UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2017] UKUT 0081 (LC)

Case No: DET/115/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – PLANNING PERMISSION – certificate of appropriate alternative development – compulsory purchase of former railway land – whether planning permission would have been granted for change of use of former operational building(s) said to be in Green Belt – conditions to be attached to agreed scrap yard and fuel recovery uses – ss. 17, 18 Land Compensation Act 1961 – appeal allowed

IN THE MATTER OF AN APPEAL

UNDER SECTION 18, LAND COMPENSATION ACT 1961

BETWEEN:

TRUSTEES OF THE BOULDER BRIDGE LANE TRUST **Appe**

and

BARNSLEY METROPOLITAN BOROUGH COUNCIL **Respo**

Re: Land at Boulder Bridge Lane,

Carlton

Barnsley

Before: Martin Rodger QC, Deputy Chamber President and Mr A J Trott FRICS

on

24 November 2016

Manchester Civil Justice Centre

Richard Langham, instructed by Mr C Meynell, for the appellants

Martin Carter, instructed by the Legal and Governance Directorate of Barnsley MBC, for the respondent

The following cases were referred to in argument:

Fletcher v Secretary of State [2000] 2 AC 307

Jelson Ltd v Minister of Housing and Local Government [1970] 1 QB 243

Grampian Regional Council v Secretary of State for Scotland [1983] 1 WLR 1340

Introduction

1.
This is an appeal under section 18 of the Land Compensation Act 1961 (“the 1961 Act”) by the Trustees of the Boulder Bridge Lane Trust (“the Trustees”) against a negative certificate of

appropriate alternative development (“CAAD”) issued by Barnsley Metropolitan Borough Council (“the Council”) on 29 October 2015.

2.
The background to the appeal is the Metropolitan Borough of Barnsley (Carlton) (Land Reclamation) Compulsory Purchase Order (“the CPO”) which was made by the Council on 9 December 1985 and confirmed by the Secretary of State for the Environment on 5 December 1986. The CPO gave the Council power to acquire 37 acres of vacant land at Boulder Bridge Lane, Carlton, which comprised former railway sidings, embankments and other disused land (“the appeal site”) for the purpose of carrying out improvements including grading, mounding, grassing, tree planting and ancillary works. The freehold interest in the appeal site was owned by the Trustees.

3.
The appeal site is an elongated area of land formerly at the junction of two railway lines. The site is approximately in the shape of the letter Y, with the base of the Y pointing south and the western limb being shorter than the eastern limb. The western boundary of the site is formed by an operational railway, while on the eastern side there is open land, now used as a nature reserve. The eastern limb was formerly a railway line, but the tracks have been removed. The land between the two limbs of the appeal site (but not forming part of it) is used as scrap yards. The shorter, western limb of the site terminates at its northern end where it meets Shaw Lane, which runs from west to east across through the scrap yards and across the route of the former railway. Shaw Lane is raised on an embankment where it passes through the scrap yards and crossed the eastern limb of the appeal site over a bridge. To the north of Shaw Lane, adjoining the scrap yard, at least one operational railway building once stood on the appeal site but has subsequently been demolished.

4.
The Council took possession of the appeal site by entry on 2 February 1990 which is agreed to be the valuation date for the purposes of assessing compensation under the 1961 Act.

5.
Despite the lapse of more than 27 years no award of compensation has yet been made or agreed and freehold title to the land remains vested in the Trustees. The Council does not wish to rely on the expiry of the limitation period under section 9 of the Limitation Act 1980 and it referred the determination of compensation to the Tribunal on 15 April 2014.

6.
On 15 September 2015 the Trustees made an application to the Council for a CAAD under section 17 of the 1961 Act. In their application the Trustees stated that had it not been required under the CPO the appeal site could appropriately have been used for (i) light and general industrial purposes; (ii) the extraction of fuel deposits; and (iii) landfill.

7.
On 29 October 2015 the Council issued a negative certificate saying that in its opinion there was no development that “for the purposes of section 14 [of the 1961 Act] is appropriate alternative development in relation to the acquisition.”

8.
The Trustees appealed to the Tribunal against the Council’s CAAD on 9 November 2015. The basis of the appeal was that the Council had erred in law by failing to apply the law appropriate to a case

where the CPO had been made before 6 April 2012, and by relying on current local and national planning policies rather than those which applied when the CPO was published on 10 December 1985.

9.
The Council now accepts that it issued the negative certificate on a mistaken basis, in that it wrongly considered the application for the CAAD in the light of the planning policies and other circumstances current at the date of its decision rather than as they were in 1985 when the CPO was published.

10.
The Council was right to make this concession. In its current form section 17 of the 1961 Act was substituted by section 232(3) of the Localism Act 2011. The substituted section 17 applies only to compulsory purchase orders made or confirmed after 6 April 2012. As the CPO in this appeal was made before that date, section 17 applies to the Trustees' CAAD application in its original form.

11.
Mr Richard Langham of counsel appeared for the appellants and relied upon a witness statement from Mr Roy Thornton, a current trustee, and on expert evidence from Mr Paul Bedwell, MRTPI, a Director of Spawforths Planning Consultancy.

12.
Mr Martin Carter of counsel appeared for the Council and relied upon a witness statement from Mr Cliff Gorman, a local resident and former employee of British Rail who had worked for a time at the appeal site, and on expert evidence from Ms Elaine Ward, BSc MRTPI Major Applications Team Group Leader at the Council.

13.
It was agreed between the parties before the hearing that neither party would cross-examine the witnesses of fact or the expert planning witnesses, whose evidence was taken as read.

The parties' respective positions on the appeal

14.
The Council reconsidered the Trustees' CAAD application at a meeting of the Planning Regulatory Board on 23 February 2016 at which it accepted that it ought to have granted a certificate for recovery of fuel. It now accepts that, having regard to planning policies at the relevant date, it ought to have issued a certificate stating that the following three forms of development would have been granted planning permission on 10 December 1985:

(i)
The recovery of fuel on that part of the appeal site south of Shaw Lane to the extent that it removed contaminants, subject to 10 conditions set out in the report of the Council's Head of Planning and Building Control.

(ii)
The deposit of inert waste following the recovery of fuel followed by restoration to an appropriate Green Belt use on those parts of the appeal site not proposed to be allocated in the 1983 draft of the Barnsley Urban Area Plan ("the 1983 draft plan") for use as scrap yards. Such permission would have related only to the filling of voids created by fuel recovery and would not have permitted any raised land levels. The permission would have been subject to conditions designed to protect the amenity of local residents and the adjoining local nature reserve to the east known as Carlton Marsh.

(iii)
The use of the western part of the appeal site for scrap yard use in accordance with the proposed allocation under policy I7 of the 1983 draft plan (“the I7 area”).

15.
The Trustees contend that planning permission would also have been granted on 10 December 1985 for the commercial use of existing buildings located on the appeal site to the north of Shaw Lane. The Council denies that such permission would have been granted. It says that the number and condition of the buildings on the land in 1985 is unclear; it accepts that there was at least one building, but not that it was fit for re-use. Any buildings would have been ancillary to the then railway undertaker’s operational use and could not have been put to commercial use without planning permission. Such planning permission would have been refused given the location of the building(s) in the Green Belt and the planning policies which therefore applied.

16.
By the date of the hearing there was a substantial measure of agreement between the parties on all issues apart from the possible commercial re-use of the former railway undertaker’s building(s) north of Shaw Lane. In respect of the other classes of development which, either immediately or at a future time, would have been appropriate for the appeal site had it not been compulsorily acquired by the Council the parties agreed the following:

(i)
Light or general industrial uses were not appropriate alternative uses.

(ii)
The recovery of fuel (being coke and low-quality coal which had been imported onto the appeal site and used as ballast for the operational railway and sidings), and the subsequent progressive restoration of the land and its after use for informal recreation were appropriate alternative uses.

(iii)
The I7 area could appropriately be used as a scrap yard.

17.
The parties agree that any planning permission for the agreed uses would have been granted subject to conditions. A significant number of these conditions were agreed after the hearing, including all the conditions relating to the I7 area, but several remain outstanding and require determination by the Tribunal.

18.
The remaining issues are:

(i)
whether the building(s) to the north of Shaw Lane could have been appropriately used for commercial purposes and, if so, subject to what conditions; and

(ii) any additional conditions subject to which the agreed alternative uses would have been permitted.

Issue (i): the re-use of former statutory (railway) undertaker’s building(s)

19.
From the evidence of Mr Gorman and Mr Thornton, including photographic evidence, we are satisfied that there was at least one single-storey building located on the appeal site on 10 December 1985.

Pedestrian access could be obtained by steps leading down from the north side of Shaw Lane and vehicular access from a road which ran along the line of the disused railway line under Shaw Lane bridge. Mr Gorman said that this building was approximately 12-15m x 3m. Our own measurements from the 1:2,500 scale CPO reference plan suggests a slightly smaller size of 11m x 3m. A second, smaller, building is shown on that plan to the north of the main building but there are no corroborative photographs or witness testimony concerning it and we are not satisfied that it remained standing in December 1985 and therefore disregard it.

20.
The building was apparently used as offices and associated ancillary uses such as a canteen, changing and toilet facilities. Mr Gorman had visited the building to collect his wages until the early 1980s and described the use as a “motive power depot offices”. The condition of the building in December 1985 is not known but there is some evidence that it was empty (it was described as “abandoned” on the back of a contemporary photograph) and had been, and continued to be, vandalised. It is agreed that the building had been demolished by the valuation date (2 February 1990).

21.
The dispute between the parties is over whether the building was in the Green Belt in December 1985. The Trustees say that it was not in the Green Belt because the South Yorkshire Structure Plan adopted in 1981 did not define the inner limits of the Green Belt but only its general outer limits. The adopted local plan at that time was the West Riding Council Development Plan Town Map for Cudworth & Grimethorpe, 1972 which excluded this part of the appeal site from the Green Belt.

22.
The Council says that the 1981 Structure Plan determined the general extent of the Green Belt and that the Key Diagram showed that the appeal site came within it (Policy V15). The inner boundary of the Green Belt was defined in local plans and the 1983 draft plan (which was the most recent draft available in December 1985) showed the appeal site (excluding that part of it designated as site I7) as being within the Green Belt (proposals Map 2 and Policy E2).

23.
The boundary of the Green Belt shown in the 1983 draft plan as it affected the building cannot be determined precisely. The building is not shown beneath the stippling used to designate the Green Belt and the large scale of the plan prevents sufficiently accurate measurements being taken.

24.
There is no dispute that putting the building to a commercial use would require planning permission and that this would be regarded as a non-Green Belt use. The Council say that permission would not have been granted since it would have contravened Green Belt Policy E3 of the 1983 draft plan and Policy V18 of the Structure Plan. The Trustees argue that the alternative to the grant of planning permission for a commercial use would have been the continuing dereliction of the building in an area designated in the 1983 draft plan as an environmental improvement area. Mr Langham accepted that putting such a building to a non-Green Belt use would usually be regarded as inappropriate development. But he submitted that the circumstances of this case were sufficiently special to justify the grant of planning permission for the change of use of the building. For that reason planning permission would have been likely to be granted whether or not the building was in the Green Belt.

25.
Mr Carter submitted that such an argument could be used by any owner of a redundant building in the Green Belt. But he accepted, in answer to questions from the Tribunal, that the Council would

have found it very difficult to resist Mr Langham's proposition that very special circumstances existed where the alternative to a change of use of the existing building to a commercial use was that it would have remained derelict and unused.

26.
Mr Carter's concession on this point was, in our view, correctly made. Although it is not possible to determine with certainty the precise boundaries of the Green Belt in this location it seems probable that they were intended to follow the boundaries of the statutory undertaker's former freehold ownership which included the existing building. But there would be no benefit to either the Green Belt designation or to the proposals for environmental improvement to allow the building to fall into dereliction because it could not be used for any commercial purpose unconnected with the statutory undertaker's (railway) use. It was not suggested that the building could be used for one of the Green Belt purposes listed in the Structure Plan (V18) and 1983 draft plan (E3) policies. In our judgment planning permission would have been granted in December 1985 for the material change of use of the former statutory undertaker's building to offices and other uses (see paragraphs 48 to 52 below).

Issue (ii): conditions

27.
The classes of development agreed to be appropriate for the appeal site as at 10 December 1985 (see paragraph 14 above) and the commercial use of the existing building would have been granted planning permission subject to conditions. Many of those conditions have been agreed and are reproduced in the attached CAAD, but several remain disputed and these are considered below.

Fuel recovery and deposit of waste

(a) Restoration period

28.
The Trustees submitted that the condition for restoration of the site following fuel recovery would have required completion within five years of the grant of planning permission since it would take three years to recover the fuel and landfill could not be completed immediately thereafter. There was nothing objectionable about a five year period and the Council's landfill operations at nearby Cudworth North continued for many years (said by Ms Ward to be between 1979 and 1993).

29.
The Council submitted that restoration would have been required within three years. This was the period specified in condition 3 of a planning permission (B/86/0334/BA) granted by the Council on 13 November 1986 for the proposed reclamation of fuel by surface working and subsequent restoration of the appeal site. The Council said that fuel recovery and landfill processes could take place simultaneously rather than sequentially as suggested by the Trustees.

30.
In considering the conditions that would have been imposed upon a planning permission for fuel recovery and the subsequent deposit of waste the parties have generally adopted the conditions that were contained in planning permission B/86/0334/BA. But that development, as Ms Ward points out in her report, did not require landfill as a method of restoration. Ms Ward states that:

"The restoration of the site following extraction of fuel deposits under B/86/0334/BA was not to restore the land to its original appearance, but to restore it to a recreational use with additional excavation to create [a] lake."

In our opinion a period of five years for the completion of the development, including the

restoration of the site by landfill, would have been regarded as reasonable and should be included in the certificate.

(b) Type of waste to be deposited

31. The Trustees submitted that the relevant condition should have provided that only “inert waste” should be deposited. Mr Bedwell gave two examples of this expression being used in the contemporary grant of planning permission for the tipping of builder’s waste and the reclamation of land for agricultural purposes at Bleach Croft Farm, Cudworth, Barnsley. Planning permissions B/80/2204/CU granted in 1981 and B/83/1367/CU in 1984 contained conditions limiting the permitted tipping to “builders waste or other inert material”.

32. The Council submitted that the relevant condition should refer to “clean inert waste” to avoid the tipping of contaminated material. In the parties’ position statement on planning conditions the Council stated:

“Whilst it is accepted that the word ‘clean’ would not have been applied at that time [1985], the concept of clean waste would not have been meaningless and serves the purpose of ensuring that the inert waste is not from a contaminated source given the proximity of a nature reserve.”

Ms Ward said that the risk of potential negative effects upon the adjoining nature reserve due to the possible introduction of contaminated material would have been a material consideration when deciding whether or not to grant planning permission.

33. In our judgment the matter is settled by the Council’s concession that a planning permission granted in 1985 would not have qualified the expression “inert material” by the adjective “clean”. This is supported by Mr Bedwell’s reference to two contemporary planning permissions (albeit of the same site) where no such qualification was made and the absence of any examples where it had been included. In any event the word “inert” means without active chemical properties; a definition which goes at least some way to meeting Ms Ward’s point about the possible deposit of contaminated material. We prefer the Trustees’ wording.

(c) Scheme of restoration

34. The disputed condition requires that:

“Restoration shall be carried out progressively in accordance with a scheme to be submitted and approved in writing before development commences and no new phase of tipping shall be commenced prior to the previous phase being made available for landscaping.”

The words in italics were proposed by the Council and opposed by the Trustees who referred to planning permission B/88/0925/RO, granted in 1989, for the landfill of a site at Cudworth North junction (a short distance to the north of the appeal site) for the deposit of household and commercial waste and which contained the above condition without the additional words.

35. The Council offered no justification of the additional words although in paragraph 7.7 of her supplementary report Ms Ward referred to the need for “a suitable restoration scheme”. Condition 2 of planning permission B/86/0334/BA provided for the restoration of the appeal site following the completion of fuel reclamation “in accordance with the scheme shown on the approved plan to the satisfaction of the Local Planning Authority.” In a section 52 agreement dated 13 November 1986

entered into in consideration of the grant of permission B/86/0334/BA, the developer agreed “to carry out and complete restoration of the land referred to in Condition Number 2… in accordance with the Specification of Restoration Works prepared by the Council and produced at Appendix I to this Agreement.” That specification was a detailed six page document covering 24 subject headings including phasing and progressive restoration. In our judgment the additional words proposed by the Council reflect the requirement there would have been at the time for the Council to approve and control the restoration works and we consider their inclusion to be appropriate.

(d) The final levels of the restoration

36. The Trustees propose the following condition:

“The final levels of the restoration shall be those shown on Spawforths’ Plan 0000-00-06.”

37. The Council does not accept the restoration levels proposed by Mr Bedwell of Spawforths. His plan, and the associated cross-sections, show proposed landfill on today’s topography which is itself a restored landscape following the implementation of planning permission B/86/0334/BA and the extraction of fuel. Mr Bedwell did not provide the original land levels prior to fuel extraction in the late 1980s and there is no evidence, other than Mr Gorman’s photographs, of how the landscape looked prior to extraction. The photographs show a relatively flat man-made plateau raised above the surrounding landscape. The Council argued that there was therefore no justification for the proposed level of landfill.

38. The Trustees submitted that there is nothing wrong with the restoration levels proposed by Mr Bedwell and that the Council would have had no proper grounds for refusing planning permission for their implementation in December 1985.

39. The specification of restoration works attached to the November 1986 section 52 agreement allowed backfilling to the final levels shown on plans and sections attached but these were not submitted in evidence and there is therefore nothing to show what the final levels of restoration were intended to be. The Council submitted that any planning permission for fuel extraction followed by restoration would not have allowed landfill to prejudice the openness of the site. The raising of the land above pre-existing levels would not have been acceptable and Policy M5 of the 1981 Structure Plan stated that “most after-uses require restoration to the original ground level.” In its amended statement of case the Council said that planning permission for the deposit of inert waste would only have been granted subject to a condition that infilling would bring the land back to the levels present on site prior to the recovery of fuel.

40. As Mr Langham identified, site levels prior to the excavation of fuel under the 1986 planning permission are not known and the Council’s proposed condition is effectively meaningless. Fuel extraction ended prematurely and Mr Bedwell referred to what appeared to be a reduced restoration scheme produced by the Council in 1988. He considered that the land remained essentially as it had been after the cessation of fuel recovery and reflected minimal restoration.

41. We accept the Trustees submission that the proposed contours of the appeal site shown in Mr Bedwell’s plans and sections at Appendix 15 to his rebuttal report are based upon reasonable assumptions about the fuel recovery and limited restoration that actually took place and would have been acceptable to the local planning authority in December 1985. We therefore adopt the Trustees’ proposed condition.

(e) Detailed conditions that may not affect value

42. The Council proposed five further conditions dealing with the control of the environmental effects of the proposed development and the scheme of restoration. In summary the conditions would have:

(i) imposed a time limit of three months for the commencement of development;

(ii) required control of dust emissions by spraying roads with water in dry weather;

(iii) provided for wheel cleaning facilities;

(iv) required approval for the details of the restoration scheme; and

(v) required the approval of a revised restoration scheme in the event the whole site was not worked or restored in accordance with the approved scheme.

43. Mr Langham submitted that these conditions were inappropriate in a section 17 certificate because they did not affect value or enable a specific cost to be identified. He relied on the Government's "Guidance on Compulsory Purchase Process etc" issued on 29 October 2015 paragraph 230 of which states:

"If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such [as] approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so."

44. This ministerial guidance was issued after the amendments to section 17 of the 1961 Act introduced by the Localism Act 2011 had come into effect. Those amendments made an important change to the way in which local planning authorities consider whether it is appropriate to attach conditions to a positive CAAD. Under section 17(5)(b)(i) as amended, a positive certificate must also "give a general indication" of any conditions to which planning permission for development could reasonably have been expected to be subject. The previous provisions which apply in this appeal, state at section 17(5) that where planning permission would have been granted for one or more classes of development specified in the CAAD but only subject to conditions "the certificate shall specify those conditions". So the requirement of the original statutory wording is for something specific rather than just a general indication of what they might be.

45. The first three conditions proposed by the Council conform to the requirements of section 17 as they apply in this appeal and reflect the conditions imposed in respect of the use of the appeal site in permission B/86/0334/BA. They are also capable, at least to some extent, of having an effect on the value of the land acquired. It should not be forgotten that the sole purpose of a CAAD is as an aid to valuation; even in its original form section 17 provides no justification for the inclusion of conditions which have no effect on value.

46. The fourth condition, which requires approval of a detailed restoration scheme, should provide for the final contours of the scheme to be those shown on Spawforths' Plan 000-00-06.

47. The fifth condition, which requires a revised restoration scheme to be submitted and approved in the event that the whole restoration scheme does not proceed, was not a condition in planning permission B/86/0334/BA. The Council said that the proposed condition uses similar wording to that

used in “other permissions at that time” but it did not give any examples. It is not a condition that is referred to in terms by Ms Ward. We do not consider that this is a condition to which planning permission would have been made subject in December 1985.

The re-use of the existing building

48. The Trustees want to limit the use of the former railway building to uses within Classes II-IV of the Town and Country Planning (Use Classes) Order 1972, with Class IV use being limited to the hours of 0700-1900 on weekdays, 0700 -1200 on Saturdays and no such use on Sundays or bank holidays. The Council wants to limit the use to just Class II with similar time limits to those proposed by the Trustees.

49. The schedule to the Use Classes Order 1972 defines the relevant classes of development as:

“Class II – use as an office for any purpose

Class III – use as a light industrial building for any purpose

Class IV – use as a general industrial building for any purpose”.

50. A light industrial building is “an industrial building (not being a special industrial building) in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”

51. A general industrial building is “an industrial building other than a light industrial building or a special industrial building.”

52. The Council relied on paragraphs 7.0, 7.7 and 7.8 of Ms Ward’s expert report to support their proposed condition for the use of the building but that section of her report is concerned with the proposed light and general industrial use of the whole appeal site as described in the Trustees’ original CAAD application dated 15 September 2015 whereas this condition is only concerned with the use of a small building at the very edge of the site adjoining the scrap yards. Ms Ward states at paragraph 7.7 of her report that “the Structure Plan acknowledges that small sites could be made available for purely local [industrial] needs].” Given the location of the building we are satisfied that planning permission would have been granted for the uses identified by the Trustees and subject to their proposed condition on operating hours. We see no need to limit the hours of operation of either a class II (office) or class III (light industrial) use.

Determination

53. We allow the appeal and cancel the section 17 certificate issued by the Council on 29 October 2015, substituting in its place the certificate at Appendix A.

54. As far as costs are concerned both parties invited us to order that the Council should pay the Trustees’ costs of the section 18 appeal and that the costs of the application under section 17 should be taken into account in determining the amount of compensation to which the Trustees are entitled. We do not consider that approach is correct. Section 17(9A) of the 1961 Act (which continues to apply where a compulsory purchase order was confirmed before 6 April 2012) provides that:

"In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a

certificate under this section (including expenses incurred in connection with an appeal under section 18 of this Act where any of the issues on the appeal are determined in his favour)."

Moreover, rule 10(2) of the Tribunals 2010 Rules (as amended) restricts the types of case in which the Tribunal may make orders for costs to those identified in rule 10(6) (which include “proceedings for compensation for compulsory purchase” but not, expressly at least, appeals under section 18). We were not addressed on the scope of section 10 but we take the view that the appropriate treatment of costs in this case is under section 17(9A).

55. We therefore direct that, the appeal having been determined in the Trustees’ favour, their expenses reasonably incurred in connection with the section 17 application and the appeal are to be taken into account as part of the compensation payable by the Council as yet to be agreed or determined.

Martin Rodger QC

Deputy Chamber President

A J Trott FRICS

Member

14 March 2017

APPENDIX A

LAND COMPENSATION ACT 1961

CERTIFICATE OF APPROPRIATE ALTERNATIVE DEVELOPMENT

LAND AT CARLTON MARSH, CARLTON

PURSUANT to the Tribunal’s powers under section 18 of the Land Compensation Act 1961 and for the reasons in its decision dated 14 March 2017:

(1) The certificate under section 17 of the Land Compensation Act 1961 issued by Barnsley Metropolitan Borough Council on 29 October 2015 is CANCELLED.

(2) It is CERTIFIED that if the said land had not been proposed to be acquired by Barnsley Metropolitan Borough Council using compulsory purchase powers, planning permission would have been granted for the development for which the land was proposed to be acquired and for development of the following classes subject to the conditions specified:

A **Fuel recovery and deposit of waste**

Conditions:

(i) 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.

(ii) The use hereby permitted shall be carried on only between the hours of 7.00am and 7.00 pm on weekdays 7.00 am to 12 noon on Saturdays and at no time on Sunday or bank holidays.

(iii) An equivalent continuous sound pressure level (leq) of 80 dBA shall not be exceeded as measured on slow response over any one hour period at any part of the boundary of the site.

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

(v) An equivalent continuous sound pressure level (leq) of 68 dBA shall not be exceeded as measured on slow response over only the full working day, 7.00 am to 7.00 pm at any part of the boundary of the site.

(vi) The development for which permission is hereby granted shall be begun within a period of three months from the date of this permission.

(vii) The development, including the restoration of the site, shall be completed within a period of five years from the commencement of the development.

(viii) Before any fuel is recovered from the site the approval of the local planning authority shall be obtained for a detailed restoration scheme for the site.

(ix) Restoration shall be carried out progressively in accordance with a scheme to be submitted and approved in writing before development commences and no new phase of tipping shall be commenced prior to the previous phase being made available for landscaping.

(x) The final levels of the restoration shall be those shown on Spawforths' Plan 0000-00-06. Other details of the restoration scheme shall include depths of subsoil, topsoil or soil making materials, surface grading, cultivation, seeding and tree planting, protection of existing vegetation, screen banks, measures to prevent pollution of dykes, maintenance and five year aftercare.

(xi) The only waste deposited shall be inert waste.

(xii) The after use shall be for informal recreation.

(xiii) 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.

(xiv) 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.

(B) **Scrap yard use of Site I7**

Conditions:

(i) No open burning of any materials shall be permitted on any part of the site at any time.

(ii) No work shall be carried out on the site (except for the movement into and out of the site by lorries whether laden or unladen) between 7.00 pm and 7.00 am each day and not at all on Sundays and bank holidays.

(iii) No vehicles or scrap shall be stored on the site above a height of four metres from natural ground level, with the exception of the parking and storage of double decker buses.

(iv) Details of a two metre high boundary wall around the site shall be submitted to the local planning authority for its approval. A wall shall be erected within two months in accordance with the approved scheme.

(v) No vehicular access to the site shall be taken from point A [as shown on the Access Plan at appendix 5 of the first statement of Paul Bedwell], being a point to the south of Shaw Lane and immediately east of the railway bridge which passes over it.

(C) Re-use of existing building

Conditions:

(i) No external storage shall take place.

(ii) Vehicular access shall be obtained only through the adjacent scrap yards.

(iii) The building may only be used for uses within Classes II-IV of the Town and Country Planning (Use Classes) Order 1972.

(iv) Any use with Class IV shall only be carried between the hours of 7.00 am and 7.00 pm on weekdays, 7.00am to 12 noon on Saturdays and at no time on Sundays or bank holidays.

Martin Rodger QC

Deputy Chamber President

A J Trott FRICS

Member

14 March 2017