housing development (including 3 pairs of semi-detached properties located with access off Shaw Lane (the presence of which is acknowledged within the CMF)), the remainder of the allocation is free of operational development³⁰. The allocation comprises, in large part, reclaimed land.

²⁸ The extent of which is identified within MU3 and within the Carlton Masterplan Framework attached at Appendix 9

²⁹ Attached at Appendix 10

³⁰ Carlton Masterplan Framework (2021), Page 4, Figure 1, refers

9.4.8 In so far as it describes the area of the allocation within which the appeal site is located, the CMF refers to it *contaminated/unsettled land* [which] *will require remediation to enable residential development to take place*³¹ and considers this a constraint to development.

9.4.9 It is important to stress that no consultation with the Appellant was undertaken during the preparation of the CMF. As such no consideration has been given to the need to safeguard the wider site as an employment site in accordance with Policy E4 of the DP (see section 9 of the Statement of Case).

9.4.10 As to the delivery of the CMF, the vision is to be enabled through a process of:

Innovative engagement and partnership methods with community and other key stakeholders [which] *will be used to develop innovative exemplary ways of funding, implementing and managing the development and its associated services maximising social enterprise opportunities.*

9.4.11 According to the Delivery Strategy, the masterplan will be developer led. The broader infrastructure will be funded via s106 contributions.

9.5 Timeframe for Delivering MU3

9.5.1 The successful delivery of the objectives of MU3 is, principally, reliant upon the development sector and indeed the matter of land ownership and the challenges facing the assembly of land for the purposes of meeting the objectives of MU3 are acknowledged within the CMF as being a risk to its delivery.

9.5.2 According to the Delivery Strategy, the appeal site belongs to West Green Quarter, identified as Phase 5 (the last phase) (“Phase 5”) of the delivery programme and the Delivery Strategy (p5) says *it is likely to come forward last*. The Delivery Strategy also states that Phase 5 can come forward independent of the other phases. Phase 5 is expected to deliver 288 dwellings and according to the Delivery Strategy, and the CMF

³¹ Carlton Masterplan Framework (2021), Page 12, Section 3., Paragraph 3.5 refers

shows a potential train station adjacent the Appeal Site outside of the Appellant's wider site.

- 9.5.3 In addition the developable area within Phase 5 is constrained by the need to accommodate a new bus route, along with a wildlife corridor (to the south west); the FR22/3 to the east; and the need to retain all existing hedgerows and trees. Approximately 50% of the land within Phase 5 is within the Appellant's ownership.
- 9.5.4 Specific to the wider site, the CMF identifies the need *to address the contaminated and unsettled land*.
- 9.5.5 Over the lifetime of the DP to date, the Local Authority has persistently under performed in terms of delivering housing against its targets.
- 9.5.6 In relation to the delivery of housing within MU3; land within MU3 has been promoted for housing (as part of the Local Authority's five year housing land supply) since 2017.
- 9.5.7 A recent appeal decision³² has granted outline planning permission for up to 215 dwellings on land (parcel L11) within Phase 3 of the MU3 allocation. This is located at the northern end of the MU3 allocation and a substantial distance away from the appeal site at the southern location, with the operational railway and heavily vegetated embankment, proposed Phases 2 and 4 of the MU3 development and Wharnccliffe Woodmoor open space in between. A reserved matters application is yet to be submitted for parcel L11 and there are no planning permissions for the remainder of the allocation.
- 9.5.8 At the time the Inspector's Report on the Examination of the Barnsley Local Plan was published (in 2018), the projected start date for the delivery of MU3 was 2021/22³³. However, 6 years post DP adoption, and some 8 years after the allocation was first promoted for housing, the only site within MU3 to come forward for development is parcel L11.
- 9.5.9 The Appellant considers that the programme for progressing and delivering relevant MU3 development is uncertain, however, the prospects of housing being delivered on the appeal site and the parts of the MU3 allocation in the vicinity, within the lifetime of the DP

³² Appeal Reference: APP/R4408/W/24/3341097 attached at Appendix 11

³³ Report on the Examination of the Barnsley Local Plan, Page 32, Paragraph 164, attached at Appendix 13

up to 2033, within the area of the appeal site as part of MU3 is, highly optimistic at best, particularly when weighing in the balance the fact that:

- The Local Authority has provided no, up to date, indication on programme timetable
- To the Appellant's knowledge there is no master developer/identified or appointed to the delivery programme
- Other than the permission granted on parcel L11 that was obtained on appeal, following a Local Authority refusal, there is no evidence of progress by the Local Authority or anyone else on any other parts of the MU3 development (beyond the MU3 policy that was adopted in 2019 and the Masterplan Framework published in 2021) or evidence of any landowners or developers interested in developing it.
- The permission granted on parcel L11 is for outline planning permission, and before any start can be made on site the proposal will have to be subject to at least one reserved matters application
- Even if interest suddenly arose in the near future to seek outline planning permission for other parts of the MU3 development (which would be the usual route for a site of this size, rather than a full planning application), which seems unlikely based on past and recent progress; submission and approval of the outline planning permission, followed by reserved matters approval and discharged or pre-commencement conditions can safely be said to be years away.
- The Delivery Strategy indicates that Phase 5 is likely to come forward last.

9.5.10 The Appellant can confirm that they have not, to date, been approached by a relevant developer on the matter of developing their land for the purposes of delivering MU3.

9.6 Policy Poll1

9.6.1 With reference to Poll1, this states:

Development will be expected to demonstrate that it is not likely to result, directly or indirectly in an increase in air, surface water and groundwater, noise, smell, dust, vibration, light or other pollution which would unacceptably affect or cause a nuisance to the natural and built environment or to people.

We will not allow development of new housing or other environmentally sensitive development where existing air pollution, noise, smell, dust, vibration, light or other pollution levels are unacceptable and there is no reasonable prospect that these can be mitigated against.

9.6.2 The text supporting Poll1 states:

Planning cannot control the noise and vibration from existing development. However it can try to make sure that new noise sensitive development such as housing ... is not close to existing sources of noise, including industrial uses and noise created by vehicles and other forms of transport.

9.7 Policy WCS4

9.7.1 Policy WCS4 is set out within the Joint Waste Plan for the Borough, as explained in the supporting text, it addresses itself to the provision of *waste management facilities on sites that are not allocated in the Joint Waste Plan but which may come forward in the future.*

9.7.2 According to WCS4, development should prioritise brownfield or underused land. WCS4 supports, in principle, *waste proposals on existing waste ...recycling... sites..* In considering ‘waste proposals’ per the requirements of WCS4, consideration must be given to the effect of the proposal on the site and surrounding area; and its contribution to waste management in the Borough.

9.7.3 More specifically, WCS4 expects waste management development to:

- *Not significantly adversely affect the character or amenity of the site or the surrounding area*
- *Contribute towards the aims of sustainable waste management*

- *Not undermine the provision of waste development on strategic sites*
- *Prioritise the reuse of vacant or underused brownfield land*
- *Facilitate quicker and better quality reclamation*

9.8 Policy WCS6

9.8.1 Policy WCS6 sets out the criteria against which waste management proposals will be assessed. The text supporting WCS6 states:

The locations with the greatest potential for recycling and treatment are concentrated on existing industrial estates and employment areas within or adjoining the main urban areas of the three boroughs³⁴.

9.9 Development Plan Policies considered during the Lifetime of the Application

9.9.1 The Appellant considers it important to point out that the appeal proposal is entirely compliant with an extensive suite of Development Plan policies, assessed by the Local Authority in its consideration of the planning application but omitted within the RfR's. These include:

- SD1 – Presumption in favour of Sustainable Development
- T3 -T5 – Transport related
- HE1 – The Historic Environment
- BIO1 – Biodiversity and Geodiversity
- CC3 – Flood Risk
- CC4 – Sustainable Urban Drainage Systems

³⁴ Joint Waste Plan, Page 43, Paragraph 4.27 refers

9.10 Other Development Plan Policies Relevant to the Appeal

9.10.1 Notwithstanding the policies referred to within the RfRs, there are a number of other DP policies that are relevant to the appeal. These include:

- Policy E3
- Policy E4
- WCS1

9.11 Policy E3

9.11.1 Policy E3 applies to *areas currently in employment use*. Policy E3 supports general industrial uses, and supports *Ancillary uses ...where appropriate in scale*.

9.11.2 According to the text supporting E3³⁵:

In order to encourage economic restructuring in accordance with the Jobs and Business Plan, provision is made on the majority of the sites for a range of employment creating uses. These will be mainly uses falling within Parts B1, B2, or B8 of the Use Classes Order 1987. However, so that the process of widening the economic base and diversifying the local economy is not hindered, other job creating uses may be considered. Proposals for waste management facilities may be acceptable subject to meeting the requirements set out in the Barnsley, Doncaster and Rotherham Joint Waste Plan 2012 and any updates.

9.12 Policy E4

9.12.1 The purpose of Policy E4 is to protect *Existing Employment Land*. It states:

³⁵ Paragraph 8.23 of Chapter 8. Of the DP refers

Land or premises currently or last used for employment purposes will be retained in order to safeguard existing or potential jobs. The development of employment land and premises for non-employment uses will only take place if:

- *Development would not result in a significant loss of existing jobs or employment potential*
- *There will still be an adequate supply of employment land or premises in the locality; and*
- *The land or premises cannot satisfactorily support continued employment use*

If the above criteria can be satisfied then redevelopment will be allowed.

9.12.2 According to the text supporting E4 ³⁶:

Due to their long established nature, land or premises currently or last used for employment purposes, comprise some of the borough's most sustainable and most valued employment areas. These areas will be protected from non-employment use to maintain the range of land and premises.

9.12.3 The Local Authority does not appear to have weighed in the balance the provisions of Policies E3 and E4 of the DP.

9.13 Policy E4

9.13.1 Policy E4 applies to the appeal site, it expects existing employment uses to be retained. Policy E4 is not expected to be read together with any other DP policies.

9.13.2 Policy E4 describes circumstances where the development of employment land for non-employment uses can be supported - these do not include for development brought forward under a strategic allocation including in line with the objectives of MU3.

9.13.3 According to Policy E4, any redevelopment brought forward must demonstrate that:

³⁶ Barnsley Local Plan, Chapter 8, Page 52, Paragraph 8.24

- *It would not result in a significant loss of existing jobs or employment potential;*
- *There will still be an adequate supply of employment land or premises in the locality; and*
- *The land or premises cannot satisfactorily support continued employment use*

9.13.4 In line with Policy E4, all of the above criteria must be met.

9.13.5 The Appellant confirms that for the period of the DP, the appeal site is entirely capable of 'satisfactorily supporting' *continued employment use*.

9.14 Policy WCS1

9.14.1 According to Policy WCS1 *provision will be made to maintain, improve and expand the network of waste management facilities throughout Barnsley ... to achieve sustainable waste management across all waste streams.*

9.14.2 WCS1 identifies *no capacity gaps for construction, demolition and excavation waste*. However nor does the Waste Plan anticipate the loss of any such facilities. In terms of guiding *waste proposals*, and in so far as it is relevant to the appeal proposal, WCS1:

- *promotes innovative waste technologies ...where these support the vision and aims of the Joint Waste Plan*
- *supports the local management of waste; and*
- *directs waste proposals towards accessible locations with good transport links, particularly in and around urban areas*

9.14.3 Subsection E of WCS1 states that *all development proposals (including non-waste uses such as housing) must:*

- 1) *Promote high quality design and layouts that minimise waste and reduce resources ... especially during the construction process*

9.15 Conclusion on Policy as a Material Consideration

9.15.1 It must be remembered that for the purposes of s38(6) of the Act, and when determining planning applications, the test is that development must be in accordance with the development plan when read as a whole.

9.15.2 The NPPF states that where development accords with an up-to-date Development Plan, planning permission should be granted without delay unless material considerations indicate otherwise. The appeal proposal accords with the provisions of the DP when read as a whole and, as such, should be granted without delay. Furthermore, 'other material considerations' also support the grant of planning permission.

9.16 National Planning Policies Referred to in the RfR

9.16.1 The NPPF is a material consideration. The RfRs rely for their justification, on Paragraphs 135 thereof.

9.16.2 According to Paragraph 135 of the NPPF, planning decisions *should ensure that developments:*

- a) *Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) *Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) *Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) *Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*

- e) *Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*

- f) *Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crim, do not undermine the quality of life or community cohesion and resilience.*

10 ANALYSIS OF THE REASONS FOR REFUSAL

10.1.1 As stated within Section 4 of the Statement of Case, the appeal proposal has been refused on four grounds.

- 1. The proposed development introduces significant new development that appears to be required to facilitate the intensification of the existing use on the site. This is contrary to the mixed-use allocation policy MU3, General Development Policy GD1 and the adopted Carlton Masterplan Framework in that the proposal is not for residential development, is not ancillary to the housing elements and would not provide a service or other facility for local residents and would frustrate the Local Authority's strategic objectives for the application site and the wider allocation. It is also contrary to the NPPF policy which required the strategic policies of Local Plans to identify land to provide a minimum of five years' worth of housing against their housing requirement or local housing need and has the potential to undermine the delivery of the Local Plan*
- 2. The development is at odds with the Local Plan (2019), the Joint Waste Plan (2012), the Carlton Masterplan Framework and the NPPF (2024) which seek to ensure that developments function well, add to the overall quality of the area, are visually attractive, sympathetic to local character, establish a strong sense of place, and create safe, inclusive and accessible places that promote health and well-being. The development has resulted in incongruous features that have an unacceptable visual impact in the landscape because of their height, scale, design and prominence and lack of existing or proposed landscaping to relieve their impact and is considered to be contrary to Local Plan policies GD1 and D1, Joint Waste Plan policies WCS4 and WCS6 and NPPF policy at para 135.*
- 3. The development conflicts with Local Plan policies GD1 (General Development) and Poll1 (Pollution Control and Protection) which seek to ensure that development is compatible with neighbouring land and will not significantly prejudice the future use of neighbouring land or adversely affect the potential development of a wider area of land; and will not cause unacceptable levels of noise, dust or other pollution to local residents. The visual impact on surrounding land and the likelihood of noise and dust*

unacceptably affecting the living conditions and residential amenity of future residents results in conflict with these Local Plan policies.

4. *The applicant has failed to respond to the request to submit further information relating to the aggregate storage bays and a quarantined/rejected load bay shown on the amended proposed site plan. In the absence of this information, it is not possible to conclude that these elements would be of satisfactory appearance and use and the proposal is therefore considered to be in conflict with Local Plan policies GD1 and D1, Joint Waste Plan policies WCS4 and WCS6 and NPPF policy at para 135.*

10.2 RfR1

10.2.1 As regards RfR1 there are two limbs to the Local Authority's objection:

- a. That an intensification in the use of the appeal site would be contrary to the provisions of GD1, and MU3 (with CMF), *frustrating* the strategic policy objectives for the MU3 allocation; and
- b. That it would frustrate the Local Authority's ability, in line with the NPPF, to maintain a five year supply of housing.

10.2.2 In the case of both limbs and with reference to the contents of the case officer's report to the Planning Regulatory Board (the "Report"), it seems the Local Authority is concerned that in allowing the Appellant to invest in the existing (lawful) waste management function within the appeal site, the Appellant is less likely to want to relocate to make way for development in accordance with MU3.

10.2.3 The concept of 'frustrating' the Local Authority's strategic objectives for the application site and the wider allocation is not one contained in the policies. Policy GD1 says proposals will be approved if: there will be no significant adverse effects on existing and future residents, they will not significantly prejudice the current or future use of the neighbouring land; and they will not adversely affect the potential development of a wider area to otherwise be available for development. This Statement of Case demonstrates that the appeal proposals do not do that.

10.2.4 RfR1 appears to be a similar reason for refusal as RfR3.

10.3 RfR2

10.3.1 On the matter of RfR2, the Local Authority's concerns are limited to the visual impact of the appeal proposal, which officers have concluded would be contrary to a number of policies within the DP. More specifically - with reference to the Report - officers are concerned the appeal proposal would be contrary to:

- D1 – in so far as it not considered to be of a design quality sufficient to respect the immediate landscape character
- GD1 – in so far as it is not supported by adequate landscaping
- WS4 – in so far as it affects the character of the surrounding area
- WS6 – in so far as it is not *sympathetic to its context*
- NPPF Paragraph 135

10.4 RfR3

10.4.1 With reference to the third RfR, the Local Authority is concerned at the *likely* effect (by way of visual impact, noise and dust) of the operation within the appeal site on the amenities of future residents. RfR3 relies upon GD1 and Poll1 for its objection.

10.4.2 According to the Report, officers are content that any dust and emissions generated by the appeal proposal can be controlled by condition. In regard to noise disturbance, officers' concerns are confined to the matter of noise generated by traffic movement and from the operation of the aggregate wash plant.

10.4.3 As such it seems the Local Authority considers the appeal proposal is contrary to:

- GD1 and Poll1 – on the basis it would have a significant adverse impact on future residents by way of noise and visual impact.

10.5 RfR4

- 10.5.1 The claim in RfR4 is that the Appellant failed to submit additional information *relating to the aggregate storage bays and a quarantined/rejected load bay shown on the amended proposed site plan.*
- 10.5.2 As stated at Section 3.2 of this Statement of Case, and in relation to the matters outlined in RfR4, the proposed site plan for the appeal proposal was amended in October 2024 to take account of additional requirements as regards the matter of storing aggregate within the appeal site.
- 10.5.3 The changes were notified to the Local Authority on 20 November 2024. Subsequently, and in response to a request from the Local Authority, the Appellant submitted additional information pertaining to the changes asking the Local Authority to revert should further information still be required. Unfortunately it seems that no further communication took place between the parties ahead of the decision on the appeal proposal being issued.
- 10.5.4 For the purposes of setting RfR4 aside, the Appellant considers adequate information has been submitted. However, if the Local Authority disagrees and sets out anything further that is required, the Appellant is content to agree, in discussion with the Local Authority on the Statement of Common Ground, the extent of additional detail required; and to have any additional information required by the Local Authority and agreed by the Appellant appended, as necessary, to the Statement of Common Ground.

10.6 Conclusion

- 10.6.1 From the Appellant's reading of the Report, the objections outlined in RfRs 1-4, are in essence confined to the effect of the aggregate wash plant with filter presses and external pipework.

11 HAVING REGARD TO THE CIRCUMSTANCES OF THE CASE

11.1 Appellant's case for the grant of Planning Permission

11.1.1 In summary, having considered the main issues, the appeal proposal accords with the development plan when read as a whole, plus the appeal proposal is also supported by 'other material considerations' as explained in this Statement of Case.

11.1.2 However, in the alternative, even if the Inspector were to determine to the contrary, the 'other material considerations' in this instance weigh heavily in favour of granting planning permission contrary to the development plan (if the Inspector were to determine the latter) as explained in this Statement of Case.

11.1.3 On either basis, the conclusion is the same that planning permission ought to be granted in accordance with s.38(6) of the 2004 Act.

11.2 Frustrating the objectives of MU3

11.2.1 The appeal proposal is not contrary to the provisions of MU3 in a context where the appeal site is in lawful use, as employment land.

11.2.2 In their application at/to the appeal site, the objectives of MU3 are, in the first instance, confined to expressing a preferred land use, stating that the appeal site (as part of the MU3 allocation) is *proposed* for housing. Thereafter MU3 sets the parameters for any relevant operational development.

11.2.3 Whilst the Appellant is not proposing 'housing', neither are they proposing development or redevelopment of a nature that provides an opportunity to deliver part of the MU3 development, which might conflict with the objectives of MU3; they are simply undertaking operational development as asset management works to the existing lawful waste recycling facility. This is development on which MU3 simply has no bearing and is not contrary to the policy MU3 or its policy as the Local Authority's reasons for refusal suggest.

11.2.4 The Local Authority has erred in its judgment (in RfR 1) that in granting planning permission for the appeal proposal their ability to deliver MU3 in accordance with GD1 would be frustrated. The Local Authority's ability to deliver MU3 in line with the objectives of GD1 is entirely contingent on satisfying the provisions of GD1 (read together with E4) as they apply to the interests of protecting the appeal site as an existing lawful employment site as a waste recycling facility. This is the case whether planning permission for the appeal proposal is granted or not.

11.2.5 The Appellant considers that to claim the appeal proposal 'frustrates' the objectives of GD1 or MU3 or the strategic objectives of the DP more broadly is to disregard the circumstances of the case and it is considered that the appeal proposal complies with GD1 and is not contrary to MU3.

11.3 Appeal Proposal otherwise an impediment to the delivery of MU3

11.3.1 As noted above, the appeal proposal complies with GD1 and is not an impediment to the development of other MU3 land, with the issues of visual and noise impacts addressed specifically below.

11.3.2 Beyond the points made at section 11.1 above, the Appellant also considers that the programme for progressing and delivering relevant MU3 development is uncertain, however, the prospects of delivering development in accordance with MU3 in the vicinity of the appeal site, at least over the period of the DP, are highly optimistic at best.

11.3.3 According to the BLP and except in relation to development affecting/the regeneration of Barnsley Town Centre³⁷ the Local Authority makes no claim that it intends to use its compulsory purchase powers to acquire and assemble land for the purposes of delivering the objectives of MU3, although the Authority has the powers if they wished to use them and there were a compelling case in the public interest for compulsory acquisition.

³⁷ Barnsley Local Plan, Page 223, Paragraph 16.135

- 11.3.4 According to the CMF, the delivery of MU3 is entirely reliant upon investment by the development sector. The CMF also recognises that the multiple land ownerships defined within MU3 present a challenge to the successful delivery of the objectives of MU3.
- 11.3.5 The freehold for the appeal site is within the Appellant's ownership; and any proposal to develop it in line with MU3 (Phase 5) must engage with the matter of that ownership.
- 11.3.6 The appeal site currently operates, lawfully, as part of the use of the wider site for the purposes of recycling waste and for the purposes of storage. The appeal site has operated in this capacity without cessation for a period of in excess of 10 years; and it has the ability and capacity, whether planning permission is granted or not for the appeal proposals, to operate at its current permitted throughput capacity of 75,000 tonnes per annum indefinitely or until such time as the Appellant is encouraged to transfer its ownership to a third party in connection with the delivery of MU3 (Phase 5).
- 11.3.7 The Appellant accepts that its site is within MU3 and the delivery of MU3 (Phase 5) relies upon the Appellant 'coming to the table'. They would like it known that, contrary to the assertions in the Report, they support, in principle, the objectives of MU3; and that they are content to discuss the relocation of their business with a relevant developer to transfer ownership of the appeal site to a developer and relocate the existing operation at the appropriate time as part of the delivery of the MU3 development on its land subject to agreeing a reasonable timeline and recompense aligned with a realistic programme for the delivery of the masterplan under MU3.
- 11.3.8 The appeal proposal has absolutely no bearing on the baseline position. It is the case that the matter of the relocation of the lawful waste management facility will need to be addressed whether or not the appeal proposal is granted planning permission. Therefore, the appeal proposal provides no additional impediment to the development of the Appeal site for MU3 purposes than would already exist if the appeal plant and machinery were removed from the Appeal site and it continued operations as it has done in the past for an extensive period without the appeal plant and machinery.
- 11.3.9 In the meantime, noting that the appeal site and Phase 5 are remote from the remainder of the phases in the MU3 allocation identified for housing development within the CMF, the appeal proposal is very unlikely to prejudice the delivery of the objectives of MU3 in other parts of MU3 based on the evidence in this Statement of Case. It is considered that
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by allowing the Wash Plant to be retained, the Local Authority would be supporting the objectives of MU3, noting that the historic spoil heaps must be processed and removed and, according to the CMF, the ground made stable before any development can take place within Phase 5.

- 11.3.10 Further still, there is every prospect that the recycled material produced within the appeal site by the Appellant can supply a local and sustainable source of material to support the construction of development (including infrastructure) within MU3, including the better product produced from the waste recycling facility with the appeal plant and machinery in place; this support extends to the silt and clay material which is capable of supporting the major landscape works proposed across MU3.

11.4 The Appeal Proposal and Visual Impact

- 11.4.1 The Local Authority objects to the visual impact of the appeal proposal describing it as 'incongruous'. Officers emphasise that there is no prospect of mitigating its 'harmful' visual effect.
- 11.4.2 The judgement arrived at on the matter of visual impact, is not based on a sound examination, by a suitably qualified expert, of the evidence submitted with the planning application and fails to recognise the established use rights at the appeal site and the character of the wider area.
- 11.4.3 It is considered that the visual effect of the appeal proposal needs to be considered in the context of the appeal site's existing use rights, and taking into consideration what is on the ground.
- 11.4.4 For clarity, in association with its existing use rights, the appeal site contains (and is entitled to contain) numerous spoil heaps of varying heights, over which the Local Authority has no control. These spoil heaps because of their scale, are prominent features within the landscape. In addition to the spoil heaps there exists a large amount of material stored on the site, including scrap metal. The Local Authority has no control over this aspect of the existing, lawful, operation. The spoil heaps have a strong visual presence on the appeal site's immediate surroundings. Further still, the Appellant has been using and is

entitled to continue to use mobile plant and machinery on site, which because of its scale is visually prominent.

11.4.5 According to the Landscape and Visual Impact Technical Note, prepared by Mr Carl Taylor (the “TN”)³⁸, which accompanies the appeal submission, *the key question when assessing the harm [of the appeal proposal] is, who experiences [the changes] and from where; and to what extent*³⁹.

11.4.6 The Local Authority does not dispute the choice of representative views (the “RVs”)⁴⁰ contained within the LVIA and so for the purposes of assessing the visual impact of the appeal proposal, in the context of the objectives raised in RfR2, the Appellant has reverted to the RVs.

11.4.7 As per the TN and in the RVs:

*None of the visual effects are above Slight-Moderate and are below the threshold where the impacts could be described as notable or significant. Even at close range receptors such as the permissive path along the disused rail line is enclosed by woodland with no views of the site until the view is directly adjacent the boundary*⁴¹.

11.4.8 As to the Local Authority’s claim (in the Report) that the *proposal as a whole will result in incongruous features that have an unacceptable visual impact in the landscape because of their height, scale, design, prominence in the landscape and lack of existing landscaping to relieve their impact*, the TN finds that this position *fails to acknowledge the findings of the LVIA that accompanied the appeal proposals application*.

11.4.9 On this point the LVIA states:

The proposals would introduce a combination of machinery plant, hard standing, structure and buildings to further develop and make more efficient the existing recycling business operating on the site. These changes, although noticeable, would be set within a site that has existing workings, industrial activity and large and prominent material spoil heaps. In the context of the wider landscape these changes would be visible only from locations

³⁸ TN attached at Appendix 14

³⁹ TN, Page 16, Paragraph 7.6

⁴⁰ Identified in Table 2, page 16 of the TN

⁴¹ TN, Page 18, Paragraph 7.9

immediately adjacent to the site or else from occasional locations on elevated routes around the study area.

Both landscape and visual effects are assessed as not being notable/significant and being below a moderate adverse level. The proposal site is also part of a longer term masterplan and vision which would see a large area, including and surrounding the site being developed for housing. The development allocation strongly suggests a landscape that can accommodate substantial change without harm and one that is capable of absorbing the change brought through the proposals without significant adverse effects over the landscape character and visual amenity of the area.

- 11.4.10 It is considered that *the appeal proposals do not lead to any notable or significant landscape or visual impacts* and that regardless, as stated, the visual impacts such that they might exist, must be considered in the context of the existing lawful operation. When assessed against the existing baseline, it is considered that the appeal proposal is not incongruous but rather an entirely ordinary addition to a *man-made landscape with industry at its heart*.
- 11.4.11 The Wash Plant is a kit of parts, universal in its design, industrial in appearance. It cannot be described as ‘architecture’ nor is it a ‘building’. Its form is a direct consequence of its function.
- 11.4.12 Concealing the Wash Plant would require it to be housed in an industrial shed of much greater scale than the Wash Plant itself (taking into consideration its component parts, and its operational requirements). It is suggested that the prospects of laying out, within the area of the appeal site, a building sufficient in scale to house the Wash Plant, whilst enabling it to continue to operate would be difficult at best.
- 11.4.13 Regardless even assuming the design (including scale, appearance and layout) and construction of such a building was possible it would have no less of a visual effect on the surrounding landscape than the appeal proposal as a whole; and it is arguable whether a building of such inevitable mass, would be any more visually attractive when compared to the Wash Plant in views from the surrounding landscape (including all RVs).
- 11.4.14 Ultimately the expectation that development in the manner of the appeal proposal must adhere to the design principles set out in the DP (D1, and GD1) and within Paragraph 135
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of the NPPF is to misunderstand the nature of the development for which planning permission is being sought, and by addressing the appeal proposal against the provisions of policies D1 of the DP and Paragraph 135 of the NPPF the Local Authority has failed to have regard to the circumstances of the case.

- 11.4.15 As regards the visual and landscape effects of the appeal proposal on the character of the surrounding area, these are not considered to be *notable or significant* in the context of which it cannot be claimed that the appeal proposal (in terms of its visual or landscape effects) would *adversely affect the potential development of a wider area of land* in accordance with the objectives of GD1.

11.5 The Appeal Proposal and the Amenity of Existing and Future Residents

- 11.5.1 Referring to the evidence contained within the Noise Assessment, the appeal proposal will have no observable effect on the existing noise environment for relevant existing receptors and according to the Local Authority's Report to the extent the appeal proposal might generate dust and emissions, these effects are capable of being controlled by condition. As such, and as already stated, the Appellant does not understand why RfR2 objects to the appeal proposal on grounds that dust and emissions would result in harm to the amenity of future residents as they do not constitute a reason for refusal.
- 11.5.2 As to future residents; the Appellant confines their consideration of the effects of the appeal proposal on residents occupying future development under MU3.
- 11.5.3 On the matter of what effect the appeal proposal might have on these future residents, it seems upon reading RfR2 that the potential effects objected to are noise; visual impact; and dust and emissions.
- 11.5.4 As evidenced, residential development set to be delivered under MU3 is currently confined to that on parcel L11 (following the grant of planning permission on appeal). Parcel L11 is situated remote from the appeal site (approximately 1km to the northwest as the crow flies). Situated between it and the appeal site there is to be retained an area of Green Space (the CMF refers). At the boundary of the Appeal site with the proposed Green Space there exists the live rail line with embankments that are heavily vegetated.
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- 11.5.5 Otherwise the prospects of housing being delivered on land within MU3 phase 5 adjoining the appeal site are a long way off. As stated in section 9.4 of this Statement of Case there is not likely to be any development delivered within the appeal site or adjacent to it (as part of the delivery of Phase 5) within the lifetime of the BLP (up to 2033).
- 11.5.6 As to the effect of noise on the amenities of future residents (within MU3 phase 5/in proximity to the appeal site); Mr Green in a letter dated 21 July 2025⁴² as an addendum to the Noise Impact Assessment dated 23 October 2023 (the "NIA") still considers the survey data to provide reasonable data base to understand the noise environment in the locality of the appeal proposal for the purposes of forming a professional judgement, based on his expertise and experience, on the noise impacts associated to the appeal proposal, albeit that survey data has not been obtained from the Local Authority owned land.
- 11.5.7 Mr Green's professional judgement, based on the information available, is that the Local Authority owned land in Phase 5 of the MU3 development (adjoining the Appeal site to the south west, which is the closest future residential site) is closer to the dominant noise source of road traffic noise on the A628 and West Green Way trunk roads than the existing most representative receptor on Grace Street contained in his survey data in the Noise Impact Assessment dated 23 October 2023. As such the background noise levels within Phase 5 of MU3 on land adjoining the appeal site are likely to be higher than that experienced by the most representative receptor on Grace Street.
- 11.5.8 In Mr Green's professional judgement, the current plant, machinery and operations at the West Green Recycling facility can be operated not to exceed the likely background sound level (based on his understanding of the noise environment in the locality and with the implementation of noise control measures, which may include noise insulation on the inside of existing enclosures around some plant/machinery, using a buffer zone and an area of the existing landscaping along the western/southwestern boundary) without causing any significant adverse effect on residents of future residential properties (if constructed in the future) on the neighbouring MU3 Phase 5 land to the south west of the Appeal site.

⁴² Attached at Appendix 9

- 11.5.9 As previously noted, the Appellant is not averse to discussions with regards to the relocation of their business at the appropriate time subject to agreeing a reasonable timeline and recompense aligned with a realistic programme for the delivery of the masterplan under MU3. However, even if it turned out that the existing waste facility were to co-exist with future residential on the Council land to the south west, the 'agent of change' principle in paragraph 200 in the NPPF would mean in that scenario that the existing waste recycling business should not have unreasonable restrictions placed on it as a result of residential development permitted after it was established and where its operation could have a significant adverse effect on the new residential development in its vicinity, the applicant (or 'agent of change') for planning permission for the residential should be required to provide suitable mitigation before the development has been completed. As such, on this basis, the buffer zone, the area of the existing landscaping along the western/southwestern boundary and, if necessary, further planting of that existing area to act as an audible barrier can be secured in the future at the time the residential planning permission is granted.
- 11.5.10 Furthermore, in the alternative, Mr Green notes that the use of the land for waste management and storage is a long standing lawful use and that, prior to the appeal proposal plant and machinery being installed, the use of the Appellant's wider site already included noise sources from mobile crusher, mobile trommel screen, hydraulic pecker, excavator and HGV movements. Mr Green notes that the impact of the appeal proposal needs to be considered on the basis of whether there is likely to be in any additional material noise from the appeal plant and machinery above background noise levels when compared to the fallback position of the Appellant's company operating in a similar manner to before the appeal proposal plant and machinery were installed. Mr Green considers that, even in the unlikely event that the current plant, machinery and operations at the recycling facility were materially audible above the likely background noise level at this location (which is primarily dominated by road traffic noise), in his professional judgement, there is unlikely to be any significant adverse effect on the residents of the future residential development (if constructed in the future) on the neighbouring MU3 Phase 5 land to the south west of the south west of the appeal site over and above the impact of the fallback position without the appeal plant and machinery in place, having regard to the fact that the pre-existing noise sources.

- 11.5.11 Furthermore, as noted above, there remains the ability to obtain any necessary mitigation regarding a buffer and neighbouring landscaping through the agent of principle in the NPPF at the appropriate time should the above circumstances arise.
- 11.5.12 To the north west of the appeal site, the Appellant owns the wider site up to the existing operational railway and, as such, the Appellant is in control of the land in order to avoid or adequately mitigate impacts on future residential development (if constructed in the future) on such land.
- 11.5.13 Beyond the Appellant's wider site is an operational railway with heavily vegetated embankments of both sides providing screening for impacts of the waste recycling facility on the Appeal site. On the opposite of the railway to the north west is the proposed MU3 Phase 2 land (over 500m from the waste recycling facility).
- 11.5.14 As to the matter of additional noise generated by increased vehicle movements associated with the appeal proposal, according to the findings of the Transport Assessment, in the event the Appellant were to begin processing material at maximum capacity; there could arise 6 x 2 way HGV movements every hour (in comparison to less than 2 x two way HGV movements per hour at present). The Appellant is at pains to confirm that it is unlikely they will ever be able to exploit the full capabilities of the Wash Plant. The Highways Authority raises no objection to the appeal proposal.
- 11.5.15 Notwithstanding, according to the CMF, Phase 5 of the MU3 is potentially set to deliver a railway station and introduce a bus route within the wider site. This infrastructure will be aimed at serving the needs of the residents within MU3 Phase 5, the existing local community and the wider urban area. It is therefore entirely conceivable to suppose that residential development could be exposed to a much greater number of vehicular movements and associated noise in the vicinity of the appeal site.
- 11.5.16 On the matter of the visual effect of the appeal proposal on the amenity of future residents (in terms of their outlook), as stated in section 11.4 of this Statement of Case, in association with its existing use rights, the appeal site contains (and is entitled to contain) numerous spoil heaps of varying heights, over which the Local Authority has no control. These spoil heaps because of their scale, are prominent features within the landscape. In addition to the spoil heaps there exists a large amount of material stored on the site, including scrap metal. The Local Authority has no control over this aspect of the existing,
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lawful, operation. The spoil heaps have a strong visual presence on the appeal site's immediate surroundings. Further still, the Appellant has been using and is entitled to continue to use mobile plant and machinery on site, which because of its scale is visually prominent. Such is the baseline position against which the visual effect of the appeal proposal needs to be judged.

11.5.17 Given the significant distance between site L11 of MU3 and the appeal site, and taking into consideration the presence of the live railway embankment with vegetation situated between the Appellant's land and land adjoining within MU3, the appeal proposal will have no visual effect on the outlook of those residing in the dwellings set to be delivered on L11.

11.5.18 Whilst not considered necessary for concluding the appeal proposal to be acceptable in visual terms, having regard to the fallback position of the waste facility without the appeal planning and machinery, if it turned out that the existing waste facility were to co-exist with future residential on the Council land to the south west and additional landscaping is secured in the future along the boundary of the future residential development on the Council land, for example, under the 'agent of change principle', that would further mitigate any impact on the neighbouring future residential.

11.5.19 As to effect of the appeal proposal on the outlook of residents residing in development set to be delivered under MU3 Phase 5; referring once more to Mr Taylor's evidence, the visual effects of the appeal proposal would be experienced in the context of the existing waste recycling and storage function against the backdrop of which the visual effects would not be significantly adverse.

11.6 The Appeal Proposal in the context of MU3 Read Together with GD1, E4, WCS1, WCS4 and WCS6

11.6.1 The carrying out of the appeal development as asset management works to the existing lawful waste recycling facility on the appeal site, is not in itself contrary to policy MU3 or its policy criteria as the Local Authority's reasons for refusal suggest, nor is it a development or redevelopment of a nature that provides an opportunity to deliver part of the MU3 development. The criteria in policy MU3 cannot sensibly apply in themselves to such development to render the appeal development contrary to the policy.

11.6.2 The policy that needs to be addressed in this respect is policy GD1, with the main criteria of relevance for these purposes being:

Proposals for development will be approved if:

There will be no significant adverse effect on the living conditions and residential amenity of existing and future residents;

They are compatible with neighbouring land and will not significantly prejudice the current or future use of the neighbouring land;

They will not adversely affect the potential development of a wider area of land which could otherwise be available for development and safeguards access to adjacent land...

11.6.3 With reference the future use of *neighbouring land*, and noting the objectives of MU3, this is, for the purposes of assessing the appeal proposal against the provisions of GD1, confined to residential use. As such the principle issue when testing the appeal proposal against GD1 is whether the appeal proposal would have a *significant adverse effect on the living conditions of future residents* thus prejudicing the potential of this neighbouring land to come forward for residential development.

11.6.4 The Appellant's evidence demonstrates that in the case of the appeal proposal:

1. When taking into consideration the baseline position at the appeal site there does not result *any notable or significant landscape or visual impacts*, and certainly not to the extent that the character and visual amenity of the wider area is significantly adversely affected to the detriment of the living conditions or amenity of existing or future residents— as evidenced within Mr. Carl Taylor's LVIA, summarised at section 8.8 of this Statement of Case and as further evidenced within Mr Carl Taylor's Technical Note, which is addressed at section 11.4 of this Statement of Case.
2. When taking into consideration the baseline position there arises no significant adverse effect to living conditions or amenity (by way of noise disturbance) of existing residents. According to Mr Andy Green's Noise Assessment, summarised at section 8.4 of this Statement of Case, in *accordance with the*

Noise Policy Statement for England (NPSE), site operations are predicted to be at the No Observed Effect Level (NOEL).

3. There would arise no significant adverse effect to the living conditions or amenity (by way of noise disturbance) of future residents – were development to take place on neighbouring land or within the wider area – as per Mr Andy Green’s addendum appended to and summarised at section 8.4 of this Statement of Case and, if necessary, usual planning processes can be applied to provide any necessary additional mitigation measures.

11.6.5 The Appellant considers that the appeal proposal complies with the objectives of GD1 in so far as they are relevant to the appeal proposal.

11.6.6 Notable among the Joint Waste Plan’s (the “JWP”) core objectives (as per Chapter 3) is the commitment to allocating new sites for the management of waste; and safeguarding existing waste facilities. The JWP (Aim 1 of Chapter 3) stresses that by 2026, *Barnsley, Doncaster and Rotherham boroughs will be leading exponents of environmentally friendly and innovative waste management solutions* and that *the majority of the borough’s waste [will be] diverted from landfill* (Core Objective 2, Aim A, Chapter 3).

11.6.7 In addition, the JWP assumes that by 2026, the Boroughs will have *developed a range of high quality state of the art and integrated facilities that manage different waste streams mainly within accessible urban locations ... addressing the overall shortfall* in waste management facilities (Core Objective 1, and Aim C of Core Objective 2, Chapter 3).

11.6.8 Whilst the JWP identifies no *capacity gaps* for construction, demolition and excavation waste (and does not safeguard such sites within the DP) neither is the JWP anticipating any loss in the existing range of aggregate recycling facilities, such as that operated by the Appellant. The proportion of construction, demolition and excavation waste that is expected to be diverted from landfill by 2026 is at least 93% (as per Table 8, page 32 of the Waste Plan). The JWP makes it clear that the Boroughs will rely upon existing waste operators in order to meet this target. In addition the JWP states that the provision of new waste management facilities on existing employment sites will be supported.

11.6.9 The Appellant notes that the JWP has not been reviewed to take account of the Waste Needs Assessment (2021 -2041) prepared by the South Yorkshire Waste Planning

Authorities published in April 2022⁴³. The Waste Needs Assessment identified the appeal site at Page 53 as an Inert Recycling facility and as a Waste Management site with extant planning permission. In relation to the processing of inert waste, the Waste Management plan states that *capacity gaps have been identified for ... inert recycling [and] inert recovery*⁴⁴. In addition, the capacity gap for inert recycling is expected to increase to 2041⁴⁵. The data within the Waste Needs Assessment is based on returns processed through the Environment Agency (the Appellant provides returns to the Environment Agency as part of the operation of the appeal site).

- 11.6.10 The Waste Needs Assessment identifies South Yorkshire as a net importer of inert waste material something that is not set to change and it notes that the generation of waste from ‘Construction, Demolition and Excavation’ is tied to construction and demolition projects and the forecasted shortfall in inert waste recycling facilities has taken into consideration *forecasts for dwelling stock and infrastructure projects* within the South Yorkshire region⁴⁶.
- 11.6.11 The Appellant is operating and has invested in their lawful waste management facility installing technically advanced plant and machinery, which allows them to process waste aggregate to the highest possible standards and enables them to maximise the production of recycled materials that are capable of being reintroduced into the construction cycle within the local area in line with the wider objectives of the JWP
- 11.6.12 The appeal proposal does not conflict with policy MU3 and complies with policy GD1 of the BLP as set out in the Statement of Case. Furthermore, the appeal proposal is positively supported by policy E4 of the BLP.
- 11.6.13 In summary, the appeal proposal will have no significant adverse effect on the living conditions and residential amenity of existing and future residents (including those of the MU3 development) and will not significantly prejudice the current or future use of the neighbouring land MU3 development land. The proposal accords with the policies of the Local Plan (including GD1 and Poll1) and the Joint Waste Plan (including policies WCS4 and WCS6).

⁴³ Attached at Appendix 16

⁴⁴ As per the Executive Summary

⁴⁵ As per Table ES1 of the Executive Summary

⁴⁶ As per Paragraphs 120 -122 of the document

11.6.14 The appeal proposal also complies with policies WCS1, WCS4 and WCS 6 of the JWP as set out in this Statement of Case.

11.6.15 Therefore the appeal proposal complies with the Development Plan as a whole, plus the appeal proposal is also supported by 'other material considerations': S38(6).

12 OTHER MATERIAL CONSIDERATIONS

- 12.1.1 As per paragraph 39 of the NPPF, decision taking should be approached in a positive way, and local authorities should apply the presumption in favour of development when assessing and determining development proposals.
- 12.1.2 Paragraph 7 of the NPPF clarifies that the purpose of the planning system is to contribute to the achievement of sustainable development.
- 12.1.3 Paragraph 8 of the NPPF, defines sustainability as having three limbs - social, economic and environmental. Those limbs are mutually dependent such that a decision taker should not focus on one of the requirements of sustainable development at the expense of another. The question is, when considering whether the development is sustainable, it can be so described, taking all three limbs into consideration.
- 12.1.4 Paragraph 85 of the NPPF states that planning decisions *should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.*
- 12.1.5 According to Paragraph 87 c) of the NPPF, planning decisions should make provision for: *the expansion or modernisation of ... industries of local... importance to support economic growth and resilience.*
- 12.1.6 In line with Paragraph 124 of the NPPF, *planning ... decisions should promote an effective use of land in meeting the need for homes and other uses whilst safeguarding and improving the environment and ensuring safe and healthy living conditions.*
- 12.1.7 Paragraph 125 c) of the NPPF expects planning decisions to *give substantial weight to the value of using suitable brownfield land within settlements for ...identified needs, proposals for which should be approved unless substantial harm would be caused.*
- 12.1.8 As per Paragraph 127 of the NPPF, *planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning*
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authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

- a) *It should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and*
- b) *In the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.*

12.1.9 According to Paragraph 222 of the NPPF, it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long term conservation.

12.1.10 Paragraph 223 continues:

- b) *so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously*
- e) *safeguard existing, planning and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material*

12.1.11 The Appellant considers it important to draw to the Inspector's attention the suite of benefits which would be delivered in the event the appeal was allowed and planning permission was granted. These are set out below:

- Investment in and making best use of an existing waste recycling facility, in a sustainable location, which is of substantial weight.
- Sustainable recycling of construction waste for re-use that would otherwise be sent to landfill, which is of substantial weight

- Investment in and making best use of brownfield land to optimise its use, increasing the efficiency of its waste recycling function, bringing operations up to the best technical standards, which is of substantial weight
- Investment in innovative waste recycling technology - The aggregate washing plant uses the latest technology to ensure the production of high-quality sands and aggregates (incorporating a purification and filtration system) while limiting water consumption. The technology enables the Appellant to produce high quality, commercially attractive products, often from previously rejected or underused resources (e.g. overburden and demolition waste), which is of considerable weight
- Providing an alternative local source of sand, gravel and aggregates for the construction industry local to the appeal site, including the better product produced from the waste recycling facility with the appeal plant and machinery in place, which is of considerable weight
- Contributing to the borough's intention of incorporating more sustainable building materials and practices within its construction and development sectors, which is of moderate weight
- The appeal plant and equipment enables the Appellant to assist various authorities in the region who are committed to the zero waste to landfill philosophy, which is of moderate weight
- Investment in an existing employment use, of moderate weight
- Direct and indirect economic benefits from the company and its employees, (including through taxation) within the local economy, which carries limited weight

12.1.12 As noted above and evidenced in Section 9 of this Statement of Case, the programme for progressing and delivering relevant MU3 development is uncertain, however, there is little or no prospect of relevant MU3 development being delivered on the appeal site or in the immediate vicinity over the lifetime of the DP, which is a material consideration in its own right, however, achieving the benefits listed in bullet points 1-9 above for the likely significant period of time as a result, is of significant weight in the determination of this appeal.

12.1.13 It is acknowledged that the Council does not have a 5 year housing land supply as noted in the recent appeal decision granting planning permission dated 5 September 2024 for Phase

3 of the MU3 allocation⁴⁷, however, the above benefits nevertheless justify the grant of planning permission in the circumstances of this appeal.

12.1.14 Furthermore, it would be unreasonable in planning terms to refuse planning permission for the appeal proposal plant and machinery to enhance the waste recycling facility, with the benefits it provides, when little to no apparent progress has been made on progressing and delivering MU3 development has been made since the adoption of the Local Plan in 2019 and the Masterplan Framework was published in 2021 (other than Phase 3, which the Local Authority was against), nor is there any underway or any indication from the Local Authority when that might realistically progress (if all in the reasonably foreseeable future) and the Full Local Authority decided on 24 November 2022 to review the Local Plan until 2027 (at the earliest), however, there is little or no prospect of relevant MU3 development being delivered on the appeal site or in the immediate vicinity over the lifetime of the Local Plan (ending in 2033).

12.1.15 Taking into consideration bullet points in paragraph 12.1.11 above, it is clear the appeal proposal complies the objectives of the NPPF specified in paragraphs 12.1.1 to 12.1.10, also above; these are material considerations that weigh heavily in favour of the grant of planning permission.

⁴⁷ Appendix 11

13 CONCLUSION

- 13.1.1 The appeal proposal accords with the development plan when read as a whole, and it is also supported by ‘other material considerations’ as explained above.
- 13.1.2 However, in the alternative, even if the Inspector were to determine to the contrary, the ‘other material considerations’ in this instance weigh heavily in favour of granting planning permission contrary to the development plan as explained above.
- 13.1.3 The enhanced waste recycling facility on a site with a lawful use for that purpose provides a valuable facility that results in benefits that meet other policy objectives, and priorities as outlined in the ‘Other Material Considerations’ section above so as to justify the grant of planning permission, particularly in circumstances where the programme for progressing and delivering relevant MU3 development is uncertain, but there is little or no prospect of relevant MU3 development being delivered on the appeal site or in the immediate vicinity over the lifetime of the Local Plan (ending in 2033).
- 13.1.4 Furthermore, it would be unreasonable in planning terms to refuse planning permission for the appeal proposal plant and machinery to enhance the waste recycling facility, with the benefits it provides, in these circumstances and when little to no apparent progress has been made on progressing and delivering MU3 development has been made since the adoption of the Local Plan in 2019 and the Masterplan Framework was published in 2021 (other than Phase 3, which the Local Authority was against).
- 13.1.5 On either basis, the conclusion is the same that planning permission ought to be granted in accordance with s.38(6) of the 2004 Act. The Inspector is respectfully requested to grant planning permission for the appeal proposal.