

BARNSLEY METROPOLITAN BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY Mr Eric Lidster

West Green Recycling, West Green Way, Monk Bretton, Barnsley, S71 5SN

LPA REF: 2023/0758

INSPECTORATE REF: APP/R4408/W/25/3369666

Helen Willows (Planning Officer) BA (Hons) MRTPI

1. Introduction

- 1.1 This appeal is against the decision of Barnsley Metropolitan Borough Council to refuse planning permission for the 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. The application was reported to the Council's Planning Regulatory Board and refused for the following reasons:
- 1.1.1** 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 Council's strategic objectives for the application site and the wider allocation. It is also contrary to the NPPF policy which requires 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.
- 1.1.2** 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.
- 1.1.3** 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.
- 1.1.4** 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.
- 1.2 The officer report clarifies that the proposal sought retrospective planning permission to retain the buildings, equipment and engineering works referred to in the application description. The application was amended during determination to delete reference to

a substation (which received permission in June 2024) and to include reference to additional cladding to the filter presses. The applicant also submitted during determination of the application a Landscape and Visual Impact Appraisal.

- 1.3 Shortly before the application was determined, the applicant submitted amended plans which included reference to aggregate storage bays and a quarantined/rejected load bay. The application did not respond to a request for further details about these elements, including design, the materials to be stored and their height. In the absence of this information it was not possible to conclude whether they were acceptable in appearance and use.
- 1.4 The officer report also clarifies that the applicant was reminded of the terms of the existing planning consent on the site, and in particular the conditions restricting the height of any storage and the types of equipment to be used on the site to a maximum of 2.5 metres and that the significance of the conditions restricting the height of storage and equipment is in relation to the considerable impact of the height of the proposed equipment.

2. Site location and description

- 2.1 The application site is a waste recycling centre, which is accessed off West Green Way. The site backs on to the heavily treed embankment to the dismantled railway which is now part of the wider Dearne Valley Wetlands Site of Special Scientific Interest (SSSI), appears to have paths (but not recognised public rights of way) running through it. It forms the east boundary of the appeal site.
- 2.2 The adjacent land to the south and west of the site is a relatively level field owned by BMBC and views across the site from West Green Way are largely uninterrupted, although there is some planting immediately adjacent the southwest boundary which appears to be outside the application site and is of limited impact in terms of softening the visual appearance of the development. To the extent that this area of land has been previously developed (including the former tip shown on the plan attached at Appendix 1) the land has either been fully restored or any remains have blended into the landscape. The same can be said of the land on the opposite side of West Green Way, which also has the appearance of an agricultural field. In views in the vicinity of the appeal site, beyond that field, the houses and industry around Burton Road can be glimpsed between well established tree planting.
- 2.3 This boundary is defined by two concrete fences, the taller one amounting to around 3m in height appears to be recently constructed but is not included in this planning application. To the north of the site is a raised area of land part of which is laid out as a motor-quad and motorcycle track. The appellant's appeal statement confirms that this land is now used in association with the waste management facility. There is no planning permission for this use. The height of material stored here increased substantially in around 2019 as can be seen on the google street view photographs attached at Appendix 2.
- 2.4 Amended plans that were submitted on 20 November indicated an additional storage tank to the south of the site and additional aggregate storage bays to the north of the site. The Council were not provided with details of the design of the aggregate storage bays and it is not known whether these additional elements have been completed alongside the other development that is subject to this appeal.
- 2.5 The development subject to this proposal was already in place and largely operational at the time the application was determined. The wider site has some degree of

surfacing but was predominantly mud at the time of site visit. There are significant mounds of material within the northwestern part of the site which it is understood are awaiting processing, which are significantly higher than the proposed development. Together with the proposed development, they are highly visible from West Green Way.

3. Planning history

3.1 Historic planning applications which are relevant to this appeal (decision notices attached at Appendix 3):

3.1.1 B/92/1021 – Use of land for plant/vehicle storage and waste transfer station (Granted conditionally including no outside storage to exceed 3 metres in height).

3.1.2 B/93/0210 – Erection of storage shed for timber pallets (Granted subject to a condition that the permission lasted for 5 years by which time the building shall be removed and the land restored)

3.1.3 B/93/1144 – Use of land for temporary siting of soil screener and materials selection (Granted for a temporary period of 12 months and subject to a condition requiring all operations to cease and all plant, equipment, materials and structures to be removed within 12 months and the land restored)

3.1.4 B/95/1181 – Erection of industrial unit – (Granted subject to conditions including a restriction on any outside storage at all)

3.1.5 B/98/1134 – Change of use of part of haulage depot to storage and distribution of coal, skips, sand, gravel and topsoil (Granted subject to conditions stating that the site shall at no time be used as a waste transfer station, or for the processing and screening of any materials (other than in connection with coal distribution) and restricting outside storage to three metres in height).

3.1.6 B/01/0635 - Use of land for siting of mobile soil screener and crusher/ancillary processing of imported inert waste and storage of recycled products (Retrospective) The permission is subject to several conditions including that all material shall be stored in the approved bunkers; and shall not exceed 2.5 metres in height.

3.1.7 2024/0329 – Erection of substation for purposes ancillary to existing waste recycling facility (retrospective) (Granted June 2024)

3.2 Decision notices for these applications are attached at Appendix 3. All of the permissions (other than the most recent 2024 permission for the substation) were subject to a restriction on the height of outside storage (generally to a maximum height of 3 metres and in the case of the permission in 2001 the restriction is to a maximum height of 2.5 metres) or were for temporary consents; or restricted any outside storage at all.

3.3 Notwithstanding the submission, including the Appellant's sworn statutory declaration, that there has been outside storage of waste and other materials on land to the north west of the appeal site since 2008, it is clear that there has been around 2019 a substantial change in the height of the materials stored to the north west of the appeal site. This is seen on the site photos attached here at Appendix 2. The Council is currently giving consideration to the lawful storage use on the land to the north west of the appeal site and the extent to which there has been a change in the height of the outside storage which is unlawful. It remains the case that there is no planning permission or lawful development certificate for any outside storage on the land to the north west of the appeal site and the substantial change in 2019 casts doubt on the extent to which this outside storage has reasonably been taken

into account in the appellants assessment of the appeal proposal and the LVIA. While the statutory declaration refers to refers to the history of storage on the site it is not sufficiently precise or detailed to evidence a lawful use for the height of storage which has been relied upon in part to justify the appeal proposal.

4. Planning Policy Context

Development Plan Policy

4.1 Planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making. Barnsley's statutory development plan consists of the adopted Local Plan, the adopted Joint Waste plan and four Neighbourhood Plans. The Neighbourhood Plans do not cover the area of the appeal site. The Local Plan was adopted in January 2019. A Local Plan review was approved at the full Council meeting held 24th November 2022. The review determined that the Local Plan remains fit for purpose and is adequately delivering its objectives. The next review is due to take place in 2027 or earlier if circumstances require it. The Local Plan is supported by a series of Supplementary Planning documents which provide more detail to adopted policies and are a material consideration in the decision-making process. The Joint Waste Plan was adopted 2012.

4.2 The site is within an area allocated within the Barnsley Local Plan as a mixed use site where site specific policy MU3 states:

Site MU3 Land off Shaw Lane Carlton

This site is proposed for mixed use for housing and green space. The indicative number of dwellings proposed for this site allocation is 1683. These are included in the Housing figures for Urban Barnsley in the Housing chapter.

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.

The development will be expected to:

- Retain areas of woodland, not affected by the road. Should any part of the existing Wharnccliffe Woodmoor green space be developed, an area of compensatory biodiversity-value green space of equivalent size should be created on the land within site MU3 to the east of the existing Wharnccliffe Woodmoor green space. Compensatory areas will need to be linked to Wharnccliffe Woodmoor by wildlife corridors;
- Provide access from Far Field Lane roundabout;
- Provide off site highway works;
- Retain the higher ecological value habitats in the southern part of Wharnccliffe Woodmoor green space, together with the water courses in the centre of the site with a buffer;

- Provide robust measures to mitigate ecological impact where the construction of the access road impacts upon the southern part of the site which has high ecological value and in particular woodland blocks;
- Provide robust mitigation measures to mitigate against noise, odour and other potential impacts arising from the existing industrial operations at Manor Bakeries and Boulder Bridge;
- Provide small scale convenience retail and community facilities in compliance with Local Plan policy TC5 Small Local Shops; and
- Avoid locating built development in parts of the site within flood zone 2 and 3.

4.3 The following Local Plan policies are also relevant to this appeal and the policies are summarised as:

Policy SD1 Presumption in favour of Sustainable Development – indicates that we will take a positive approach reflecting the presumption in favour of sustainable development in the National Planning Policy Framework and that we will work proactively with applicants to find solutions to secure development that improves the economic, social and environmental conditions in the area

Policy GD1 General Development - sets a range of criteria to be applied to all proposals for development including the requirement that there will be no significant adverse effect on the living conditions and residential amenity of existing and future residents; that the development is compatible with neighbouring land and will not significantly prejudice the current or future use of the neighbouring land; that the development will not adversely affect the potential development of a wider area of land which could otherwise be available for development; and that they include landscaping to provide a high quality setting for buildings and appropriately reflect, protect and improve the character of the local landscape.

Policy H3 Uses on allocated housing sites – indicates that the sites shown as housing sites on the Policies Map will be developed for residential purposes and other uses on these sites will only be allowed where: they are small scale and ancillary to the housing elements; and they provide a service or other facility for local residents.

Policy T3 New development and Sustainable Travel – expects new development to be located and designed to reduce the need to travel, be accessible to public transport and meet the needs of pedestrians and cycles. Also sets criteria in relation to minimum levels of parking, provision of transport statements and of travel plans.

Policy T4 New development and Transport Safety – expects new development to be designed and built to provide safe secure and convenient access and to not cause or add to problems of highway safety or efficiency.

Policy T5 Reducing the Impact of Road Travel – we will reduce the impact of road travel by developing and implementing air quality action plans; working to improve the efficiency of vehicles and goods delivery and implementing measures to ensure the current road system is used efficiently.

Policy D1 High Quality Design and Place Making – indicates that development is expected to be of high quality design and to reflect the distinctive, local character and

features of Barnsley.

Policy HE1 The Historic Environment – indicates that we will positively encourage developments which will help in the management, conservation, understanding and enjoyment of Barnsley’s historic environment and will support proposals which conserve and enhance the significance and setting of the borough’s heritage assets.

Policy BIO1 Biodiversity and Geodiversity - Indicates that development will be expected to conserve and enhance the biodiversity and geodiversity features of the borough and that harmful development will not be permitted unless effective mitigation and/or compensatory measures can be ensured.

Policy CC3 – Flood Risk – the extent and impact of flooding will be reduced by not permitting new development where it would be at unacceptable risk of flooding or would give rise to flooding elsewhere; ensure that only water compatible or essential infrastructure is allowed in functional floodplain (subject to the flood risk exception test) and provided that there is no harmful effect on the ability of the land to store floodwater; (etc etc) -sets a range of criteria in relation to development and flood risk, including expecting all development proposals on brownfield sites to reduce surface water run off by at least 30%; development on greenfield sites to maintain or reduce existing run off rates; and development proposals to use SuDS in accordance with policy CC4.

Policy CC4 – Sustainable Urban Drainage Systems – all major development will be expected to use SuDS to manage surface water drainage unless it can be demonstrated that all types of SuDS are inappropriate. The council will also promote the use of SuDS on minor development. Planning applications must be supported by an appropriate drainage plan and SuDS design statement.

Policy Poll1 Pollution Control and Protection – sets criteria to ensure that new development does not unacceptably affect or cause nuisance to the natural and built environment or to people; or suffer from unacceptable levels of pollution.

4.4 Barnsley, Doncaster and Rotherham Joint Waste Plan (adopted 2012) sets out the overall approach to managing waste across the three Council areas and reflects the waste hierarchy which prioritises waste prevention, and then re-use and recycling before energy recovery and disposal. Relevant policies include:

4.5 Policy WCS4 Waste Management Proposals on Non Allocated sites – establishes criteria to be considered when determining such applications – including that development does not significantly adversely affect the character or amenity of the surrounding area; will contribute towards the aims of sustainable waste management in line with the waste hierarchy; and prioritises the reuse of vacant or underused brownfield land.

4.5.1 Policy WCS6 General Considerations for all Waste Management Proposals – sets out the tests against which any proposal for waste management will be assessed including in relation to supporting the vision, aims and overall strategy of the Joint Waste Plan; access; design; amenity; ecology and pollution.

4.6 Adopted Supplementary Planning Documents relevant to this application:

- Trees and hedgerows
- Biodiversity and Geodiversity

The adopted Carlton Masterplan Framework was adopted by Full Council on 25 November 2021. It is a strategic document that sits under the Local Plan and provides the key principles that future planning applications must align to. The masterplan framework was subject to public consultation between 16 June and 28 July 2021. It sets out objectives for development of allocations MU2 and MU3 and seeks to coordinate development to ensure that it is aligned with the Local Plan. In particular the Framework sets out a requirement for 1500 homes, a small new local shop, expansion to Carlton Primary Academy, improved play and community facilities all surrounding the retained and enhanced Wharncliffe Woodmore green space. It identifies the potential for a new railway station immediately to the east of the application site (where the Local Plan safeguards the former railway line for potential reinstatement. The application site (1.51ha) forms part of a 7.2ha phase identified in the framework for residential development with potential for 288 homes.

The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Paragraphs of particular relevance to this appeal include

Paragraphs 78 - 81 set out government policy on maintaining supply and delivery of housing, the requirement for strategic policies to include a trajectory illustrating the expected rate of housing delivery over the plan period and the advice that plans should set out development rates for specific sites. Also sets out the requirement to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where strategic policies are more than five years old

Paragraph 85 - Planning policies and 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.

Paragraph 124 – planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions

Paragraph 125 – planning decisions should give substantial weight to the value of using suitable brownfield land with settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. **135** – planning decisions should 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, optimise the potential of the site and create safe, inclusive and accessible places that promote health and well-being.

Paragraph 135 – planning decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and are sympathetic to local character and history including the surrounding built environment and landscape setting.

Paragraph 170 – inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

Paragraph 181 – When determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. (And foot note 63 confirms that a site specific FRA should be provided for all development in Flood Zones 2 and 3.

The NPPF 2024 has additionally proposed a new method of calculating housing targets for Local Authorities which will see an increase in mandatory housing delivery targets for Barnsley of approximately 30% above existing (from 831pa to approx. 1092 pa).

5. Justification for the reasons for refusal and one other issue (flood risk).

Conflict with policies that seek to secure strategic housing development.

- 5.1 The first reason for refusal relates to the principle of development on this mixed use allocation. The principle of the proposed development is complicated because this is an existing and longstanding waste recycling facility on a site which was in 2019 removed from the Green Belt and allocated in the Local Plan as part of a much larger mixed-use allocation for housing and greenspace. It appears that the applicant has no intention of relocating his existing business to allow the site to be redeveloped for housing and there is no objection to the continued operation of the business if undertaken in accordance with the extant permission at this time. It also appears that small scale development associated with the permitted and lawful use of the appeal site may not be contrary to Local Plan policies which identify the site for housing development and seek to protect the site from other uses.
- 5.2 However, the proposed development is not a small-scale development. It is both physically large and would allow for the throughput of the site to double. Granting permission for the proposal which would enable doubling of the throughput of materials on site which represents a significant intensification and expansion of the business would appear to make any relocation even less likely, given the investment and returns likely to be made. Notwithstanding that the Joint Waste Plan identifies a predicted shortfall in the provision of suitable recycling and treatment facilities, it is clear that the development is in conflict with the policies WCS4 and WCS6 as it adversely affects the character and amenity of the area and is not of high quality design or sympathetic to its surroundings.
- 5.3 In addition there is a clear conflict with the adopted policies of the Local Plan which allocate the site for residential development within the Carlton Masterplan. The proposal also conflicts with the adopted Carlton Masterplan Framework which sets out objectives for development of allocations MU2 and MU3 and seeks to coordinate development to ensure that it is aligned with the Local Plan. This proposal will frustrate the objectives of the Masterplan Framework to secure planned development to meet the strategic development needs of the borough and in doing so, failing to deliver housing on this site which would also fail to contribute to the housing requirements of the Local Plan. It is concluded therefore that the proposal is contrary to local plan policies GD1, H3, MU3 and to the provisions of the Carlton Masterplan Framework and the Council gave substantial weight against the proposal to these policy conflicts. The application does not indicate that the proposal would secure any

increase in employment on the site but it would appear that it would allow for throughput of materials to double. The Council concluded that the full economic benefits may be given only limited weight.

- 5.4 The appellants make the case that the Council should have considered the application against Local Plan policies E3 and E4 which give support to retaining employment sites in employment use. However, the Council took the view that while the appeal site is a form of employment site, it is a specialist form of employment use, waste management and there are specific policies to address this particular kind of development which are policies WCS4 and WCS6 of the Joint Waste Plan. These policies also provide support to waste and recycling uses. Consequently, these are the key policies that the Council has focused on. Although Local Plan policy E4 that the appellant refers to could also be said to be relevant, the key factors are already assessed in relation to policies WCS4 and 6. The conflict of the proposal with the Local Plan and Joint Waste Plan policies and with the MPF outweighs and benefits of the development.
- 5.5 To further clarify the Council's first reason for refusal, the proposal is contrary to the mixed use allocation policy MU3 and the MPF because the proposal is not for the housing development that the allocation promotes on the site and the MPF gives more detail to. The proposal is contrary to GD1 because it will prejudice the future use of neighbouring land and adversely affect the potential development of the wider allocation. Collectively, the Local Plan policies and the MPF set out the Local Planning Authority's strategic objectives for the appeal site and the wider allocation. As acknowledged above, there is no objection to the current and continued operation of the business on the appeal site, in so far as it is authorised. However, the appeal proposal would result in a development that would have a far greater impact on and prejudice the future use of neighbouring land which is allocated for development.
- 5.6 The Council quite simply disagrees with the appellants interpretation of the status of Policy MU3. The conflict of the proposal with the development plan as a whole, and with the MPF, outweighs any benefits of the development. As set out in the report to PRB, the Council takes the view that *'It appears that the applicant has no intention of relocating his existing business to allow the site to be redeveloped for housing and there is no objection to the continued operation of the business if undertaken in accordance with the extant permission at this time. It also appears that small scale development associated with the extant permission may not be contrary to Local Plan policies which identify the site for housing development and seek to protect the site from other uses'*. Not only does the appeal proposal, representing a substantial investment and allowing for a doubling of the throughput of the site, make it less likely that the appellant would relocate as previously agreed, but it also makes it less likely that the surrounding allocation could be developed for housing, thus frustrating the Council's strategic objectives and in conflict with the allocating policy MU3 and GD1 (bullets 2 & 3). Policy MU3 is a policy in an adopted Local Plan and in accordance with s38(6) of the 2004 Act, goes further than, as the appellants case states 'expressing a preferred land use'. The appellants suggestion at part 11.2.3 that the allocation policy in a development plan is 'merely expressing a preferred land use' conflicts with the legal position that the proposal must be determined 'in accordance with the development plan unless material considerations indicate otherwise. The development plan remains the starting point for determining applications, whether or not the proposal is for a use that conforms with the site allocation.

Visual amenity

- 5.7 The development as constructed and proposed form substantial and unrelieved features in the landscape. It is also significantly higher than any of the authorised equipment, storage or other authorised structures on the site which are reasonably well screened by the previously constructed two-metre-high boundary walls (which have been raised in height to 2.4 metres) and the limited landscaping off the south-western boundary. The applicants submission warned against conflating 'visual presence' with 'harm'. They also state that the proposals in terms of their visual appearance are entirely appropriate in the context of the existing industrial operation. This is fundamentally refuted because the proposed development is so substantially larger and out of scale with the authorised development on the site.
- 5.8 A landscape and visual impact appraisal (LVIA) has been submitted in support of the proposal. It is apparent that the scale of the development proposed is significantly greater than the previously authorised development on the site. The proposed plant are of large scale, being highly visible and variously 10.56m high(filter press), 9.15m high(wash plant), storage tanks up to 11.6m high, with high existing (and unauthorised) material stockpiles lying outside permitted areas, all exceeding the modest scale of development allowed by the extant permission with conditions which restricted plant to one specified screener and one specified crusher and stockpiles to be no more than 2.5m high
- 5.9 The LVIA concludes (section 9.3) that both landscape and visual effects are assessed as not being notable/significant and being below the moderate adverse level. The LVIA states at appendix 1 that for views within around 300 metres of the site (that is receptors 1, 2 and 10 - public views from the south and west of the site and also including from the adjacent redundant railway embankment where there appears to be an informal footpath) the visual effects are stated as being 'slight-moderate adverse'.
- 5.10 In relation to viewpoint 1 the visual effects are further assessed as being 'A noticeable but not prominent change to view that includes industrial structures and activity'. In 'Change to View' the assessment states that 'The elevated and covered Filter Press is the most prominent element in the view but other machinery and activity from the existing operation are also visible' – it appears this is referring to other elements of the appeal proposal which are visible in the photo from viewpoint 1.
- 5.11 In relation to viewpoint 2 the 'Change to View' states that 'The washing system and filter press structure are the most prominent elements of the proposal in the view ... the change is over a very short section of path and is assessed as low'. The summary of visual effects concludes that the effects are 'over a view that has historically always included industrial activity but does not set out the impact of the proposed development on the appearance of the site as it appeared before the unauthorised works took place (since the photograph from viewpoint 2 is dominated by the development which is subject to this appeal) and also assumes that the 'existing and large spoil mounds' in the description of view are lawful.
- 5.12 In relation to viewpoint 10, the description of view refers to the fast moving A road (West Green Way) but doesn't refer to the dual foot/cycleway that runs alongside West Green Way. The view includes the development subject to this Appeal and is described as including 'industry evident throughout' but does not set out the view before the unauthorised development took place. The change to view refers to the visibility of the existing operation off site, including the mounds of spoil material to be worked as being particularly prominent' although they do not feature in the photo from viewpoint 10.

- 5.13 The visual impact of the appeal proposal is clearly significant. The appraisal assesses the development in the light of the substantial mounds of materials to the north of the appeal site. However, these exceed what has historically been the height of material stored on that site and as indicated above the Council is investigating whether there has been a change in the height of the outside storage which is unlawful. It remains the case that there is no planning permission or lawful development certificate for any outside storage on the land to the north west of the appeal site and the substantial change in 2019 casts doubt on the extent to which this outside storage has reasonably been taken into account in the appellants assessment of the appeal proposal and the LVIA. However, it is further the Council's case that even if the substantial outside storage of materials were lawful, that does not justify the unacceptable visual impact of the appeal proposal. The LVIA goes on to state that views from around 300-500 metres seem to demonstrate that where the site is visible, landscaping could have had a significant impact on minimising the effect of the development on views. Where views are taken from between 500-1000 metres there is limited or no impact on views but where there are views, landscaping could have a significant effect. Although the impact on views from a greater distance away is, or could be made acceptable this, does not reduce the concerns about the impact on views within 300m of the site and in any event, there is nothing in the submission that proposes measures to make the impacts on views acceptable.
- 5.14 The submitted LVIA is summarised in the statement of case as concluding that the appeal proposal would result in a small change in wider landscape character but noticeable change in an area of established industrial activity)and goes on to state that *'The proposals when visible are almost always seen against a backdrop of existing large scale industry and settlement'* (part 8.9.1). This is simply not accepted. As can be seen in the photos attached at Appendix 2, the appeal site prior to the construction of the plant was of very limited impact in the landscape. The newly installed equipment is very prominent in views of the site and is predominantly viewed against the heavily treed embankment to the dismantled railway to the east. It is only since 2019 that the storage to the north west of the appeal site has been anything other than glimpsed beyond tree cover. Views of the site from the north, when approaching along West Green Way, are limited by the railway embankment which crosses West Green Way. Only once you are beyond the appeal site access is there any visibility of the appeal site, which is viewed against the heavily treed railway embankment with glimpsed views of the Grade II listed chimney at Bleachcroft Farm and the settlement of Cudworth beyond.
- 5.15 Reflecting national and local planning policy, any development proposal would be expected to include appropriate landscaping to mitigate its impact. The submission does not include any landscaping proposal and given the height of the equipment on site it is not envisaged that any landscaping scheme could satisfactorily mitigate the impact of the development.
- 5.16 As proposed, the filter press system and 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. In addition, there is a lack of any proposal for landscaping that could both mitigate the impact of and provide a high-quality setting for the development. The applicant had stated a willingness to consider entering into a S106 agreement to secure soft landscaping/planting on within the ownership of BMBC to help screen the site and this offer is repeated in the appellants submission. This is on land outside the appellant's control, over which they have not initiated negotiations with the Council as landowner to establish if they could secure ownership of this land to deliver a landscaping scheme. It has not been shown that

this can be secured and 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 appeal site. The development is in conflict with local plan policies GD1 and D1 and the NPPF policies on the quality of design and the Council took the view that this carries significant weight against the proposal.

- 5.17 For the reasons given above the proposal is also contrary to the provisions of Joint Waste Plan policy WCS4 'Waste Management Proposals on Non Allocated sites', which establishes criteria to be considered when determining such applications including the requirement that development does not significantly adversely affect the character or amenity of the surrounding area; and Joint Waste Plan policy WCS6 'General Considerations for all Waste Management Proposals, which establishes criteria for the determination of all waste management proposals including that they provide high-quality design and architecture sympathetic to the context and surroundings. It is also concluded that the development is in conflict with policies WCS4 and WCS6 as it would adversely affect the character or amenity if the area and would not be of high quality design or be sympathetic to its surroundings. Again, the Council took that view that this conflict with policy carries significant weight against the proposal.

Residential Amenity

- 5.18 The application was, and the appeal is, supported by a dust and emissions management plan which indicates that effective site management to ensure the control of airborne dust will ensure that there are no adverse dust impacts off site in respect of existing residents. Reflecting the advice of Pollution Control, it is concluded that if the application were otherwise acceptable any approval would be required to be subject to a condition requiring the dust and emissions management plan to be implemented and retained for the duration of the operation of the approved development.
- 5.19 The application was supported by a Noise Impact Assessment which assessed the impact on existing noise receptors. The appeal is supported by an amended Noise Impact Assessment and a letter from the noise consultant which now address the impact of the proposal on prospective future residents of the mixed use allocation. In response to this submission advice has been sought from the Council's Environmental Health Officer in Pollution Control. This advice is attached at Appendix 4 and clarifies that the submitted Noise Impact Assessment is not appropriately relevant for the land allocated for housing as the Assessment was not carried out under appropriate conditions and did not relate to the land allocated for housing as a potential receptor. The Assessment uses a weather station at Leeds Bradford Airport to determine meteorological conditions, which were determined to be light rain on 7 out of 8 days and wind speeds of 5m/s or above on 5 out of 8 days. These unfavourable meteorological conditions provide increased uncertainty about the measured results. The use of a weather station at Leeds Bradford Airport (in excess of 20 miles, as the bird flies, to the north of the appeal site) to determine meteorological conditions does not reflect the advice in BS4142 which states that an anemometer should have been used to measure wind speed and direction at the measurement site. In addition, the appeal submission indicates that the conclusions reached in the originally submitted Noise Impact Assessment are appropriate for assessment of the housing allocation. However the allocation, while much closer to West Green Way as the consultant notes, is also much closer to West Green Recycling and is not shielded by the 5m high soil bund that is noted in the analysis of

the receptor at 19 Grace Street. The Environmental Health Officer notes that the sound monitoring data poses more uncertainty in relation to the impact on the housing allocation, as the activity at West Green Recycling may be audible at the allocated housing land, it would potentially require some character corrections on the rating level, possibly increasing it to being +5 or +10 above the background level and concludes by recommending that another noise impact assessment is carried out under appropriate conditions relating to the allocated housing land as a potential receptor.

5.20 To clarify, while the submitted evidence was sufficient to demonstrate that the proposal would not have an unacceptable impact on existing residents by reason of noise or dust, the appeal does not include sufficient or acceptable evidence to demonstrate that the proposal would not have an unacceptable impact on future residents of the housing allocation that surrounds the appeal site to the south, west and north.

5.21 The appeal proposal would further frustrate the future development of the wider residential phase of the site allocation for mixed use housing and green space, given the scale of the equipment that has been sited with no meaningful mitigation of the visual impact on surrounding land, in particular to the south and west. The proposed development as constructed affects the visual appearance of the wider area and the development of the wider residential phase and would have a significant adverse effect on the living conditions of future residents, by reason of noise from increased vehicle movements and the increased noise from the plant which allows for a doubling of throughput of materials, and the visual impact of the plant and plant. It is concluded that the proposed development would have a significantly adverse effect on and unacceptably affect the living conditions and residential amenity of future residents and is therefore contrary to local plan policies GD1 and Poll1 and the Council attached significant weight against the proposal to this material consideration.

Lack of information

5.22 Shortly before the application was determined, the applicant submitted amended plans which include reference to aggregate storage bays and a quarantined/rejected load bay. The applicant did not respond to a request for further details about these elements including design, the materials to be stored and their height. In the absence of this information, it was not possible to conclude whether they were acceptable in appearance and use and this lack of information was considered by the Council to weigh significantly against the proposal.

5.23 The appellant indicates that in respect of the fourth reason for refusal (the lack of information regarding the design of the aggregate storage bays), the appellants agent responded on 13 January clarifying that they were '*of the same design and construction as elsewhere on the appeal site*'. To be clear, there was and is no information on the submitted application about the design and use of the aggregate storage bays on the appeal site, not plans, or photos, or information about what material would be stored in them, and to what height that material would be stored. The information in the appellant's agents' email of 13 January was received over 5 weeks after the Council's email of 4 December, and after the point at which the application had been reported to PRB. The Council's email of 4 December (copy attached at Appendix 5) stated '*The amended plans that you have submitted on 20 November indicate an additional storage tank to the south of the site and additional aggregate storage bays to the north of the site. I don't have details of the design of any aggregate storage bays and can't deal with this on the basis of the submitted site*

plan alone. The email that accompanied the amended plans doesn't set out what the updates are so please clarify if I have overlooked any other changes to the site plan' The PRB meeting was held on 21 January and the decision was issued on 22 January. On the same day that the agent responded regarding the design of the storage bays (13 January), the agent registered to speak at the PRB meeting – that is to say, they were fully aware of the timescale involved but made no effort to provide proper details of the aggregate storage bays.

Other issues

- 5.24 At the time that the application was determined, a store that had been constructed on the eastern side of the site was sited in flood zone 3, as indicated in the submitted flood risk assessment. Reflecting the advice of the Environment Agency, the applicant confirmed that the store had been constructed at or above the specified AOD height (41.6 metres above Ordnance Datum (AOD)).
- 5.25 However, since the application was determined, the Environment Agency has issued revised flood mapping in April 2025 which now indicates that a more significant part of the site is within flood zone 2 and 3. Attached at appendix 6a are extracts from the flood map for planning and from the Council's GIS system showing the flood map and the appeal site. Since this mapping was published after the Council's decision on the proposal, there is nothing from the appellant to show the appeal proposal in relation to the most up to date flood maps and it is not therefore possible to conclude whether the appeal proposal is sited in the lowest flood risk zone possible.
- 5.26 More recently in August 2025, the Environment Agency has issued a further revision to the flood maps. This introduces a new layer called 'Flood Zones plus climate change' which shows how the combined extent of Flood Zones 2 and 3 could increase with climate change over the next century. Extracts from this mapping are attached at Appendix 6b.
- 5.27 Informal discussion with the Environment Agency has confirmed that in the circumstances, the Flood Risk Assessment submitted with the planning application is now out of date and that there may be unresolved built development and additional flood risk issues that may benefit from further assessment due to the potential of unacceptable flood risk to others. This position is supported by revised comments from the Council's Drainage engineer on the appeal (copy attached at Appendix 7). If this further assessment (a revised FRA based on up to date flood risk maps for planning) demonstrated that the equipment has been sited within Flood Zone 2 or 3, then the appellant would be expected to follow the sequential approach and if there is sequentially preferable space within the appeal site, to move the equipment to that, Flood Zone 1, land. It is understood that if the sequential test was passed because there was not sequentially preferable land available, then the appellant would be expected to undertake an exception test. In circumstances where the Council was determining an application without an up to date FRA, it is expected that the application would be refused on the basis of the lack of information relating to flood risk, reflecting the NPPF policy at paragraph 181.
- 5.28 The report to Planning Regulatory Board (PRB) noted that the development is not in an area of high development risk arising from previous mining operations but is located partially on two old landfill sites (a plan showing the extent of the landfill and the appeal site is attached at Appendix 1). It had not been possible to source advice from the Council's Contaminated Land Officer at the time the planning application was determined and the report to PRB noted that this issue would need to be addressed in the event of any appeal or future planning application. More recently,

advice from the Pollution Control team is that as the site is regulated by the Environment Agency, they will deal with any issues relating to contamination getting in to water courses and clean up on closure, and there are no further comments to add as the application is to increase the facilities on site and the receptors have not changed.

- 5.29 The Council's Ecologist has advised that the submitted evidence sets out how the habitats on site do not meet the definition of Open Mosaic Habitat on Previously Development Land; and that there will be no direct or indirect impact upon the watercourse off the eastern boundary. The Ecologist does advise that measures to ensure Japanese knotweed is not spread in the wild and to require a sympathetic lighting scheme to be agreed to avoid adverse impacts on bats using the wooded corridor off the eastern boundary should be secured. These measures could be secured by condition and subject to this, it is concluded that the proposal is in conformity with Local Plan policy BIO1 and the Council attached limited weight in favour of the proposal to this material consideration.
- 5.30 The Council's Highway Engineer advises that West Green Way can easily accommodate the anticipated additional six vehicles per hour. It is understood that staff and visitor parking is available on site, but this is not shown on the plan. Subject to a condition to secure an agreed parking layout, it is concluded that the proposal is in conformity with Local Plan policy T3 and the Council attached moderate weight in favour of the proposal to this material consideration.
- 5.31 Reflecting the advice of Yorkshire Water and Council's Drainage section it is concluded that the submitted drainage strategy is acceptable. This indicates that the concreted area around the wash plant is designed to direct water via a silt trap to a ground storage tank before reuse in the wash plant. Flood overflow will enter Cudworth Dike during storm conditions only when the wash plant water catch tank and the clarified water tank are at capacity. Proprietary welfare units with built in sewage storage are to be installed. If the application were otherwise acceptable any approval would be required to be subject to a condition requiring the drainage strategy to be implemented and retained for the duration of the operation of the approved development.

6 Response to the Appellants Appeal Statement

Response to appellant's submission on material considerations

Ownership and permitted development

- 6.1 The extent of the appellant's ownership is addressed in the appellant's comments on the extent of the existing landscape bund at section 7.3 and in the following section 7.4. The Council must rely on the accuracy of the information submitted by the applicant/appellant in relation to land ownership. The appellants submission is that they own a 5 metre wide landscaping strip outside of the 2023 application red outlined site boundary (and not within the blue outline, but within the 2001 application site). The submission further refers to correspondence from the Council at the time of the initial investigation in 2023 into the complaint about unauthorised development. The correspondence establishes the Council's position that the appeal site is a waste management facility and that if the plant were located 10 metres from the boundary of the curtilage of the site then it would be permitted development. The submission

indicates that the development does not meet the requirements of the GDPO provisions for development at waste management facilities (Schedule 2, Part 7, Class 11) because ‘it is not replacing existing aggregate washing equipment’. The Council would further submit that the GDPO does not allow replacement plant or machinery in excess of 5 metres height where it is within 10 metres of a boundary of the curtilage of the site. Although the appellant may be able to prove that they own a five metre landscaped strip beyond the concrete wall that bounds the appeal site, it is not considered that the landscape strip forms part of the curtilage of the site – which is very clearly and strongly defined by the concrete boundary wall. The items of plant are in excess of 5 metres in height and within 10 metres of the boundary of the curtilage of the site and therefore not permitted development under the terms of the GDPO.

Response to the statement of case on technical submissions

- 6.2 At part 9.4 At part 9.4 the appellant makes the case that no consultation with the appellant was undertaken during the preparation of the Carlton Masterplan Framework (MPF). During the production of both the Local Plan and the MPF, the Council identified and wrote to all landowners of prospective allocations and of the land within the MPF. The planning application case officer has contemporaneous notes of a meeting with the appellant at the time of a previous application on the site in 2023 (which was withdrawn) where the appellant advised that he had previously met two senior planning officers on his site to discuss the emerging Local Plan and advised that he informed them that he was prepared to move if we found him a site. This position is effectively repeated in the appellants statement of case at 11.3.7.
- 6.3 At part 9.5 the appellant makes the case that development of MU3 has not proceeded as anticipated. They note that at the time of the Local Plan, development was projected to start on MU3 in 2021/22 and that in the trajectory published in April 2021, it was anticipated that by the end of the Local Plan period, 2033, there would have been 1,070 dwellings built on MU3.
- 6.4 It won't be necessary to rehearse here the impact that the pandemic had on the development industry and the build out of the housing allocations. More recently the Council has failed the Housing Delivery Test and has recently published and consulted on a draft Housing Delivery Test Action Plan (copy attached at Appendix 8) which will seek to promote and advance housing building in the Borough. Further work will include a revised trajectory.
- 6.5 Homes England and the South Yorkshire Mayoral Combined Authority (SYMCA) signed the joint South Yorkshire Strategic Place Partnership MoU in 2024 with the South Yorkshire Strategic Plan Partnership, Partnership Business Plan (Appendix 9) the key annex of the MoU. The partnership is designed to enable greater collaboration at a regional/sub-regional scale, and support sub-regions with the most ambitious proposals for housing growth. Homes England, working with the Ministry of Housing, Communities and Local Government (MHCLG), is formalising its relationships with those partners with the greatest housing ambition and potential for growth in order to achieve their collective mission through the creation of Strategic Place Partnerships. These Partnerships signal new ways of working and a move to a more collaborative and flexible solution focused approach
- 6.6 This Partnership complements other Strategic Partnerships that the Mayoral Combined Authority has entered into with institutional investors including Aviva Group PLC and the

South Yorkshire Pensions Authority to seek to lever in further private sector investment to support housing growth and regeneration

6.7 As part of this Partnership, Barnsley Council is part of a ‘Housing Pipeline Project’ led by Cushman and Wakefield in part to enable an increase of housing delivery across the sub-region, including accelerating housing delivery on Local Plan and Masterplan Framework sites in Barnsley. This includes a total of 28 sites encompassing 33 Local Plan allocations (which in some instances have been grouped into a single larger site (e.g. Masterplan areas), with a total indicative capacity of 8,864 units. Within this programme, Royston, Carlton, Hoyland North and Hoyland South have been identified as catalyst sites for ‘focused and bespoke intervention on key strategic and catalytic sites’. Prioritisation of internal resources will allow the coordination of steering groups and drive forward pre applications/planning applications in the short-term

6.8 While it is not possible to provide a timeline for this work it is clear that there is active work underway with key partners to bring forward strategic housing delivery in Barnsley. Whereas the appellant asserts that there is not likely to be any development delivered in the appeal site or adjacent to it (as part of the delivery of Phase 5) within the lifetime of the BLP (up to 2033) (at para 11.5.5) they submit no evidence that this is the case. It is of course the case that at the time of adopting a development plan there will be substantial land allocations with no planning permission and their development can, may and will reasonably come forward over the plan period and beyond. The lack of planning permission in one year is not evidence that a site will not be developed at any point in the next eight years (that is, the period between today and the end of the plan period of the Barnsley Local Plan) or beyond.

7 Draft conditions in the event that the appeal is allowed

7.1 A list of suggested conditions is attached at appendix 10

8 Conclusion

8.1 The appeal proposal conflicts with the development plan when read as a whole and that harm is not outweighed by the benefits of the proposal. The proposal as constructed has resulted in a poorly designed development that fails to include any mitigation for the visual harm that it causes. The proposal would frustrate the objectives of the Local Plan which seeks to meet the development needs of the borough and would cause material harm to new residents of the adjacent housing allocation by reason of noise, dust and visual impact. The proposal lacks detail of elements shown on the amended proposed site plan which would enable an informed decision about their impact to be made. The benefits of the proposed development and any other materials considerations do not justify granting planning permission. The proposal is therefore unacceptable and contrary to Local Plan policies MU3, GD1, D1 and Poll1 and Joint Waste Plan policies WCS4 and WCS6 and the adopted Carlton Masterplan Framework.

9 Appendices

1. Appeal site and landfill mapping
2. Site photos (google street view and planning officer)

3. Historic planning application Decision Notices
 - a. B/92/1021
 - b. B/93/0210
 - c. B/93/1144
 - d. B/95/1181
 - e. B/98/1134
 - f. B/01/0635
4. Environmental Health Officer (Pollution control) comments on the appeal
5. Council email to appellants agent 4 Dec 2024
6. Flood mapping extracts
 - a. Flood mapping extracts April 2025
 - b. Flood mapping extracts August 2025 (2 no.)
7. Council's Drainage Engineer comments on the appeal.
8. Draft Housing Delivery Test Action Plan May 2025
9. South Yorkshire Strategic Plan Partnership, Partnership Business Plan
10. Summary of suggested conditions in event appeal allowed.- (detailed conditions to be agreed with appellant as indicated in draft SoCG)