IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

CUMBRIA COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

ENFORCEMENT NOTICE
REF ; EN/04/4001

LAND AT BORWICK RAILS, DEVONSHIRE ROAD, MILLOM, CUMBRIA

ISSUED BY CUMBRIA COUNTY COUNCIL

1. This Notice is issued by Cumbria County Council ("the Council"), because it appears to it that there has been a breach of planning control within paragraph (a) of Section 171A(1) of the above Act at the land described below. The Council considers that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Approximately 4000 square metres of land at Borwick Rails, on the north side of Devonshire Road, Millom shown edged red on the attached drawing no. EN/04/4001/A.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission the **change of use** of the land by the **deposit and storage of waste materials,** mostly drinks bottles, panes of glass, broken glass, food cans, and timber pallets; **the placing of storage containers** which are mostly old articulated lorry trailers and bodies, plastic drums and plastic containers (intermediate bulk carriers – IBCs) and their wire framed boxes and **use as a scrapyard** including a scrap car, a scrap van, a scrap JCB loading shovel, supermarket trolleys and other scrap metal.

An informative sketch showing the approximate layout of the site is shown on the attached drawing no. EN/04/4001/B

4. REASONS FOR ISSUING THIS NOTICE

a) It appears to the County Council that the above breach of planning control has occurred within the last ten years.

b) The uses of the land are unsightly and visually intrusive and by their nature involve noisy activities. The site is in a prominent location and is near to residential properties, a Youth Hostel and a hotel. The unauthorised uses have caused unacceptable disturbance to local amenity because of noise and visual impact, and potentially vermin and pests.

c) The unauthorised uses are likely to have adverse impacts on tourism facilities and on regeneration in the immediate locality of the site.

d) The site is adjacent to the Duddon Estuary Special Protection Area, Ramsar site and Site of Special Scientific Interest and to the Millom Ironworks Local Nature Reserve. The site is within a consultation zone for the SSSI that has been notified to the planning authority by English Nature. Most of the land within these notified sites is also within the Morecambe Bay candidate Special Area of Conservation.

On the basis of the information that is available and the manner in which the development has been carried out it is considered that the uses are likely to have unacceptable adverse effects on the Ramsar wildlife site, the Site of Special Scientific Interest and the Local Nature Reserve. This is because of the risks to and disturbance of Natterjack Toads within the Enforcement Notice site and the spread of litter problems, mostly broken bottles, from the Enforcement Notice site onto land within the wildlife sites.

In addition there is the potential for eventual contamination of the wildlife sites by liquid wastes draining from, or being washed out of, bottles, cans and scrap vehicles.

The Natterjack Toad is a European protected species which is specifically included in the citation for the Duddon Estuary Ramsar site and, together with this Millom Ironworks location, is included in the citation for the SSSI.

e) The unauthorised development conflicts with Structure Plan Policies 18, 21, 22, 60 and 61; Proposed Changes Deposit Structure Plan Policies E 34 and R 49 and Minerals and Waste Local Plan Policies 15, 16, 18, 23 and 52 and First Deposit Copeland Local Plan Policy ENV 14. These policies are set out in Appendix 1.

f) It is not considered that a planning permission could resolve these matters because planning conditions could not overcome the objections to these uses on this open and unsecured site nor remedy the injury to amenity.

5. WHAT YOU ARE REQUIRED TO DO

a) Cease the deposit of any additional waste materials or containers on the land.

b) Remove from the land :-

(i) the bottles and broken glass stored in the bays between lorry bodies,

(ii) the three lorry trailers which are not resting directly on the ground together with their contents

(iii) all of the supermarket trolleys, pallets, sheets of corrugated iron and wire framed baskets

(iv) all of the individual pieces of waste or piles of waste located on bare compacted ground,

(v) the plastic drums and other plastic containers that are not resting directly on the ground or are supported by structures with surface areas less than 25cm x 25cm resting on the ground, and

(vi) the scrap car, van and loading shovel.

c) Remove all of the remaining deposited and stored waste materials located on soft ground or within vegetated areas, the other four lorry trailer bodies and other containers from the land.

d) In carrying out works in connection with (b) and (c) above to adopt the measures set out in Appendix 2 so as to avoid disturbing any Japanese Knotweed on the land.

e) In carrying out works in connection with (b) and (c) above to adopt the measures set out in Appendix 3 so as to minimise risk to Natterjack Toads.

6. TIME FOR COMPLIANCE

a) By the expiry of one day after this Notice takes effect.

b) Within six weeks of the date this Notice takes effect (ie by 11th March 2005).

c) Within two weeks starting from the 1st May 2005.

7. WHEN THIS NOTICE TAKES EFFECT: 28th day of January 2005

Dated the 23rd day of December 2004

B Walker
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B. Walker
Head of Legal Services

The Courts
Carlisle
CA3 8LZ

YOUR RIGHT OF APPEAL:

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before 27th January 2005. The enclosed booklet "Enforcement Appeals – A Guide to Procedure" sets out your rights. Read it carefully. You may use the enclosed appeal forms. One is for you to send to the Secretary of State if you decide to appeal. The other is for you to keep as a duplicate for your own records. You should also send the Secretary of State the spare copy of this enforcement notice which is enclosed.

WHAT HAPPENS IF YOU DO NOT APPEAL:

If you do not appeal against this Enforcement Notice, it will take effect on 27th January 2005 and you must then ensure that the required steps for complying with it, for which you are responsible, are taken within the periods specified in the notice. Failure to comply with an

enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

STRUCTURE PLAN

Policy 18 – Nature Conservation Interests of International Importance

Development and other land use changes which are detrimental to nature conservation interests of international importance will not normally be permitted. Exceptions will be made only:

(a) where an overriding public interest can be demonstrated to outweigh the international conservation interest, and

(b) where the need for the development or land use change cannot be met in other locations where they would be less damaging or by reasonable alternative means.

Policy 21 – Hazards and Emissions

Development will not be permitted which, through emissions to land, water or the atmosphere or by noise, vibration or risk of accident, exposes workers or the public to undue hazards, nuisance or has an effect on health, or has a significant adverse effect on the natural environment.

Policy 22 – Water Pollution

Development and other land use changes will not be permitted which results in the discharge of inadequately treated sewage or effluents which have a damaging impact on the water quality of water courses, groundwater, lakes or sea.

Policy 60 – Disposal of Waste

Adequate sites should be provided for the disposal of wastes arisings within the County. Planning permission for waste disposal facilities will not be granted where the proposal has adverse effects on local communities or on the environment, or where the infill and restoration of existing sites would be seriously prejudiced.

Policy 61 – Recycling of Waste

Proposals for developments which minimise waste production or which recycle, reuse or otherwise utilise waste materials will be favourably considered in appropriate locations subject to the criteria in Policy 60.

PROPOSED CHANGES DEPOSIT STRUCTURE PLAN POLICIES

Policy E34: Areas and features of national and international conservation importance

Development and other land use changes in areas or features of national or international conservation importance, or within their settings, and that are detrimental to their characteristics will not be permitted. Exceptions will only be made where 1. there is an over-riding need for development required to meet local infrastructure needs which cannot be located elsewhere and which is sited to minimise environmental impacts and meets high standards of design, and 2. in the case of nature conservation, where an overriding public interest can be demonstrated to outweigh the international conservation interest or, in the case of European Priority habitats or

species, where there are human health or safety considerations or benefits of primary importance to the environment.

Where development is permitted, mitigation should be provided, where appropriate. Areas and features of international or national importance are defined as:

- World Heritage Sites recognised by the World Heritage Committee of UNESCO
- National Parks
- . Areas of Outstanding Natural Beauty (AONB)
- Special Protection Areas (SPAs)
- . Ramsar sites
- Special Areas of Conservation (SACs)
- . Limestone Pavements protected by Order
- . National Nature Reserves
- . Sites of Special Scientific Interest (SSSI)
- . Statutory protected species
- . Buildings or groups of buildings listed as of Grade 1 or Grade II* architectural or historic merit
- . Parks or gardens listed as Grade I or Grade II* in the Register of Parks and Gardens of Special Historic Interest

Policy R49 : Waste management
recovery facilities

New facilities will be required to meet Government and European targets for the increased recovery and recycling of industrial, commercial and municipal solid waste and for the reduction of biodegradable waste disposed of to landfill. , namely: Therefore, there is a presumption in favour of:

1. Materials recovery and waste treatment facilities
1. Large scale recovery and treatment facilities (designed to handle a range of waste from a wide area) to be located on existing industrial/employment sites or previously developed land close to areas of major waste arising subject to there being no significant adverse effects on landscape character, conservation interests, environmental infrastructure, transport and local communities; and measures being included to reduce any adverse impact. land not being designated for other purpose (eg Nature Reserve).
Sites should wherever possible be rail or port linked. Priority will be given to sites for municipal solid waste in the vicinity of the following centres:

a) Carlisle
b) Penrith
c) Workington
d) Whitehaven
e) Kendal
f) Barrow in Furness

2. Small scale recovery facilities (designed to handle a range of local waste arisings locally) to be located in the vicinity in which waste arises . Priority will be given to new facilities serving the key service centres as defined in Policy ST25 or larger settlements towns in the National Park.

2. Waste collection points

3. New civic amenity sites, mini-recycling centres and other collection and separation points for municipal waste provided for the convenience of local residents and businesses to be located throughout the county.

MINERALS AND WASTE LOCAL PLAN

POLICY 15

Proposals for minerals and waste development which would have an adverse effect on the nature conservation interests of a site of international nature conservation importance (either individually or in combination with other plans or projects), will not be permitted unless:

i. there is no alternative solution; and
ii. there are imperative reasons of overriding public interest for the development.

Where the site hosts a priority natural habitat type and/or a priority species, as listed in the EC Habitats Directive, the proposal will only be permitted if required for reasons of human health or public safety or for beneficial consequences of primary importance for nature conservation.

POLICY 16

Proposals for minerals and waste development which would have an adverse effect on the nature conservation interests of a Site of Special Scientific Interest will not be permitted unless the harm caused to the value of those interests and the nature conservation value of the national network of such sites, is clearly outweighed by the need for, and/or benefits of, the development.

Where the site concerned is a National Nature Reserve or a site identified under the Nature Conservation Review or Geological Conservation Review, particular regard will be paid to the individual site's national importance.

POLICY 18

Proposals for minerals and waste development which would have an adverse effect on species protected by law will only be permitted where harm to the species can be avoided by reducing disturbance to a minimum or providing adequate alternative habitats or by other means.

POLICY 23

In assessing the extent to which proposals for minerals and waste development meet the social and economic needs of the County's population and help maintain rural communities, the following will be taken into account:

i. the number, type and duration of direct and indirect jobs to be generated or maintained and how many will be or are occupied by local people; and
ii. the opportunities for the development of skills of locally employed people; and
iii. the level and nature of investment in the local economy from wages and use of local businesses; and
iv. the impact on economic development initiatives and neighbouring businesses, including tourism.

POLICY 52

Proposals for S crapyards, Vehicle Dismantlers, Materials Recovery Facilities, Transfer and Storage Facilities to facilitate materials re-use and recycling will be permitted on industrial sites provided that they do not have an adverse impact on surrounding landuses and do not prejudice the overall development of the area.

FIRST DEPOSIT COPELAND LOCAL PLAN

POLICY ENV 14 : Development in the Coastal Zone

Development in the coastal zone must require a coastal location. Development will not be permitted in the coastal zone which would be likely to:

1. increase the risk of flooding, coastal erosion or instability through its impact on natural coastal process, or
2. prejudice the capacity of the coast to form a natural sea defence or adjust to changes in conditions without risk to life or property, or
3. increase the need for additional sea walls or other civil engineering works for coastal protection purposes except where necessary to protect existing investment (or achieve the Council's strategic planning objectives), or be prejudicial to local fisheries, or
4. have a detrimental impact on water quality, or
5. have an adverse effect on natural landscape character or be prejudicial to people's enjoyment and understanding thereof, or
6. have an adverse effect on areas of historic, conservation or wildlife importance.

APPENDIX 2
MEASURES TO MINIMISE DISTURBANCE TO JAPANESE KNOTWEED

To erect temporary fences or barriers around the clumps of Japanese Knotweed within the site prior to the removal of any materials in order to deter trafficking over the plants which could lead to their spread.

APPENDIX 3
MEASURES TO PROTECT NATTERJACK TOADS

These measures are split into two types – ones to be adopted during the hibernation season (1st December to mid- March) and ones for the period after they have emerged from hibernation.

The works that are required under 5 (b) are required to be carried out during the hibernation period for the toads. In these circumstances no mitigation measures are needed other than A below.

A) No contractor or individual shall undertake the work unless they have first been given instructions on how to identify a Natterjack Toad, on its protected status and on what to do and who to contact should a Natterjack Toad be found.

The works required under 5 (c) are required to be carried out when the toads have emerged from hibernation and are active and are intended, in particular, to aid the removal of young, non-breeding toads. In addition to (A) above the measures under (B) below are required to be adopted :-

B) During a period of at least one week immediately before the work is undertaken a minimum of one artificial night refuge shall be placed and left next to each of the trailer bodies and each pile of wastes.

For information, a typical artificial night refuge would comprise two shovel-fulls of sand topped by a piece of wood.

C) During this week immediately before the work is carried out a minimum of four separate night time searches for Natterjack Toads shall be undertaken and any toads that are found shall be removed.

D) The lorry bodies shall be lifted and removed and any Natterjacks Toads shall be removed.

E) The piles of waste shall be removed by hand and any Natterjack Toads shall be removed.

Note for information.

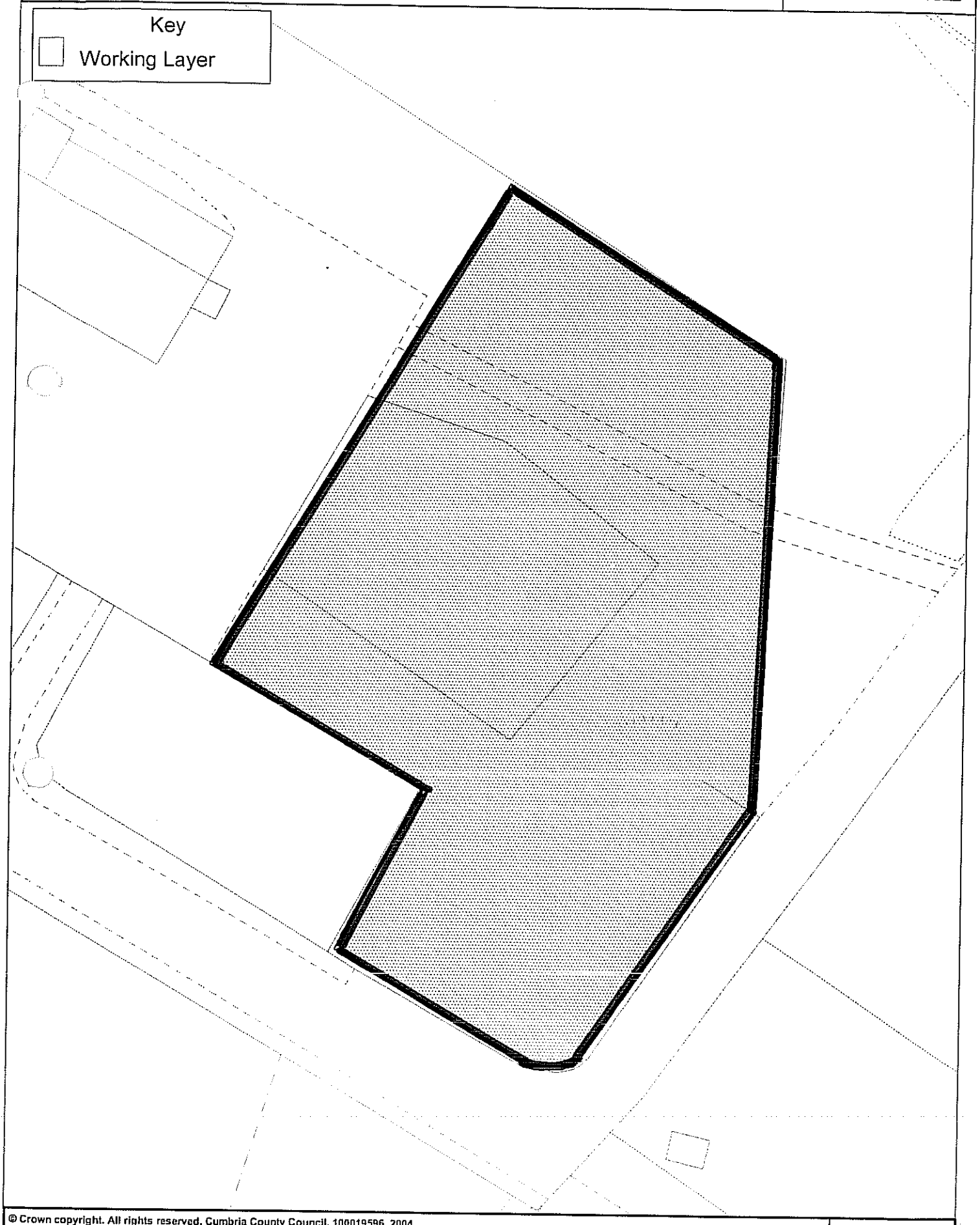
The works and measures set out in Appendix 3 may need to be licensed by DEFRA or

English Nature under the requirements of the Conservation (Natural Habitats etc) Regulations 1994 and they may need to be carried out under the supervision of an appropriately licensed person. The requirements of this Notice are in accordance with advice that has been obtained from English Nature and the Herpetological Conservation Trust. However, should the detailed toad protection measures set out in any licence that may be issued differ from this Notice's requirements then those of the licence would take precedence.

EN/04/4001/A Borwick Rails

Enforcement Notice site.

COUNTY COUNCIL



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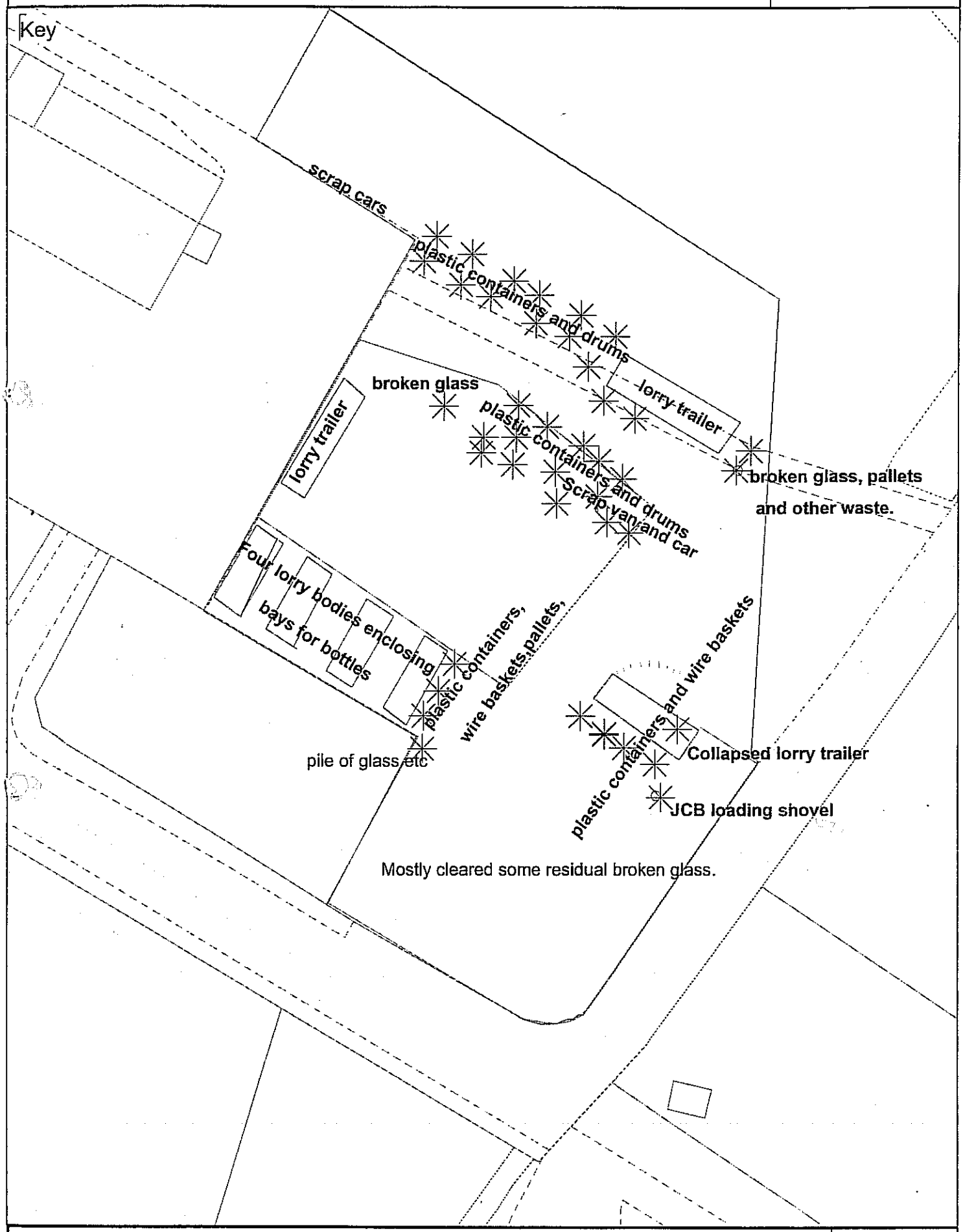
Scale
1:500

EN/04/4041/B BORWICK RAILS

Sketch layout at 9/12/04

COUNTY COUNCIL



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