

## Report Ref No.

**Report of the Head of Planning  
and Building Control to  
the Planning Regulatory Board  
on 23rd February 2016**

TRUSTEES OF BOULDER BRIDGE LANE TRUST V THE COUNCIL.  
APPLICATION FOR A CERTIFICATE OF APPROPRIATE ALTERNATIVE  
DEVELOPMENT PURSUANT TO THE LAND COMPENSATION ACT 1961.

- 1.0 Purpose of Report
- 1.1 To reassess the Certificate of Appropriate Alternative Development issued on 27<sup>th</sup> October 2015 relating to land at Carlton Marsh Carlton on the basis of the circumstances that prevailed on 10<sup>th</sup> December 1985 and if necessary issue an addendum to that Certificate.
- 1.2 Members may recall that at Planning Regulatory Board on 27 October 2015, authority was given to the Head of Planning and Building Control to issue a S17 Certificate confirming that if the land subject of the application for a Certificate of Appropriate Alternative Development were not acquired by the Barnsley Metropolitan Borough Council in exercising its Compulsory Purchase Powers, planning permission would **NOT** have been granted for any other use. The assessment was undertaken on current planning policies and a negative nil development Certificate issued.
- 1.3 An appeal against that Certificate has been made to the Upper Tribunal Lands Chamber by the trustees of Boulder Bridge. The Council, as part of its response to the statement of case submitted, need to provide a further assessment of the planning permissions that might have been granted historically, in addition to the assessment conducted on 27<sup>th</sup> October 2015 that resulted in the issue of the Certificate.
- 1.4 The basis of the assessment that the Board are asked to make in this report is similar to the determination made on 27<sup>th</sup> October 2015 in that they must consider what planning permission might have been granted on the land assuming that there were no plans for the land to have been acquired for the purposes specified under the 1985 compulsory purchase order (land reclamation). The Board must consider the historic hypothetical position and assess whether planning permission would have been granted in the circumstances that existed on 10<sup>th</sup> December 1985 (the date of the notice publicising the Compulsory Purchase Order). This means assessing on the policy position in 1985 and the physical state of the land and surrounding environment that existed at that date.
- 1.5 The objectives of this report are to assess three suggested types of development which, in the opinion of the Trustees of Boulder Bridge Lane Trust, is development that, for the purposes of section 14, is Appropriate Alternative Development in relation to the acquisition concerned. A Certificate

of Appropriate Alternative Development is NOT a planning application. The three suggested types of development are:

Light and general industrial purposes as now defined within classes B1 and B2 of the Town and Country Planning (Use Classes Order 1987 as amended), Extraction of Fuel deposits, Landfill.

- 1.6 As previously stated for the purposes of the CAAD the assessment date undertaken is assumed to be 10th December 1985.
- 1.7 It is recognised at the outset that this is a difficult task and the report makes clear where there are any gaps in knowledge or uncertainty about the physical or policy position.

## 2.0 Recommendation

- 2.1 That the Board consider that no use, other than the extraction of fuel deposits, would have been considered to be appropriate alternative development as at 10 December 1985 and that Authority be given to the Head of Planning and Building Control to issue an addendum to the S17 Certificate previously issued to that effect, subject to conditions which include limiting the period by when the land must be restored.

## 3.0 Background

- 3.1 On 9<sup>th</sup> December 1985 the Council made the Metropolitan Borough of Barnsley (Carlton)(Land Reclamation) Compulsory Purchase Order 1985 in respect of the land subject to this application. The notice to owners publicising the Order was made on 10<sup>th</sup> December 1985. This is the date the planning position must be assessed in accordance with sections 17 and 22 of the Land Acquisition Act 1961.
- 3.2 On 13<sup>th</sup> November 1986 planning permission was subsequently granted on the land for reclamation of fuel by surface working and subsequent restoration of the site. A condition attached to the permission specified that the development, including the restoration of the site, should have been completed within three years from the commencement of development.
- 3.3 The CPO was confirmed by the Secretary of State on 25<sup>th</sup> November 1986 and published in December 1986. A Notice of Entry was served on 17<sup>th</sup> January 1990. The Council took possession of the land following this Notice. However compensation was never paid to the Trustees' predecessors and the registered title remains registered in the names of the Trustees.
- 3.4 In 2014, an application was made by BMBC to the Upper Tribunal (Lands Chamber) for a valuation of compensation for the CPO to be paid to the Trustees in order that transfer of title to the land could be agreed or that the awarded compensation be paid into court and the vesting of the land effected by Deed Poll.

- 3.5 This was in response to incidents of vandalism and blocking of access to the land by the Trustees. It was decided that title to the land had to be secured by the Council before enforcement action could be successfully taken by the Council.
- 3.6 In November 2014 the Trustees commenced a claim in the High Court, challenging the validity of the CPO. The application to the Upper Tribunal was stayed until the High Court proceedings were determined. The High Court proceedings have been settled by consent between the parties and a Consent Order issued which provided some agreement on how the reference to the Upper Tribunal should proceed.
- 3.7 This included consolidating both the valuation reference to the Upper Tribunal made by the Council with the appeal to the Upper Tribunal against the Certificate issued on 27<sup>th</sup> October 2015. It is an important part of these proceedings that this historic assessment is undertaken.
- 4.0 Site Description circa 1985
- 4.1 This site lies to the north-east of Barnsley centre between Carlton, in the west, and Cudworth to the south-east and forms an elongated V shape. The western boundary of the site forms the left arm of the V and is marked by a mineral line to the west. The eastern boundary of the site forms the right arm of the V and is marked by a disused railway line.
- 4.2 Between the two arms of the V shape lies the southern part of the Boulder Bridge Scrapyards which are not part of the land in dispute. To the south of this lies the redundant marshalling yards. The railway embankments and marshalling grounds are believed to be of made ground with the embankments providing some screening to the Boulder Bridge scrap yards and residential dwellings approximately 100m to the east and 200m to the west. The railway embankment and adjacent marshalling yard form the majority of the disputed land.
- 4.3 The site to the south east of Shaw Lane comprises an area of land comprising Carlton Marsh Nature Reserve, a statutory Local Nature Reserve (DEFRA ref 1008825) and Local Wildlife Site No 27.
- 4.4 Photographs taken at the approximate date for the assessment appear to show an area previously used as railway sidings bounded by raised railway embankments (Appendix 1). The railway lines appear to have been removed and the land which had been previously bare substrate allowed to naturally revegetate. The central area of former railway sidings appears to be fairly flat with embankments to the east and west, the whole forming man made topography within a wider relatively flat landscape. In one photograph is an area of what appear to be coal fines which have not revegetated.

## 5.0 Planning History pre December 1985

- 5.1 The land belonged to British Railways and was used as railway siding and goods yard, since at least 1955. It was allocated as Railway Land in the 1955 adopted County Borough of Barnsley Development Plan.
- 5.2 Whilst still under the ownership of the British Railway Property Board, Barnsley Metropolitan Borough Council submitted a planning application on 7<sup>th</sup> February 1985 for the reclamation of derelict land ( planning application reference B/85/151/BA). At the time of the application the railway tracks appear to have already been removed and the site was redundant. A statement of works submitted with the application proposed site clearance comprising removal of rubbish and debris, demolition of any existing structures and foundations, surface regrading, creation of screen bank along western boundary of Shaw Lane, cultivation and sowing of grass seed, tree planting, and provision of footpaths. The proposed plan identified an existing footpath running east to west across the southern end of the site which was to remain unaffected.
- 5.3 Subsequently in accordance with Section 270 of the Town and Country Planning Act 1971 and the provisions of Regulation 4(5) of the Town and Country Planning Regulations 1976, the Planning Sub-Committee passed a resolution to carry out the development and planning permission was therefore deemed to be granted by the Secretary of State for the Environment, subject to conditions, on 21<sup>st</sup> March 1985.
- 5.4 The reclamation of the site had not yet begun when in October 1985 the Boulder Bridge Lane Trust acquired the land.

## 6.0 Purpose of Report

- 6.1 To reassess the application submitted by the landowner for a Certificate of Appropriate Alternative Development pursuant to Section 17 of the Land Compensation Act 1961 on the basis of the circumstances that prevailed on 10<sup>th</sup> December 1985.

## 7.0 Relevant Legislation and National Planning Policy

### 7.1 National Parks and Access to the Countryside Act 1949

The site adjacent to the west declared as a Statutory Local Nature Reserve on 13 June 1980 by Barnsley Metropolitan Borough Council under the National Parks and Access to the Countryside Act 1949 although the adopted plan is not available. The Site itself is now on Barnsley Council and Natural England's records as part of the Local Nature Reserve but there is no documentation available to indicate when or whether this was ever legally put into effect. However, as a consequence for the purposes of this report, the site is considered in 1985 to not to form part of the Local Nature Reserve.

## 7.2 Town and Country Planning Act 1971

Under Section 29 of the Town and Country Planning Act 1971 where an application is made to LPA for planning permission, that authority when dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. The statutory presumption that applications should be determined in accordance with the development plan unless material considerations indicate otherwise, was introduced under S54A of the 1990 Act by the Planning and Compensation Act 1991 and so does not apply to this decision.

## 7.3 Town and Country Planning (Minerals) Act 1981 repealed 27.5.1997

Meaning of " development " .

(1) The following subsection shall be inserted after subsection (3) of Section 22 (meaning of "development" and " new development") of the Town and Country Planning Act 1971—

“(3A) For the purposes of this Act mining operations include— .

(a) the removal of material of any description— .

(i) from a mineral-working deposit;

(ii) from a deposit of pulverised fuel ash or other furnace ash or clinker ;  
or

(iii) from a deposit of iron, steel or other metallic slags; and .

(b) the extraction of minerals from a disused railway embankment.”

The effect of this subsection is to confirm that the extraction of fuel deposits from the site comprising former railway land would be considered mining operations. As such, the relevant minerals policies are considered below.

## 7.4 DoE Circular 14/84 Green Belts published 4 July 1984

There is a general presumption against inappropriate development. In para 5 it states that it is particularly important that full use is made of opportunities for bringing back into use areas of neglected or derelict land. The Circular does not specify what is considered inappropriate development but instead in para 7 states that the previous two circulars relating to Green Belts are appended and that the policy advice contained within them remains valid.

MHLG Circular 42/55 published 3 August 1955 clarifies in para 5 that “ Inside a Green Belt, approval should not be given, except in very special circumstances, for the construction of new buildings, or for the change of use of existing buildings for purposes other than agriculture sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area”.

## 7.5 Local Planning Policy

## 7.6 1955 County Borough of Barnsley Development Plan

Site allocated as Land For Railway Purposes

7.7 South Yorkshire Structure Plan Written Statement and figure 5.1 Key Diagram– Approved by the Secretary of State for the Environment with modifications 19 December 1979.

7.8 Site allocated as Green Belt.

7.9 Policy V7

The County Council will use all relevant powers to ensure that the maximum amount of derelict land is reclaimed and that the creation of further derelict land is kept to a minimum.

Policy V8

New industrial development will not be permitted if it is not the right use of land in the public interest, taking account of all the relevant planning considerations including such matters as the effect on residential areas or town centres, nuisance or public health.

Policy V14

No development which would pollute existing or potential drinking water supplies will be permitted.

Policy V18

In the Green Belt development will not be permitted, except in exceptional circumstances, for purposes other than agriculture, forestry, recreation, cemeteries, and institutions standing in large grounds and other uses appropriate to a rural area.

The supporting text (to policy V18) states that extraction of surface minerals will be regarded as a use appropriate to a rural area.

Policy M1

Surface Mineral Workings will only be permitted when the operator is prepared to accept an agreed scheme of working which makes provision for adequate screening of the working, the minimisation of environmental problems, and for the mode of working.

Policy M2

Surface Mineral Extraction (other than open cast coal, pipe clay and fireclay) will normally be confined to areas already in operation and to extensions of such areas, which are acceptable in relation to agriculture, the environment and transport.

Policy M5

Opencast coal working( except by NCB) and surface mineral workings will only be permitted when the operator is prepared to accept and agreed scheme of working which makes provision for adequate restoration of the land. This restoration will be progressive where possible, will normally provide an

agricultural after use and, where feasible and compatible with the intended after use, will include the disposal of domestic, commercial and non-toxic industrial waste and colliery shale as an integral part of the scheme.

#### Policy R1

The highest priorities for local authority recreation provision should be schemes which:

- a) Provide urban open space, and indoor facilities, and schemes which
- b) Promote the full public use of existing or proposed facilities

#### Policy R2

New Recreation Facilities will be provided primarily to cater for the demands of South Yorkshires Residents

#### Policy R5

Subject to Policy R1, priority for local authority provision of informal countryside recreation facilities will be given to the provision of new inexpensive facilities.

#### Policy R7

Wherever possible, features which offer the best opportunities for informal countryside recreation will be safeguarded.

#### Policy T5

Applications for mineral working will not normally be approved, and applications for industrial development should not be approved, unless there is adequate access to a suitable highway. Encouragement should also be given to the use of rail and/or water transport where these are available.

#### Policy T7

Where practicable, pending any imposition of a mandatory system of heavy goods vehicle routes, restrictions will be imposed on heavy goods vehicles where they create environmental problems

Para 8.29 "Waste Disposal is not a key issue in this Structure Plan, largely because the waste disposal survey which the County Council is carrying out is not sufficiently advanced for waste disposal policies to be formulated"... The County Council intends to prepare a Waste Disposal Plan on completion of the survey, to provide a blueprint for the disposal of all waste in the County".

7.10 The paragraph above relates to the preparation of a Waste Disposal Plan as required by the Control of Pollution Act 1974. However, this section was repealed by the Environmental Protection Act 1990, and the County Council was abolished before a County Waste Disposal Plan was adopted. It is believed there are therefore no relevant waste disposal policies relevant to this site at the time the assessment is being considered.

### 8.0 Subsequent Planning Policy

8.1 The following development plan was adopted five months after the date set for this assessment and therefore shows the direction of travel for the policies for

the site. The development plan at this stage, whilst not yet adopted, would be likely to have some weight as a material consideration as it would have been at an advanced stage in the adoption process. The plan, being at a late stage at 10 December 1985, is presumed to have been substantially similar to that adopted.

8.2 Barnsley Urban Area Local Plan Adopted 14 May 1986

8.3 Allocated as Green Belt on Proposals Map  
Allocated with Policies E1 and R1 on Proposals Map – Environmental Improvement and Recreation

8.4 Policy E1. It is proposed that the sites listed below and shown on proposals map will be environmentally improved. The proposed after use will be in accordance with those stated in policy R1 or policy E16.  
- (xxv) Land at Boulder Bridge Lane, Carlton

Policy R1 Recreation– Open Space

The Borough Council will normally give first priority to recreational provision in the east Barnsley Recreation Project Area as defined on the proposals map and proposals within this area will be considered with particular regard to the recreational potential of the area. In accordance with this, the sites list below and on the proposals map will be environmentally improved during the plan period for open space/playing fields.

- (xxxiv) Land at Boulder Bridge Lane, Carlton

Policy E3 In the Green Belt, development will not be permitted, except in exceptional circumstances, for purposes other than agriculture, forestry, recreation, cemeteries, institutions standing in large grounds and other uses appropriate to a rural area.

Policy E4 Such development as is permitted in the Green Belt should take account in its scale and, nature and location, of the need to conserve the environment and wherever possible enhance it.

8.5 It is believed there were no strategic minerals or waste plans relevant to the site available at this time.

9.0 Consultations

9.1 Consultations were undertaken with specialist officers and their comments are summarised below which in some instances are the same as previously reported.

9.2 Highways

Access to the site could not be taken adjacent Shaw Dike Bridge due to poor highway visibility and acceptable visibility cannot be achieved to access the land to the south. As such, therefore, all of the land to the south of Shaw Lane could not be developed for any purpose unless an alternative means of



access could be found, or substantial improvement works carried out which would require additional land.

In terms of the land to the north of Shaw Lane, there was already access to the land to the north which could have been utilised so there would have been no objections in principle to any of the three options. The critical issue would have been the amount of vehicular movement. A nearby site had the number of vehicle movements per day limited, and providing this could be repeated, there would have been no objections to any of the options.

### 9.3 Regulatory Services

Policy V8 of the adopted South Yorkshire Structure Plan states that development will not be permitted if it is not the right use of the land in the public interest taking account of all the relevant planning considerations including such matters as the effect on residential areas or town centres, nuisance or public health.

There would have been major concerns with regards to potential nuisance being caused to nearby residents in terms of noise, dust, odour, light and insects. While mitigation is possible for these forms of nuisance, the land in question would have formed a buffer/barrier between residents and the adjacent uses at Boulder Bridge. Therefore developing on this land would bring the potential for nuisance closer to residential properties and unless comprehensive mitigation could negate these potential nuisances, this site would not be suitable for any of the three uses in principle.

### 9.4 Contaminated Land Officer

Contaminated land was not introduced as a material consideration until the Environment Act 1995 which inserted Part 2A of the Environmental Protection Act 1990.

Light Industry - No major concerns about the contamination of the land in question being developed for this use. Most of the land would be former railway land, and would have been made ground over the site, which might have some heavy metal contamination.

Extraction of Fuel Deposits- No concerns with regards to contamination issues – the contamination would be removed by this proposal.

Landfill - No significant concerns about this proposal, but the site is limited with capacity to landfill, as there was no large void in 1985 which needed backfilling.

### 9.5 Public Rights of Way

The site falls within what was the excluded area of the Definitive Map that covered Barnsley. The excluded area Definitive Map was not published until 1986 and therefore (unlike the rest of Barnsley) there was no legal document on which to show whether public footpaths did or did not exist in 1985 in this location.

The Excluded area Definitive Map (known as the Ex County Borough Map) in 1986 initially showed only 1 path. The remainder of the footpaths and bridleways on the map were researched and published in two stages between 1989 and 1992. It was (and is) not unusual that public access on BMBC owned land was allowed and encouraged without it being formally recorded on the Definitive Map.

In 2013 a Definitive Map Modification Order application was made to the Council for the footpaths along the railway line. DMMO applications can only be processed if the public's right to use a route has been called into question. For example, a planning application not showing a footpath alignment or in this case the physical blocking of existing stiles by the Boulder Bridge Trust preventing public access.

The 2013 DMMO application was on hold pending the Court's decision, but 15 out of the 21 user evidence forms received as part of this application show public use of the route prior to 1985.

If a planning application was made for this land in 1985 then (based on the current DMMO application) there was likely to have been evidence on the ground that the public had used the route. It is also likely that there would have been objection to any planning application if it blocked their used route, there may also have been a DMMO application made at that time (current legislation relating to DMMO's is Section 53 of the Wildlife and Countryside Act 1981). A diversion under the Highways Act 1980 or Town and Country Planning Act 1971 could have been applied for to enable implementation of a planning application. So the existence of a public footpath would not in itself have prevented a planning application from being granted consent; but it would have been an added complication, cost and time delay and there would have been no guarantee of success.

#### 9.6 Biodiversity Officer

Photographs taken at the approximate date for the assessment appear to show an area previously used as railway sidings bounded by raised railway embankments (Appendix 1). The railway lines appear to have been removed and the land which had been previously bare substrate allowed to naturally revegetate, though the lack of bushes may indicate that scrub growth was controlled. The central area of former railway sidings appears to be fairly flat with embankments to the east and west, the whole forming man made topography within a wider relatively flat landscape. The site appears to be nutrient poor, with scrubby grassland and occasional bush. In one photograph is an area of what appear to be coal fines which have not revegetated.

The 1981 South Yorkshire Structure Plan is very sparse in relation to explicitly protecting wildlife and nature conservation value/ resources (the term 'biodiversity' did not come into regular use until after 1986). Species and

habitats do not seem to be mentioned at all. The strongest defence for wildlife appears to be policy V24 which states that:

‘...nature reserves will be safeguarded from any development which would result in their loss or damage or would adversely affect their appearance or character....’

The site would have its own ecological and biodiversity interest but is also abuts Carlton Marsh Nature Reserve and certain types of development would affect the reserve’s value. The greatest value of the (then) reserve is the wetland habitat offered to certain bird species, many of which try to avoid humans – which is why birdwatchers use bird hides to see wetland birds.

All of the mooted uses of the land would affect some of the bird value of the reserve during the construction phase. Many of the bird species would avoid coming to the site and would seek other wetland sites which would lead to increased competition and reduced breeding success. Some of those species are birds Of Conservation Concern in the UK such as the bittern. The land in question also offered a wildlife resource in its own right – both in terms of being a wildlife habitat (albeit a damaged one due to the former railway sidings that it had been) and supporting many species of animal, including lots of bird species. Some of the more mobile species such as birds, mammals and amphibians would move between the site and the reserve, so the site also acts as a conservation ‘buffer’ to other developments. Without seeing, for example, aerial plans of the site in 1985 I could not even start to evaluate the site’s wildlife value in its own right.

B1 or B2 uses could continue to affect the bird value of the reserve after construction and during normal operation of the developments, depending on exactly what those developments were. In particular, developments which are noisy or which have a high level of traffic/ people movements to/ around them will impact more on the types of species I referred to earlier. The closer to the original reserve the development is, the more the impact on the reserve would be. This has to be set in the context that the existing Boulder Bridge scrapyards complex would already have been quite noisy and with significant traffic movements.

Extraction of Fuel use could be an appropriate temporary use of the land even though some vegetation cover (and hence animals appearing, taking advantage of those habitats) will have occurred by natural means since the railway sidings ceased to be in operation (and would have been happening to some extent whilst they were still in operation). But recognising that coal fines were part of the product which had been spilt on the site meant it could have been deemed a fire hazard to some extent and so removing this risk may well have been seen to be desirable provided an agreed reclamation scheme was part of the planning permission. As well as having a detrimental effect on the wildlife on site which had already developed, the process would have affected particularly the bird value of the (then) Carlton Marsh reserve abutting the site. The reclaimed site could well end up having a greater biodiversity value than the original, unreclaimed site.

Landfill use would leave behind a reclaimed site offering some biodiversity habitat – usually created grassland, often with tree planting too. At that time, decision-makers tended to design landfill reclamations to ‘green up’ as fast as possible and many of the planting species would be highly competitive grasses and trees which could not provide high ecological value once established. Nonetheless, this ‘habitat’ would provide refuge and feeding opportunities for some common animals, including some common bird species. But the value would be massively inferior to the value that the site currently has, which is as a wildlife grassland (primarily) created by man. It was designed by BMBC Countryside Officers and used wildflower grassland seed sources.

Hence in summary, all of the planning application uses would impact on the value of that part of the reserve which was designated as LNR at that time. The impact would vary considerably depending on the exact development, its size and where on the site it was built. None of the developments would provide the wildlife resource and buffer which the current extension to the reserve provides.

Local Nature Reserves (LNRs) are a statutory designation made under Section 21 of the National Parks and Access to the Countryside Act 1949 by principal local authorities. LNR’s are designated both for their ecological value and for the robustness of that value which enables the general public to be able to view and interact with it through education, recreation, etc

## 10.0 Assessment

### 10.1 Principle of development

B1 and B2 Light and General Industrial purposes  
Extraction of Fuel Deposit  
Landfill

10.2 The site was allocated as Green Belt in the SYCC Structure Plan (approved by the Secretary of State in 1979) and the allocation remained the same in the Barnsley Town Plan of 1986 ( adopted 14<sup>th</sup> May 1986).

10.3 DoE Circular 14/84 Green Belts notes that the essential characteristics of Green Belts are their openness and their permanence. The Circular confirms that the policy of the previous circular (14/55) remained valid and the only appropriate use of land within the Green Belt was as follows: “Inside a Green Belt, approval should not be given, except in very special circumstances, for the construction of new buildings, or for the change of use of existing buildings for purposes other than agriculture sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area”. This is repeated by adopted Structure Plan Policy V18.

### 10.4 B1 and B2 Light Industrial

B1 and B2 Light and General Industrial purposes suggested by the Trustees do not meet any of the appropriate uses set out in the Green Belt Circulars and would affect openness of the Green Belt and constitute encroachment into the Green Belt. There is a general presumption against development in the Green Belt and as such very special circumstances would be required in order for approval to be granted. No other material considerations have been provided which would constitute very special circumstances sufficient to outweigh this presumption against this type of development. As such the use of the site for B1 and B2 would therefore not be in compliance with Government Circular 14/84 and Policy V18 of the SY Structure Plan.

10.5 Extraction of Fuel Deposit

The extraction of fuel deposit constitutes a mining operation under the Town and Country Planning Act 1971 as amended by Town and Country Planning (Minerals) Act 1981 and is considered to be an appropriate use both for the Green Belt and for rural areas (text to Policy V18 of the adopted SY County Council Structure Plan), as minerals can only be extracted from where they occur. It is clear from the subsequent 1986 Barnsley Town Plan that there was an intention to improve this land, and Policy V7 within the SY Structure Plan intends that the maximum amount of derelict land is reclaimed in the SY Structure Plan area.

10.6 The Fuel deposit is a potential contaminant and its removal and subsequent restoration would help to achieve an environmental improvement of the site and enable the site to be restored to a suitable Green Belt use, in this case recreation. As such Structure Plan Policies V7, V18, M1 would all in principle support the extraction of this fuel deposit, providing that a suitable agreed scheme of working, screening of the operations and restoration is agreed.

10.7 Policy M5 of the Structure Plan again supports opencast working in principle subject to an agreed scheme of working and suitable progressive restoration of the land, normally to an agricultural afteruse.

10.8 In considering this policy and how it relates to this site, it is not considered that an agricultural afteruse would be appropriate in this case as the Barnsley Urban Area Local Plan adopted in 1986 identifies the site for environmental improvement and recreation, and, being adjacent to a pre-established LNR this is the end use that would be considered most appropriate.

10.9 Policy E4 of the adopted South Yorkshire Structure Plan is clear that development should conserve the environment and wherever possible, enhance it. Whilst the fuel extraction discussed above could be considered to cause damage to any pre-existing biodiversity or ecological interest, it would result in the removal of potentially contaminating material and lead to an overall improvement in the environment in accordance with the policy.

10.10 Policy M5 also states that where feasible and compatible with intended after-use the disposal of waste may be used for restoration. The written justification in the SY Structure Plan supporting this policy clarifies that most

after-uses require restoration to the original [pre-excavation] ground level and large amounts of fill would be needed to infill large voids. For this site, the deposit of waste would not be considered either feasible or compatible with the intended end use as the removal of the fuel deposit from disused railway land and subsequent backfilling with the remaining material (once the fuel was removed) would not result in a significant void which would be need to be filled with domestic, commercial and non-toxic industrial waste. This is borne out by the subsequent planning permission granted in 1986 for the extraction of fuel deposit and restoration to form an extension to Carlton Marsh Nature Reserve adjacent, which did not require additional wastes to be imported to the site in order to restore it.

10.11 The excavation of the fuel deposit would be considered acceptable in principle providing it would remove the potential source of contaminants on the site and the site would be subsequently improved in environmental terms with a restoration to recreation use. Any such consent would be subject to appropriate planning conditions limiting the timescale for the extraction period and requiring appropriate restoration and aftercare to recreation use.

#### 10.12 Landfill

In applying for a Certificate of Alternative Appropriate Development, the Trustees have suggested landfill as a standalone use, not as restoration following extraction of fuel deposit. As such, landfill will be considered on its own merits.

10.13 In considering landfill, the approved SY Structure Plan does not address waste, and it appears that there were no other adopted policies that could aid the assessment of a standalone waste proposal. As such the Local Planning Authority is unable to determine if landfill is an acceptable use in Local Policy terms as a standalone use in the Green Belt as suggested by the Trustees.

10.14 Landfill is not identified in the DoE Circular 14/84 Green Belts or the previous MHLG Circular 42/55 Green Belt criteria as an appropriate land use within the Green Belt and very special circumstances would therefore need to be demonstrated in order for approval to be given. A stand alone landfill in this location would not involve filling a void but would effectively be tipping by land raising. This is not a use appropriate for a rural area or one that would preserve openness. It is therefore considered that it would fall under the general presumption against development in the Green Belt.

10.15 As such, any proposals for landfill in this location would have to be considered on their own merits, subject to national policies pertaining at that time and subject to local policies relating to the impact that a landfill use may have. Where there is a general presumption against development in the Green Belt as in this case, very special circumstances would be required in order for approval to be granted.

10.16 The adopted Structure Plan does support landfill in the restoration of mineral sites where there is a substantial void but Policy M5 is not relevant in this

case is not relevant in this case as already discussed in 10.10 above. Landfill would introduce contaminants which could have a significant negative effect on the site and on Carlton Marsh Nature reserve adjacent. As there would be no void, the landfill proposed would therefore be land raising, causing a negative effect to visual amenity and landscape character of the site, it would affect the openness of the Green Belt, and potentially affect the adjacent Carlton Marsh Nature Reserve due to increased runoff and other negative impacts and effects further detailed below.

- 10.17 Policy E4 of the adopted South Yorkshire Structure Plan is clear that development should conserve the environment and wherever possible, enhance it. Whilst the fuel extraction discussed above could be considered to cause damage to any pre-existing biodiversity of ecological interest, it would result in the removal of potentially contaminating material and lead to an improvement in the environment in accordance with the policy. The opposite is true of landfill, which would be likely to introduce a potential source of contaminants. The vehicular movements associated with importing waste, and the attendant noise, dust, odour and other potential public health and amenity concerns associated with importing waste would be unlikely to be considered acceptable, contrary to Policy V8 of the approved Structure Plan.
- 10.18 It is considered that landfill would not help improve the area and would not be appropriate adjacent to a Local Nature Reserve. Furthermore, landfill would extend the period of time before the site could be restored for recreational purposes due to settlement times.
- 10.19 Additionally, taking into account the photographs of the site as set out in Appendix 1, it is reasonable to assume that it had some ecological/biodiversity value at that time.
- 10.20 The site was designated as a site for Environmental Improvement/Recreation in the 1986 Barnsley Urban Area Local Plan. It is reasonable to assume therefore that the ecological/biodiversity interest had increased since the land became disused and it is considered that the importation of any wastes to the site with the attendant risks of ground pollution and water pollution via leachate and air pollution through landfill gas would introduce potential pollutants to the site and the adjacent Carlton Marsh.
- 10.21 No other material considerations have been provided which would constitute very special circumstances sufficient to outweigh this presumption against this type of development. As such the use of the site for landfill would therefore not be in compliance with Government Circular 14/84 and Policy V8 and E4 of the adopted Structure Plan.
- 10.22 There is no evidence that any other land outside the CPO area is likely to be forthcoming which would enable any other development to be deliverable. The assessment has therefore been limited to the land identified in the CPO.

## 11.0 Biodiversity

- 11.1 The Biodiversity Officer considers that all of the proposed alternative uses would impact on the value of the site and the adjacent local nature reserve. The impact would vary considerably depending on the exact development, its size and where on the site once complete it was built. None of the developments would provide the wildlife resource and buffer which the current extension to the reserve provides.

## 12.0 Landscape and Visual Impact

- 12.1 The site lies within the Lower Dearne Lowland River Floor which is characterised by flat valley floors, water in the form of lakes, rivers, reservoirs and canals with scarce residential settlement of the valley floors. Commercial development is quite common next to roads that cross valleys, other characteristic features include evidence of past industrial development including, dismantled railways, reclaimed land and discussed canals, trees, woodland and scrub dominated by species associate with wet ground. The strength of character in 1985 would be considered to be moderate, and the sensitivity to further built development would be judged to be high and the landscape capacity considered to be low. Disused railway lines have the potential with proper management to act as important wildlife corridors, and adoption of this site as a Local Nature Reserve and its subsequent allocation for Environmental Improvement and Recreation in the adopted 1986 Barnsley Urban Area Local Plan indicate that the Councils continuing objectives for the site were to conserve and enhance this landscape. The Structure Plan had several policies to encourage the reclamation, use and improvement of the environment in the countryside, namely policies R1, R2, R5 and R7 which intended to safeguard such sites and to improve the environment for recreation. The use of the land by any of the proposed alternative uses would have been likely to result in a loss of the important wildlife corridors that had been established on this site but the removal of the potential contamination by fuel deposit and subsequent restoration would help to improve the soil and groundwater environment of the site, and an appropriate restoration scheme to recreational use would improve the nature and wildlife interest and help to enhance the visual amenity of the nearby residential dwellings, although substantial mitigation may have been able to alleviate this impact to an acceptable degree.

## 13.0 Highways

- 13.1 In accordance with Policy T5 of the SY Structure Plan any of the appropriate alternative use of the land proposed would need to be served by a suitable access for both personal and Heavy Goods Vehicles. The Highways Officer considers that the CPO site to the north of Shaw Lane has an existing safe and adequate access, which could be used for any of the three proposed alternative appropriate uses.



13.2 However, the Highways Officer considers that access to the site to the south of Shaw Lane could not be taken adjacent Shaw Dike Bridge due to poor highway visibility and it is considered that acceptable visibility cannot be achieved to access the land to the south. As such, therefore, all of the land to the south of Shaw lane could not be developed for any purpose unless an alternative means of access could be found, or substantial improvement works carried out which would require additional land. It is likely that HGV numbers and/or routeing would be controlled in accordance with South Yorkshire Structure Plan Policy T1.

#### 14.0 Pollution Control

14.1 The removal of the fuel deposit which is a potential pollutant would improve the environment in the area, but the introduction of landfill could result in the introduction of pollutants to the area in the form of leachate, landfill gas and soil and water pollution which may affect both the site and the adjoining Carlton Marsh Nature Reserve.

#### 15.0 Regulatory Services

15.1 Development would be expected to demonstrate that it is not likely to result in unacceptable affects or cause nuisance to the natural and built environment or to people, whether directly or indirectly.

15.2 Using the land for any of the three suggested uses would have the effect of moving the nuisance effects of the existing Boulder Bridge operations closer to the nearby residential dwellings. It would also be likely that any of the three suggested uses would additionally also raise potential major nuisance issues to these nearby residents in terms of noise, dust, odour, light and insects. Unless comprehensive mitigation could negate these potential nuisances this site would not be suitable for any of the three uses in principle, and would not be in accordance with South Yorkshire Structure Plan Policy V8.

#### 16.0 Conclusion

16.1 At the date identified for the purposes of this assessment ( 10 December 1985), the Local Planning Authority is required to have regard to the development plan and to have regard to other material considerations. There is no presumption in favour of development. Material considerations in this case include relevant Legislation, Government Circulars, policies within Structure and Local Plans and site specific matters. In this case site specific material planning considerations include but are not limited to the potential impact on the adjacent nature reserve, the landscape character of the area, highways, potential impact on amenity of nearby residents.

- 16.2 In the Green Belt development will not be permitted for purposes other than agriculture, forestry, recreation, cemeteries, and institutions standing in large grounds and other uses appropriate to a rural area. The suggested appropriate alternative uses of B1 and B2 and landfill uses contravene paragraph 5 of circular 42/55 and Policy V18 of the SYCC Structure Plan and would fall within the general presumption against inappropriate development in the Green Belt (Paragraph 1 of Circular 14/84), and would therefore require exceptional circumstances in order for approval to be granted. B1 and B2 uses are not appropriate uses for a rural area in the Green Belt. Landfill may be appropriate in a rural area if there is a significant void to be filled in, but that is not the case here. The risk of pollution of both the site and adjacent designated Local Nature Reserve is considered to be a material consideration, as is the attendant change in landform which would result from landfill/landraising in this location.
- 16.3 It is considered that these proposed alternative uses on this site would constitute encroachment within the countryside and would have an adverse impact on the openness of the Green Belt and would not serve the objectives for identifying Green Belt land. Additionally it is considered the suggested uses would not retain or enhance the landscape character or conserve and enhance the natural environment for recreation (Policy V19 of the SYCC Structure Plan)
- 16.4 Added to the general presumption against inappropriate development in the Green Belt as set out in para 1 of Circular 14/84, the proposed alternative uses would not conserve or enhance the biodiversity features of the site but would cause significant harm to the land which is adjacent Carlton Marsh Reserve.
- 16.5 There would additionally be harm to visual amenity and nuisance due to the close proximity of residential dwellings but this may in principle be mitigated with comprehensive mitigation schemes.
- 16.6 Landfill may not be inappropriate development in the Green Belt if it involves the filling in of a significant void (policy M5 of the SYCC Structure Plan), and there will have been some need for landfill in the borough. However, there is no existing significant void which requires filling and the site is unlikely to have been identified as a site suitable to a need for waste disposal. Additionally, the importation of any wastes would introduce the risk of contaminants, ground pollution and water pollution via leachate and air pollution through landfill gas both to the site and the adjacent Carlton Marsh Nature Reserve which could have a significant negative effect on the biodiversity and ecology of the nature reserve and the site itself which is intended for recreation and open space.
- 16.7 All three of the proposed alternative uses would have no significant adverse effects in terms of Highways to the north of Shaw Lane only, but that access to the South of Shaw Lane would be unacceptable in Highways terms without including more land. In addition, whilst footpaths would be affected by

any development, there are legal procedures that enable footpaths to be stopped up or diverted.

- 16.8 The Local Planning Authority has assessed the material planning considerations for all the proposed appropriate alternative uses suggested by the Trustees and have determined that in considering the suggested alternative appropriate uses of B1 and B2 uses and landfill, very special circumstances do not exist and would not constitute alternative appropriate uses for this site as suggested by the landowner.
- 16.9 In respect of the extraction of fuel deposits it is considered that this constitute an alternative appropriate use. Mineral extraction is not an inappropriate use in the Green Belt and extraction of fuel deposits would additionally remove contaminated material and result in an overall improvement to the site. Although not mentioned in national or local policy as an appropriate use, mineral extraction is identified in the written justification of the adopted SY Structure Plan as being suitable for rural areas. The proposal would of necessity be limited in both scale and duration and would result in the removal of a potential polluting material. Any consent would be made subject to appropriate planning conditions limiting the timescale for the extraction period and requiring appropriate restoration and aftercare to recreation use which would enhance the site.
- 16.10 Although the quality of the restoration in terms of ecology or biodiversity may be no better than that provided by landfill, the landform would be more appropriate and the removal of the fuel deposit followed by suitable restoration and aftercare to recreation use, would also safeguard the biodiversity and ecology of the site and the adjacent nature reserve. The extraction of fuel would be in accordance with a number of policies of the SY Structure Plan and the Circulars on Green Belts.
- 16.11 Taking all the above into account, it is considered that this could constitute very special circumstances to satisfy Circular 14/84 and 42/55 and which would allow the grant of permission. The extraction of fuel deposit would therefore constitute an appropriate alternative use.

#### 17.0 Other Possible Appropriate Alternative Development

- 17.1 In assessing whether any other uses not suggested by the Landowner are considered to be Appropriate Alternative Development, the Local Planning Authority must consider any relevant material planning considerations. The SY Structure Plan allocates the land as Green Belt land. The DOE and MHLG Circulars and the approved South Yorkshire Structure Plan identifies agriculture sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area buildings for agriculture and forestry as being appropriate uses. As such many uses including but not limited to: shops, financial and professional institutions, food and drink establishments, hotels and many other commercial, residential, and industrial uses, are inappropriate development in the Green Belt and would require very special

circumstances to be allow consent to be granted. Additionally, some weight would be given to the emerging Barnsley Urban Area Local Plan (Adopted 14 May 1986), which allocated the site for Environmental Improvement and Recreation. Taking into account these material planning considerations, plus the fact that the land is adjacent to the designated Carlton Marsh Nature Reserve, whilst any other potential uses may not constitute inappropriate development in the Green Belt, in the opinion of the Local Planning Authority, the development of the site for any other use would not be acceptable due to the harm that would be caused to the biodiversity and ecology interests.

## 18.0 Recommendation

- 18.1 That the Head of Planning and Building Control issues an addendum to the S 17 Certificate confirming that if the land subject of the application for a Certificate of Appropriate Alternative Development were not acquired by the Barnsley Metropolitan Borough Council in exercising its Compulsory Purchase Powers, planning permission would **NOT** have been granted for any development other than for the extraction of fuel deposits.

## 19.0 **Proposed Conditions**

1. The development for which permission is hereby granted shall be begun within a period of 3 months from the date of this permission  
Reason: In the interests of visual amenity of the locality
2. Following completion of the fuel reclamation operation the site shall be restored in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority within 6 months of the date of the permission hereby approved. Thereafter the restoration of the site shall be implemented in accordance with the approved document.  
Reason: In the interests of visual amenity of the locality
3. The development, including the restoration of the site referred to in condition 2 above, shall be completed within a period of 3 years from the commencement of the development.  
Reason: In the interests of visual amenity of the locality
4. The use hereby approved shall be carried out only between the hours of 7.00am to 7:00pm on Mondays to Fridays 7:00am to 12:00 noon on Saturdays, and at no time on Sundays or Bank Holidays.  
Reason: To safeguard the amenities of nearby residents
5. An equivalent continuous sound pressure level (Leq) of 80 dBA shall not be exceeded as measured on slow response over any 1 hour period at any part of the boundary of the site.

Reason: To safeguard the amenities of nearby residents

6. An equivalent continuous sound pressure level (Leq) of 75dBA shall not be exceeded as measured on slow response over any 3 hour period at any part of the boundary of the site.

Reason: To safeguard the amenities of nearby residents

7. An equivalent continuous sound pressure level (Leq) of 68dBA shall not be exceeded as measured on slow response over the full working day, 7:00 am to 7:00 pm at any part of the boundary of the site.

Reason: To safeguard the amenities of nearby residents

8. All reasonable measures shall be taken to control dust emissions, and main haul roads shall be sprayed with water during periods of dry weather, to the satisfaction of the Local Planning Authority.

Reason: In the interests of amenity.

9. Wheel cleaning facilities shall be installed within the confines of the site and all vehicles shall be routed through them before entering the public highway.

Reason : In the interests of highway safety

10. There shall be no excavations within 3 metres of any watercourse, public foul sewer or surface water sewer which crosses or adjoins the site without the prior written consent of the Local Planning Authority.

Reason: To safeguard the proposer drainage of the area

## 20.0 Background Papers

DoE Circular 14/84 Green Belts

MHLG Circular 42/55

1955 County Borough of Barnsley Development Plan

South Yorkshire County Council Structure Plan and Written Statement )  
adopted 19 December 1979

Barnsley Urban Area Local Plan ( adopted 14 May 1986)

Appendix 1 Photographs of the Site

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Date: 23<sup>rd</sup> February 2016