



## Appeal Decision

Inquiry opened on 7 October 2014

Site visit made on 28 October 2014

**by Mrs KA Ellison BA, MPhil, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 03 June 2015**

---

**Appeal Ref: APP/X1355/A/11/2150277**

**Land Adj A692, Near Leadgate, Consett, Co Durham DH8 7SL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by UK Coal Mining Ltd against the decision of Durham County Council.
  - The application Ref 1/2007/1049 dated 11 December 2007 was refused by notice dated 18 February 2011.
  - The development proposed is for the surface mining of coal with restoration of the site to include woodland, species rich grassland and haymeadow, scrub, water features and agriculture.
- 

1. This decision supersedes that issued on 23 February 2012, which was quashed by order of the High Court.

### Decision

2. The appeal is allowed and planning permission is granted for the surface mining of coal with restoration of the site to include woodland, species rich grassland and haymeadow, scrub, water features and agriculture on land adjacent to the A692, near Leadgate, Consett in accordance with the terms of the application Ref 1/2007/1049 dated 11 December 2007, as amended, subject to the conditions in the Annex to this decision.

### Procedural Matters

#### *Pre-Inquiry Meeting*

3. A pre-inquiry meeting was held on 2 June 2014. A note of the meeting, along with an explanation of the standing of the Appellant, is set out at ID14. At the meeting, the Appellant proposed two amendments to the site boundary and corresponding amendments to the proposed limit of excavation. Having regard to the views expressed at the meeting and to the fact that the proposed amendments were minor in nature, I was satisfied that they would not prejudice the interests of other parties. I agreed that the amended plan should form the basis for the preparation of the Updated Environmental Statement (Updated ES) and for the redetermination of the appeal.

#### *The inquiry arrangements*

4. The inquiry sat for 12 days between 7 and 24 October 2014. It resumed on 24 November to discuss progress on the planning obligation (S106 Agreement).

The inquiry was closed on that day and a copy of the completed planning obligation was received on 16 January 2015. This obligation substitutes for the one provided in 2012 as part of the first inquiry.

5. An accompanied site visit took place on 28 October and I carried out a number of unaccompanied visits in and around the area prior to, during and shortly after the inquiry. In addition, a visit to an operational surface coal mining site at Potland Burn, Northumberland took place on 5 November.

#### *The appeal proposal*

6. As a consequence of the amendments, the main differences between the proposal as it now stands and that considered at the first inquiry are: the site boundary has been drawn back to some 254m from Douglas Terrace, with the excavation area being about 288m away; and access from the A692 would be by means of a priority right hand turn rather than a roundabout. In place of the roundabout, the Appellant proposes to transfer some of the restored site to a local wildlife group.
7. An amended Restoration Plan (Dwg no. UKC 176D03f) was submitted along with the Proofs of Evidence, which the Council confirmed it had had sufficient opportunity to consider. During the course of the appeal, a further change was proposed to amend the limit of excavation in the south west corner of Area B so as to exclude a spoil heap (Dwg UKC 176D51A). I have taken this into account in this decision.

#### *Rights of Way*

8. The proposal would require the temporary diversion of footpaths which cross the site. A separate Stopping Up Application was made in July 2014 (CD 55).

#### *Costs application*

9. The application by the Council for a partial award of costs is the subject of a separate decision.

#### *The status of the Appellant*

10. The UK Coal group of companies underwent a restructuring in July 2013, necessitated by a fire at its Daw Mill colliery earlier that year. The administrators completed a restructuring of the majority of the group's business and assets to a new company called UK Coal Production Limited and its trading subsidiaries, which include UK Coal Surface Mines Limited. As part of that process the Appellant, UK Coal Mining Ltd changed its name to Juniper (No.3) Limited and an indemnity and agency agreement was made to enable Juniper (No. 3) to pursue the appeal<sup>1</sup>. However, in the interests of clarity I agreed that the Appellant should continue to be referred to as UK Coal (UKC).

#### *Environmental Statement*

11. The Updated ES was submitted on 14 July 2014. Along with the original ES and the Bat Badger Survey Reports 2014 (ID16), these documents comprise the substantive ES. The ES provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required so that it meets the requirements of the relevant Regulations.

---

<sup>1</sup> Further detail is provided in ID14

### *The planning obligation (S106 Agreement)*

12. The matters addressed within the Agreement can be summarised as:

- with regard to the natural environment, arrangements for the transfer of an area of some 21ha (the Gifted Land) to a wildlife and conservation body, along with a commuted sum and funding for a ten year period, as well as a Habitat Management Plan to be secured by way of an agreement under s39 of the Wildlife and Countryside Act 1981. It also makes provision for the management of an area of adjacent woodland for a 15 year period and to protect trees planted as part of the restoration scheme for 40 years;
- on transport matters, it makes provision for access to the site from the A692 and identifies the haulage route to be used to access the A1(M);
- in relation to the local community, it sets out arrangements for a liaison committee and the management of a community fund generated at a rate of 10p for each tonne of coal extracted. It also makes clear that no minerals can be worked within that part of the original appeal site closest to Douglas Terrace, which was excluded from the area to be worked as a result of the amendments made in June 2014 (the Restricted Land);
- for the restoration scheme, it provides a guaranteed sum or cash bond to provide confidence that the restoration scheme would be completed. The monies would increase in stages from £1 million at Phase 1 to £3.65 million at Phase 5, stepping down again to £750,000 at Phase 8, reaching 0 by the end of the 15 year aftercare period, in order to ensure sufficient funds would be available to complete the restoration at any phase of the development;
- in relation to recreation, it provides for the creation of public rights of way across the land;
- with regard to employment, it sets out a series of measures related to the training and employment of local labour.

### **Main Issues**

13. I consider that the main issues in this appeal are:

- (i) the effects of the proposal on the environment, with particular reference to:
  - landscape character and visual impact
  - levels of amenity in the locality (for residents and others) especially with regard to outlook, dust and noise
  - other environmental effects, especially ecology, heritage assets, hydrology and traffic movements
- (ii) whether the proposal could be made environmentally acceptable by way of planning conditions or obligations
- (iii) if the proposal could not be made environmentally acceptable by such means, whether it would provide national, local or community benefits which would clearly outweigh the remaining adverse impacts.

## **Policy context**

### *The development plan*

14. The saved policies of the County Durham Minerals Local Plan (MLP) 2000 (CD 6) provide the starting point in this appeal. MLP Policy M7 sets out a presumption against proposals for the opencast mining of coal unless: (a) they are environmentally acceptable or can be made so; or (b) they provide local or community benefits which clearly outweigh the adverse impacts of the proposal. According to the judgement concerning the quashed decision, the proper interpretation of this policy requires the decision maker to carry out an assessment of whether the factors in M7(a) or (b) exist and then to make clear whether the negative presumption applies<sup>2</sup>.
15. The site is within an Area of High Landscape Value (AHLV), where MLP policy M23 requires consideration of the impact on the special character and quality of the landscape<sup>3</sup>. In addition, MLP policy M24 seeks to ensure that the adverse effect on local landscape character is kept to a minimum. MLP Policy M36 requires the incorporation of suitable mitigation measures so that potentially harmful impacts are reduced to an acceptable level.

### *The emerging local plan*

16. The County Durham Plan (CDP) was submitted for examination in April 2014. Reflecting the more recent national policy in the National Planning Policy Framework (NPPF), Policy 57 states that proposals should not have an unacceptable impact on the environment or on amenity and, in the event they cannot be made acceptable, they should provide benefits which clearly outweigh adverse impacts. With regard to landscape, policy 39 states that proposals should not cause significant harm to the character, quality or distinctiveness of the landscape. Proposals should have regard to the County Durham Landscape Strategy.
17. Under policy 14, the site would fall within the proposed North West Durham Green Belt. However, there was agreement that, in the event that the area was defined as Green Belt, the appeal proposal would not represent inappropriate development. The very few buildings required for the development would be on site for a relatively short period so that the proposal would have only a limited and temporary effect on openness. Moreover, it would not conflict with any of the purposes of the Green Belt, including that of safeguarding the countryside from encroachment. As such, I am satisfied that the proposal would not represent inappropriate development in the Green Belt.
18. In the period since the inquiry closed, the Inspector conducting the examination into the County Durham Plan submitted an interim report to the Council which identified serious issues as to its soundness, though not in relation to any of the draft policies identified as directly relevant to this appeal. At the time of this decision, the report is the subject of a Judicial review so there has, as yet, been no change in the policy context for this appeal. The situation remains that relevant development plan policies are set out in the Minerals Local Plan (MLP) 2000, but that NPPF and the County Durham Plan constitute material considerations.

---

<sup>2</sup> [2013] EWHC 2142, paragraph 10

<sup>3</sup> As defined by saved policy EN6 of the Derwentside Local Plan 1997

### *National policy*

19. Within NPPF, coal is identified as a mineral of local and national importance and one which is necessary to meet society's needs. Under the approach set out at NPPF paragraph 144, great weight is to be given to the benefits of the mineral extraction, there should be no unacceptable adverse impacts on the natural and historic environment, and account should be taken of cumulative impact. Noise, dust and particle emissions and any blasting vibrations should be controlled and provision should be made for restoration and aftercare at the earliest opportunity. Specifically in relation to coal, paragraph 149 states that permission should not be given for the extraction of coal unless the proposal is environmentally acceptable or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.
20. At paragraph 109, NPPF seeks to protect and enhance valued landscapes.
21. The Planning Practice Guidance (PPG) gives further advice as to assessing the environmental impacts of mineral extraction including in relation to noise, dust and restoration. It also states that the environmental impacts of coal extraction should be considered in the same way as for other minerals<sup>4</sup>.
22. The Council and Appellant were in general agreement that the correct approach under NPPF paragraph 149 was to assess whether this proposal is environmentally acceptable or could be made so. If not, there should then be an assessment of whether the benefits would clearly outweigh any residual harm. There was, however, some discussion at the inquiry as to the significance of the opening phrase of NPPF paragraph 149 ('permission should not be given ... unless'), particularly in the light of the phrase 'presumption against' used in the now superseded MPG<sup>3</sup> (as expressed in MLP policy M7). The Appellant contends that NPPF does not reserve a special negativity for coal. On the other hand, the Council points out that there is no similar policy approach in NPPF for any other type of development, although the approach is applied under certain circumstances such as in relation to National Parks, AONBs and designated heritage assets. LAON also made the point that this indicated that NPPF had taken a different policy approach to coal compared to other minerals.
23. To my mind, paragraph 149 should be understood in the context of the presumption in favour of sustainable development in paragraph 14 (that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits except where NPPF indicates development should be restricted). In effect, paragraph 149 makes clear that a different balance should be applied in relation to coal extraction, namely that the benefits should clearly outweigh the impacts. For these reasons, I agree that the effect of NPPF is to require the decision maker to establish whether the proposal is environmentally acceptable and, if not, to then assess whether the benefits would clearly outweigh any residual harm.
24. Two further points of interpretation should be noted.

---

<sup>4</sup> PPG Paragraph: 147 Reference ID: 27-147-20140306

<sup>5</sup> Minerals Planning Guidance 3 Coal mining and colliery spoil disposal, paragraph 8 stated: '*In applying the principles of sustainable development to coal extraction ... the Government believes there should normally be a presumption against development unless the proposal would meet the following tests ...*'

25. Firstly, the proposal consists of both the winning of coal and the restoration of the site. The adverse effects stem entirely from the first part of the proposal. However, the second part includes measures aimed at enhancement of landscape features and ecological elements as well as putting back most of what is there at present. For the avoidance of doubt, where an enhancement measure forms an integral part of the restoration scheme, such as additional footpaths or new hedgerows, I have treated it as part of the measures aimed at making the proposal environmentally acceptable. However there are other elements, such as the arrangements for the gifted land, which would not be essential to the delivery of the proposal but have nevertheless been offered. I have taken these to constitute benefits to be weighed against residual harm.
26. Secondly, MLP policy M7, NPPF paragraph 149 and CDP policy 57 all set a test of whether adverse 'impacts' would be outweighed by benefits. When applying each policy test therefore, it seems to me it is appropriate to take into account all adverse impacts identified, even where they might not be so significant as to constitute a reason for refusal in their own right.

### **Reasons**

27. The appeal site is predominantly in agricultural use and is located in the open countryside near the head of the Pont Valley. This in turn opens out to the north east to the Derwent Valley. It is bounded to the south by the A692, with woodland along the western and northern edges. Residential properties in Douglas Terrace and Hedley Terrace lie some 254m to the east. Brooms Farm and a church are located just south of the A692. The site is crossed by three footpaths and falls generally from south to north, from the A692 towards the Pont Burn.
28. The appeal proposes the extraction by surface mining methods of some 520,000 tonnes of coal, of which around 75,000 tonnes is expected to be suitable coking coal. The site would be worked from west to east and backfilled to allow it to be progressively restored. Duration of operations would be over a period of 3 years 6 months, including a coaling period of 2 years 3 months. Access would be from the A692. The land would be restored to a mix of woodland, grassland and agriculture.

### **Issue 1: effects on the environment**

29. The environmental effects of the proposal fall under the broad headings of: effect on landscape character and visual impact; effect on amenity, especially with regard to outlook, dust and noise; and a range of other potential environmental effects identified in representations from interested parties. Bearing in mind that the proposal comprises the winning of coal and the restoration of the site, it seems to me that the environmental effects are best considered in relation to the short-medium term, during the period the site would be worked or in the early years after restoration, and then the intended condition of the site in the longer term, once the restoration works had had time to become established.

### **Landscape**

30. The appeal site lies within the Durham Coalfield Pennine Fringe<sup>6</sup>, a transitional landscape between the North Pennines to the west and the Tyne and Wear

---

<sup>6</sup> CD66: profile for National Character Area 16: the Durham Coalfield Pennine Fringe, Natural England

lowlands to the east. According to the NCA profile, key landscape characteristics include a series of broad ridges separated by river valleys with a strong west–east grain. The NCA profile also notes that the influence of the mining and steel industries can be seen in the pattern of scattered settlements, with restored open cast areas giving a manmade feel to parts of the landscape. The area has a very strong sense of history due to the large number of past mining sites as well as a strong association with mining in local culture and identity.

31. Whilst no information has been provided with regard to any special qualities of the AHLV, there are documents at County level which cover landscape character areas, the landscape strategy and landscape guidelines. The site lies within the West Durham Coalfield character area, where the strategy is to enhance landscape degraded by mining or development while conserving what is most distinctive and valued, including its rural identity, its upland fringe qualities and its strong cultural associations with the coal and steel industries.
32. The County Landscape Strategy places the higher, southern part of the site within the coalfield upland fringe whereas the lower portion is placed within the coalfield valley. Among other things, the strategy in the upland fringe seeks to renovate overgrown and gappy hedges and, in relation to minerals, to avoid damage to sensitive natural landforms and avoid breaching local skylines with extraction areas or storage mounds. In the coalfield valleys, the aims of the strategy include to restore former meadows and diversity, to plant new woodlands, to protect and conserve industrial features and, again, to renovate overgrown and gappy hedges. The Landscape Guidelines for the county then set out objectives and profiles for conservation and improvement, with much of the appeal site identified as within a priority area for woodland planting.
33. In relation to duration, the GLVIA<sup>7</sup> discusses the reversibility of landscape effects and suggests a scale of up to 5 years for short term effects, 5-10 for medium and 10-25 years for long term.

*Short-medium term effects*

34. The topography of the site generally allows views northwards across the valley. In keeping with the west-east grain, there are also longer distance views from the upper part of the site along the Derwent Valley and north eastwards towards Tyneside. As an area of farmland enclosed by hedges and fences, I agree that the existing site is unremarkable in the wider valley context.
35. There would be a process of preliminary works lasting 2-3 months, followed by soil stripping and the formation of storage and screening mounds, which would then be in place for the remaining phases of extraction. The phasing plan indicates that excavation of Area A, on the more visible, southern part of the site, would be completed after about a year. That would be restored to grassland while excavation of Area B got underway. This second area is expected to be worked and restored progressively over about an 18 month period. The Updated ES notes that for the duration of the operational phase, there would be a high-medium adverse magnitude of change resulting in a moderate-major adverse effect on landscape character.

---

<sup>7</sup> CD56: GLVIA, paragraphs 5.51-52

36. The most immediate public views towards and of the site are: northwards from the A692; in the area of Bradley Cottages looking eastwards; from the area of Bradley Hall looking southwards across the Pont Burn; and from Douglas Terrace looking westwards. Several views are also available from the local network of public footpaths. The Appellant acknowledges that during the operational phase the effects on these views would, on the whole, be major adverse.
37. The site is located at the head of the Pont Burn Valley. It seems to me that this is a point where the transition from lowland to Pennines does become particularly apparent, for example in the views from the A692 travelling westwards, a feature noted by many of those who spoke at the inquiry. Also, there is little visual evidence of non-agricultural economic activity in the immediate area. During the operational phase, most views towards the site would be of the screening mounds, with their engineered appearance. From higher points such as Bradley Hall, there would also be views of the operational areas themselves. In a context where the current views of attractive open countryside were diminished as a result of views of screening mounds or site works, this would amount to a major adverse visual effect overall.
38. However, it must be noted that the scheme has been designed to allow progressive restoration. Thus, whilst the effects of the mounds would endure for the greater part of the 3 year 6 month operational phase, the most severe adverse visual effects associated with any views of the workings would be for a much shorter period of about 2 years 3 months and this on different parts of the site. This would be particularly so in relation to the higher, more visible sections, where restoration would be well underway by the 18 month stage (albeit the compound and working area would be retained). Although there would be a more lengthy period of disturbance within Area B overall, the working method would also permit some areas to remain undisturbed in the earlier phases, with restoration again getting underway more quickly on the higher parts of Area B.
39. According to the Appellant, it would be possible to start to appreciate the restored site after about 5-6 years. I take this to be after restoration of Area B, so it would be up to 9 years after site works began. I accept that some elements such as ponds, wetland and grassed areas would probably become established relatively quickly. Reinstated historic features such as Billingside Dyke and the stone gateposts would also have some immediate impact, as would the proposed route based on the Western Way. Also, other less positive elements such as stock proof fencing would be less noticeable in more distant views such as those from Bradley Hall. However, even on the Appellant's own estimates it could be 10 years after restoration before well-established hedges would be formed and perhaps 15 years before woodland would be seen as a distinct entity.
40. The Council is in broad agreement with these timescales but dwells particularly on factors which may inhibit growth of new planting, such as the local wind and weather conditions, pointing to examples of other restoration schemes which do not appear to have achieved the growth rates anticipated for Bradley. Similar points were made by the PVN and local residents, particularly with reference to the recent restoration of nearby Stony Heap. However, the Appellant provides other examples where planting has reached reasonable levels of maturity in the timescales envisaged. Whilst photographs show



apparent problems with Stony Heap, I understand there were different design principles for that scheme such as, for example, for reasons of soil availability, so that it is not necessarily a fair indication of the likely fate of any vegetation on the Bradley site. Comparisons with other sites are also of limited assistance since soil and other factors tend to vary from site to site and these will affect the course of each restoration scheme. In view of the controls which could be imposed, especially in relation to the handling and replacement of soil, I am satisfied that the appropriate circumstances could be created at Bradley which would enable the planting to develop broadly along the timescales outlined by the Appellant.

41. Aspects of the restoration scheme have been designed to address what are perceived as weaknesses in the current condition of the landscape, as identified in the landscape strategy. The likely effects of the restoration scheme at 10 years are indicated in the photomontages provided by the Appellant<sup>8</sup>. I recognise that the restoration scheme has been designed to deliver net benefits rather than simply to reinstate the land to its present condition. The design also consciously seeks to avoid blandness, as indicated in the various cameos<sup>9</sup>. In addition I accept that, on the evidence available, these benefits are likely to be delivered in the form outlined. Nevertheless, even the Appellant's own assessment acknowledges that adverse visual effects will continue beyond the point of restoration.
42. At 10 years, as the montage indicates, the planting would still lack the maturity of adjacent undisturbed land so that there would be continuing evidence of the adverse landscape effects at this point. As I have noted, in the short term the effect on landscape character would be moderate-major adverse and the visual effect major adverse. However, it seems to me that the use of a progressive approach to restoration would serve to lessen this impact to quite a significant extent, even within the medium term, to the point where the effect on both character and visual impact would more probably be moderate-minor adverse by the 10 year point.

*Longer term effects, including time-depth*

43. I consider that the comparisons in the views from Bradley Hall offer a fair illustration of the extent of likely visual change in the landscape at 10 years post restoration. On the assumption that the planting would continue to mature, the appeal site would appear as an area of farmland, woodland and mixed habitat. Some aspects would, perhaps, be more clearly defined than they are now, such as the route of Billingside Dyke and the field boundaries but, in the course of time, the restoration scheme is such that the land would be likely, once again, to be of a quality where it would appear 'unremarkable' in its surroundings. Overall, I favour the Council's assessment that this would probably be achieved at some stage around the 15 year post restoration point. To all intents and purposes, I consider that there would be no further noticeable adverse visual effect beyond this point.
44. The issue for the longer term really centres on the effect on landscape character. In this regard, the Council draws attention to time depth, an aspect

---

<sup>8</sup> See MGH Appx 8 Figs 29 and 35, showing the existing view from Bradley Hall and the predicted view 10 years after completion.

<sup>9</sup> MGH Appx 8, Figs 36-39, showing details of different aspects of the restoration scheme

which, once removed, can never be restored<sup>10</sup>. This is defined as being related to an individual's understanding of unique features and which establishes a bond with the landscape. It is illustrated in some of the leaflets produced by the PVN. Whilst such a definition indicates that particular weight should be given to local knowledge, it is also necessary to consider the objective merits of the features in question. In addition, the Appellant draws attention to those aspects which would represent a net landscape benefit against the site as it presently exists.

45. The Appellant has provided a thorough assessment of the effect on heritage assets. It is not disputed that the proposal would lead to the loss of a number of non-designated heritage assets within the site. Features of particular note include the Billingside Dyke and field pattern, the Western Way and an area of uneven ground within the site.
46. Surveys indicate that the Billingside Dyke probably pre-dates the later pattern of field boundaries which would have been created as a result of enclosure. Most of Billingside Dyke would be lost, along with the existing field boundaries. Under the restoration scheme, Billingside Dyke would be extended along its original alignment, with other boundaries replanted either on original alignments or in keeping with the historic landscape character, including some as 'Durham Hedge'. Stone gateposts would be reused and markers would denote the site of the East and West Billingside farmsteads.
47. Western Way was an early example of a waggonway. It was also of unusual length, running some 9 miles from a point just west of the appeal site to Derwenthaugh and the Tyne. The line was in use in the 1750s but was abandoned around 1800. It is significant as an indication of the extent of the waggonway network at that time. There is insufficient evidence to establish with any confidence the precise route the Western Way might have taken across the appeal site. Nevertheless, the restoration scheme proposes a footpath with interpretation along the most likely route through the site.
48. Within the south western portion of the site is an area of uneven ground showing large depressions. The PVN identifies this as an area of possible bell pits, a method of shallow mining in use from the medieval period until the 18<sup>th</sup> century. The area is a point of interest for the local community and features in local guided walks. The suggestion that this may have been an area of bell pit working seems to be based largely on the pattern of the depressions and an inferred link to Red Well Pitts. The Appellant has provided aerial photographs and other details of known bell pits. Although there are some similarities, the pattern of depressions does not exhibit the same degree of separation nor does there appear to be any evidence of surface activities normally associated with bell pits, such as discard material. Two further points count against PVN's case: the evidence that Red Well Pitts was probably some way to the south west of the appeal site; and that this pattern of depressions is more akin to surface subsidence from pillar and stall mining, a form of mining which is known to have occurred in this area. I take the point that the Appellant has not provided photographic evidence of typical patterns of surface subsidence from pillar and stall mining. However, the overall weight of evidence indicates that these depressions are not an example of bell pit working.

---

<sup>10</sup> Mr Barker describes this as those characteristics unique to a site which communicate the site's history to those who can read the signs, often as a result of what lies just below the surface having an influence on the subtle pattern of changes in vegetation, visual texture and colour. (DCC/1.2, 6.12)

49. The heritage assets within the site mainly relate either to past mining activity or to agriculture. In terms of their heritage value, I agree that they are predominantly of local importance. The proposal makes provision for mitigation of the heritage loss by means of the written scheme of archaeological investigation, including making the findings available as appropriate. To my mind, this represents a reasonable balance between the scale of the harm and the significance of these heritage assets, in accordance with NPPF paragraph 134.
50. However, whilst I accept that this approach accords with planning policies concerned with the protection of heritage assets, it does not fully address the issue of the degree of importance they hold for the local community. Time and again, residents objected on the basis that, even if the restoration scheme achieved all it set out to do, the land would not be as it is now. For example, although the holly hedges would be retained, they would become part of a field boundary rather than providing part of the setting for a walk through Billingside Dyke. Whatever the ecological value of the new Billingside ponds, they still appear as recently constructed features inserted into the landscape. This lends force to the Council's assessment that the restored site would take on an engineered appearance. It also supports residents' assessments that the more formal character of a created landscape fails to convey that sense of maturity and (in some parts of the site closer to the Pont Burn) remoteness, found in areas which have not yet been disturbed.
51. The area of pitfallen land is another example. At present, it offers visual evidence of the area's mining history and can serve as a point of interest on a walk through the site. Other relics of past mining will be retained, including the retention of a spoil heap as a result of the further amendment made during the course of the inquiry (UKC23). Also, the proposed archaeological investigation may well provide answers to many of the questions surrounding the history of this part of the site. However, this would probably be presented in the form of information boards rather than experienced directly as part of the landscape, as at present. Whilst it may well be that relatively few people actually walk the site, this does not alter the fact that this particular quality of the landscape would be diminished<sup>11</sup>.
52. On the other hand, the Appellant draws attention to the many elements of the restoration scheme which should be regarded as improvements over the present state of the site. In place of the existing gappy hedges and walls in a poor state of repair, the restoration scheme would provide substantial lengths of new hedgerow as well as new and refurbished dry stone walling. It would improve diversity through the additional woodland and habitat, including maintenance of woodland outside the site. There would also be substantial additions to the footpath network. However, it seems to me that to some extent the level of maintenance of these features within the site has been influenced by the land's potential for use for surface coal mining<sup>12</sup>.

---

<sup>11</sup> The Appellant's surveys (UKC 10/3/11-12) indicated a relatively low level of use of the public footpaths which cross the site. Given the poor state of some of the field boundaries, I consider that the exercise is likely to have understated the numbers but the Council accepted that the level of footpath use in this part of the County is generally quite low in any event.

<sup>12</sup> Mr Hammond referred to the implications for the maintenance of boundaries when farmsteads cease to be occupied. However, in a representation from a local resident (ID15.49), it became clear that a former farmstead had been vacated and cleared relatively recently.

53. Moreover, time-depth is a concept which relates to change in particular landscape features over a long period of time, a characteristic which cannot be created anew. Despite the many elements of renewal in this restoration scheme, the contribution which the site presently makes to the local sense of history is an aspect which, by definition, it will not be possible to recreate. Thus, whilst I accept that this site may not exhibit the man-made feel of earlier restoration schemes to quite the same degree, I consider that the effect on time-depth would represent a continuing adverse effect on landscape character.

#### *Conclusion on landscape effects*

54. Although the initial adverse effects in relation to both landscape character and visual impact would be substantial during the operational phase, their length and severity would be greatly mitigated through the use of a progressive approach to restoration. In my judgement, the adverse visual impact would move from major adverse to moderate-minor adverse within the short to medium term and would be barely noticeable beyond the point of about 15 years post-restoration. With regard to character, even though the scheme takes up the recommendations of the county landscape strategy and incorporates many valuable measures to improve the landscape, these would not be sufficient to outweigh the remaining longer term harm associated with the loss of so many historic features which contribute to time-depth.

#### **Amenity**

55. The nearest residential properties are in Douglas Terrace and Hedley Terrace. The somewhat isolated location and compact character of these properties is a reflection of the historic influence of coal mining in the area. A clear theme in the representations from residents was a particularly strong sense of their connection with the adjoining countryside<sup>13</sup>. This, in turn, suggests a high level of sensitivity to change in the immediate locality.

#### *Outlook*

56. The location of these terraces on steeply rising ground allows a range of views towards and beyond the appeal site. Indeed, during my site visit I noted that many of the gardens have been arranged to take advantage of long distance views towards the North Pennines AONB, from a setting which allows appreciation of its remote and wild qualities. From many of the dwellings and gardens, the appeal site forms a substantial element in short to middle distance views which provide the foreground to the AONB. Under the amended scheme, the area to be worked would be pulled further back from Douglas Terrace so that it would be beyond the pylons which cross the site. Although it may be possible to see into the site from the upper floors of properties higher up Douglas Terrace, I consider that for most occupants for most of the operational phase the main change in outlook would be views of the mounds in place of the existing open countryside. Bearing in mind the high level of sensitivity to change, I consider that this would represent a substantial adverse effect on outlook for occupants of these dwellings in the short-medium term.

57. Once the mounds had been removed and the restored land had reached a reasonable level of maturity, the site would again appear as predominantly

---

<sup>13</sup> For example, many gardens contained features such as sitting out areas or barbecue facilities which had clearly been positioned to take advantage of views across the site and towards the AONB

agricultural land serving as the foreground to the AONB. I recognise that some detailed landscape features would have been relocated and others would be missing altogether. Nonetheless, I consider that this would not be so noticeable as to represent material harm to outlook in the longer term.

### *Dust*

58. The Council made clear that its concerns related specifically to the issue of nuisance dust<sup>14</sup>. However, a number of representations from residents expressed concern at the potential impact on health.
59. The Updated ES records that approximately 95% of dust particles emitted from mineral workings have a relatively high mass and generally deposit within 100m of the point of release, with the remainder being deposited within 200-500m of source. Since Brooms Farm and Douglas Terrace lie, respectively, some 77m to the south and 254m to the east of the site boundary, it is clear that some potential exists for these properties to be affected by dust. In addition, meteorological data shows that the prevailing wind is from the west, with significant contributions from the west south-west. According to the Updated ES, residential properties in Douglas Terrace would be downwind of the site more often than others in the locality and would be within sufficient distance of site workings to be potentially affected at almost all phases of the site workings.
60. I take the point that, even with the use of good practice measures in line with national guidance<sup>15</sup>, it is unlikely that dust could be entirely eliminated. Nevertheless, there would be a fair degree of distance separating Douglas Terrace from site workings. The proposal includes measures to reduce dust emissions such as the planting of soil mounds. Monitoring and further suppression and mitigation measures have also been identified for inclusion in a proposed dust action plan. Thus, notwithstanding the comparatively low levels of dust at present, I consider that the proposal is unlikely to give rise to such a level of dust emissions as to amount to a material adverse effect on local living conditions. The Council suggests a lesser degree of harm would occur which should still be weighed in the balance. However, it seems any residual effect would be so limited as not to be quantifiable or to be objectively defined in some way. A professional assessment of this potential adverse effect has been conducted and no material harm has been identified. As such, I see no basis for it to be weighed against the proposal in the overall balance.
61. Although some public footpaths would pass close to or even run alongside the site, the evidence indicates that occasions when any route would be affected by dust emissions would be relatively infrequent. Since footpath users would be passing through the area, any transient effects of dust would not be sufficient to amount to a material adverse effect. Thus, whilst it may well be that some users would take a different route rather than register a complaint, it seems to me that the proposal would not have an unacceptable effect on users of footpaths.
62. A number of representations referred to the potential effect on health, either from dust or from other, fine particulate emissions, especially for those with

---

<sup>14</sup> The Council confirmed that policy M37 of the Minerals Local Plan was no longer relevant, since it was no longer proposed that there would be any extraction activities within 250m of Douglas Terrace.

<sup>15</sup> See PPG paragraphs 27-023-20140306 to 27-032-20140306

respiratory conditions including asthma. In this regard, my attention has been drawn to a 2010 publication: *The True Cost of Coal to Communities* (‘the Douglasdale study’). This compares data between three different locations in Scotland and identifies an association between the presence or absence of open-cast coal mines. However, it is unclear from the publication whether the conclusions make any allowance for other factors of relevance to health, especially socio-economic differences. Nor does it establish any causal relationship between emissions from surface coal mines and the health of the relevant populations. On that basis, I consider that it does not represent credible evidence that the appeal proposal would have an adverse effect on health.

63. Following the approach in national guidance, although there would be communities within 1km of the site, the technical evidence to the inquiry shows clearly that PM<sub>10</sub> levels would remain well below relevant air quality limits. In such circumstances, PPG recommends that good practice measures should be used<sup>16</sup>. This could be ensured by appropriately worded conditions.

#### *Noise and blasting*

64. Minerals proposals are expected to make provision for the control and mitigation of noise emissions<sup>17</sup>. Impact should be assessed in the context of the prevailing acoustic environment. Effects could fall into one of three categories: significant adverse effect; adverse effect; or a good standard of amenity. PPG expects that noise limits at the nearest property should not exceed the background noise level (LA<sub>90,1h</sub>) by more than 10dB(A) during normal working hours, reducing at other times. However, allowance is made for noisy, short-term activities such as soil-stripping or at times when baffle mounds are being constructed or removed.
65. BS 5228<sup>18</sup> lists a range of mitigation measures including working arrangements, plant to be used and hours of work and these are reflected in the appeal proposal, not only through the provision of screening mounds but also, for example, through locating the plant yard well away from Douglas Terrace. The noise assessment makes assumptions based on UK Coal’s normal working practices and plant. Given the circumstances of the Appellant’s successor company, I am mindful that this can only be taken as an indication of what plant might be used on site. Nevertheless, I consider that the assessment provides a realistic basis on which to judge the likely noise impact and the effectiveness of controls which could be imposed, irrespective of the identity of the eventual operator.
66. Background noise levels at Douglas Terrace were agreed to be 40dB L<sub>A90</sub>, which would tend to support residents’ observations as to the low levels of ambient noise. Noise levels from normal operations are not predicted to exceed 48dB L<sub>Aeq(1hr)</sub>. This suggests that, although there may be some increase in the overall noise environment, any impact would be below levels generally considered to represent an adverse effect, provided all mitigation measures were implemented. There would be some periods such as during the construction and removal of the mounds when noise levels beyond the site

---

<sup>16</sup> PPG paragraph 27-032-20140306

<sup>17</sup> MLP policy M7 and PPG Paragraph: 27-019-20140306

<sup>18</sup> BS 5228: 2009+A1:2014 - Code of practice for noise and vibration control on construction and open sites – Part 1: Noise (CD67)

would be greater. These are predicted to reach 51dB  $L_{Aeq(1hr)}$  at Douglas Terrace for up to ten days and 65dB  $L_{Aeq(1hr)}$  at Brooms Farm for up to three days. However, such works would be for limited periods and would be related to securing longer term protection of the noise environment. I consider that they would not amount to a significant adverse impact.

67. The Appellant anticipates blasting will be required when Area B comes to be worked. The assessment shows it would be possible to satisfy the relevant criteria both in relation to nearby residential properties and the gas main which crosses the northern part of the site. Subject to controls, including liaison with the nearby church, I consider that the proposal would not have an unacceptable effect on local amenity with regard to blasting.

### **Other environmental effects**

#### *Ecology*

68. According to the Updated ES, the adverse effect on habitat would comprise the loss of Brooms Pond (a Local Wildlife Site), the loss of trees and hedgerows and the loss of grassland, some of which qualifies as a DBAP<sup>19</sup> habitat type either as species rich, semi-improved grassland or as unimproved grassland. As a result of habitat loss, negative effects were identified in relation to bats, great crested newt and birds. Although potential negative effects were also identified in relation to surface water and dust deposition, controls over on-site activities could be expected to limit those effects, as has been the case in other surface mine working schemes. The design of the restoration scheme is intended to make compensatory provision for lost habitats and, in some respects, to deliver enhancements either through the planning obligation or a s39 Agreement<sup>20</sup>.
69. In the Appellant's view there would be no appreciable disruption to wildlife or habitats. Moreover, taking into account the current ecological interest of the site as well as the ecological mitigation and compensation measures, the Appellant suggests the restoration proposals would provide substantive improvements to biodiversity potential, for example in the way the translocation of the Great Crested Newt population would allow improved connection to the wider valley.
70. Taken overall, the Council was satisfied that any ecological concerns could be addressed by way of condition or planning obligation. This was also the view of Natural England. Nevertheless, several concerns were raised by residents and local groups who had some expertise in this area particularly as regards the perceived focus within the ecological information on protected habitats and species at the expense of features of local interest and value.
71. Thus, for example, although the site was found not to contain unique or irreplaceable habitats, it was argued that the particular mix of habitats on this site would not be found elsewhere. I recognise that this may be so but, even if it was the case, the planning concern must be whether this particular mix gives rise to some effect of ecological importance which warrants protection. No such effect has been identified. The Appellant points out that the site has been assessed in the context of a much wider range of ecological information at regional and county level. Also, the surveys were conducted in consultation with other relevant organisations, including the county ecologist and Natural

---

<sup>19</sup> Durham Biodiversity Action Plan

<sup>20</sup> An Agreement concerning the management of land made under s39 of the Wildlife and Countryside Act 1981

England. In addition, ecological surveys were conducted in 2007, 2008, 2011 and 2014, reflecting the progress of application, appeal and second inquiry. Although local people have taken issue with particular aspects of the Updated ES such as the sightings of red kite, the ecological data has not been shown to be deficient. Consequently, whilst I recognise that the site is clearly of great interest locally, I am satisfied that the data supports the findings that the site does not contain unique or irreplaceable habitats.

72. The area to be worked includes Brooms Pond, a former colliery reservoir now much naturalised, located on the southern boundary, near the A692. The Updated ES notes that the site is still of nature conservation value at County level, qualifying as Pond BAP as it supports species of high conservation importance (great crested newt) and Lowland Fen BAP. The adjacent grassland habitats are sufficient to qualify as DBAP habitat in poor condition.
73. It was suggested that, as the translocation of the Great Crested Newt would not preserve the entire population, this raised the risk of narrowing the gene pool. However, although the 2007 survey counted 27 adults, the 2011 survey counted only 3 and in 2014 the maximum count was 4 adults. Whilst acknowledging this may be a result of reduced survey efficiency, the Updated ES suggests it reflects a decline in breeding success consistent with the restricted availability of open water due to successional vegetational change around the pond. Natural England accepts that the existing population is vulnerable, being isolated and within a sub-optimal habitat. It notes that, as the new habitat would be capable of supporting both the existing population and allowing for its future expansion, translocation could be the correct mechanism to safeguard the long-term future of the newt population<sup>21</sup>. As such, I consider that a properly licensed translocation process would be sufficient to safeguard this species.
74. There were also concerns that the site had not been properly considered in the context of the wider valley, such as in relation to ornithological matters. Although the Updated ES reported only one sighting of a red kite, the representations at the inquiry indicate such sightings occur much more often. Members of the local bird club drew attention to information showing that the red kite has not been expanding in range, with about half of nests having failed in 2013. Given the secretive breeding habits of these birds, fears were expressed that nests on or near the site might be disturbed. In view of the length of time it was likely to take for the earthworm population on this site to recover<sup>22</sup>, further adverse effects may arise as a result of the particular dependence of these birds on earthworms during March and April. This could undermine the aim of maximising their breeding capacity. Other concerns were raised with regard to buzzards nesting on site or making use of secluded pastureland and the risk of other species being made more prone to predation.
75. The Updated ES acknowledges there is likely to be a displacement effect on red and amber-listed breeding birds.<sup>23</sup> However, I am mindful that there appears to be adequate availability of alternative habitat in the locality. With regard to red kite, as I understand it the lack of breeding success was mainly for reasons of bad weather and persecution. Also, although a bird may use the appeal site for foraging, it would represent only a small proportion of its territory. It

---

<sup>21</sup> NE consultation response

<sup>22</sup> past studies indicated the earthworm population could take some 20 years to return to normal

<sup>23</sup> Updated ES 9.6.16



seems to me that the modern soil handling techniques proposed for the appeal site would be likely to assist in a more rapid recovery period for the earthworm population than was the case in the study referred to. Even so, this does indicate that it could still be quite a substantial number of years before the full ecological potential of the restored site would be realised. One estimate was that it could be some 15-20 years before a similar level of ecological stability could be reached. Thus, although I accept that no direct adverse effect on particular species has been demonstrated and that the broader adverse ecological effects would be temporary, this does suggest they could persist for some time after restoration is complete.

#### *Hydrology and hydrogeology*

76. The Updated ES concludes that there would be no increased risk of downstream flooding, provided the proposal followed a working method of progressive restoration and included storage provision for storm flows. The excavations would be allowed to flood in more extreme weather conditions. Discharges into local watercourses would be subject to Environment Agency controls.
77. Survey data indicates very little groundwater is likely to be encountered, including in old mine workings. Although the proposal would lead to an increase in the drainage capacity of the underlying bedrock, there is no reason to expect it would affect groundwater conditions in the locality. The presence of boulder clay deposits means that no risk has been identified to properties at Douglas Terrace and Hedley Terrace.
78. Tufa have been identified in the Pikewell Burn, a tributary of the Pont Burn a short distance to the north east of the appeal site. Although it was suggested that a tufa cliff may also have formed in the Pont Burn, the chemical analysis and other technical evidence indicates this is unlikely. Since the proposed surface mine would not affect the Pikewell Burn, there is no basis to conclude that the proposal would affect the tufa in that watercourse.

#### *Traffic movements*

79. Site access would be by way of a priority junction access, including a right hand harbourage onto the A692. It is estimated there would be 64 HGV movements on a normal working day. These would travel to the A1(M) via the A693, which is a designated freight route, enforced by means of the planning obligation. Since site traffic would form only a small proportion of HGV traffic on this route, I am satisfied that there would be no material effect on congestion or safety in this respect.

#### *Agriculture*

80. Drawing on past experience of farming on reclaimed land and information as to the marketability of other reclaimed land it was argued that, after restoration, the land would not be comparable with the quality of other agricultural land in the locality. I accept that past experience may have shown that livestock has not fared so well on some reclaimed sites nearby. However, I am also conscious that the quality of restoration schemes has improved over the years, so that it does not necessarily follow that similar problems would be encountered from this scheme. Moreover, the indications are that this site already experiences some problems due to subsidence and these would be

addressed as part of the scheme. As to the information on the sale value of other sites, land values can vary for a number of reasons so that, on its own, it does not necessarily show that restored land is inherently of less agricultural value. As such, I am not persuaded that the proposal would, overall, have an adverse effect on the quality of agricultural land.

### *Economy, tourism and recreation*

81. Tourism and outdoor activities/recreation form an important element within the local economy. Concerns were expressed as to the impact on a number of local businesses and activities as well as on the wider economy.
82. Local businesses with particular concerns were a nearby pub, a B&B located in Douglas Terrace and an outdoor activities company which made use of land in the Pont valley. Given the nature of these businesses, I consider that they would be vulnerable to some reduction in demand for their services as a result of the adverse visual effects of the proposal in the short term.
83. PVN has also been involved in developing a series of guided walks and orienteering courses based on features of local interest and the scenic quality of the area, with some making direct use of the site. Clearly, these would be adversely affected in the short to medium term. PVN has also been involved in an initiative known as The Land of Oak and Iron, where the waggonway system is seen as the 'golden thread' tying together a number of potential projects seeking to exploit the environment and heritage of the Derwent Valley. If the projects are aimed at leisure and tourism, it seems to me that the appeal proposal could well lead to delays in projects coming forward. However, in my judgement a scheme of such short duration would be unlikely to make the locality any less attractive for funding from this initiative in the long run.
84. Although the C2C cycleway passes close to the site, it is located beyond the valley ridge. There would be no direct views from that route so that the proposed surface coal mine would be unlikely to have any material effect on its users. It was suggested that views might be had from the cycleway on the opposite side of the valley but, given the distances involved, I consider that any effect on users would be negligible.
85. There were also more general concerns that the nature of the proposal, being concerned with coal which was so strongly associated with the area's past, would run contrary to measures aimed at economic regeneration and building a new economy for the future, for example reducing potential investment from film and TV companies. However, in the absence of clear evidence of such an effect, for example by comparison with other areas where surface mining has occurred, such concerns lack an objective basis. It was also suggested that the potential for surface coal mining had led to blight and caused environmental deterioration, with a particular effect on residents. However, at the time of my site inspection I noted that many properties in the area showed evidence of recent investment and, in fact, works were in progress on others so that I am not convinced that any adverse effect could be identified in this respect.

### **Issue 2: assessing environmental acceptability**

86. In relation to dust, noise and blasting, hydrology and hydrogeology, traffic and the agricultural value of the land, I am satisfied that the mitigation measures

proposed would be sufficient to ensure that the proposal was environmentally acceptable.

87. However, although the use of a progressive approach to restoration and the incorporation of measures within the restoration scheme aimed at enhancing the landscape weigh strongly in favour of the proposal I consider that, having regard to the degree of visual harm in the short to medium term and the continuing adverse effect on landscape character, overall the proposal would result in a moderate negative effect. Also, whilst the operation would be screened from view and then restored, I consider that this would not be sufficient to entirely outweigh the substantial, short-medium term adverse effects on the amenity of occupants of nearby properties, bearing in mind the high quality of the existing outlook and the strong connection to the locality demonstrated by local residents. Furthermore, the proposal would have a substantial adverse effect on the nature conservation value of the site in the short term. Extensive measures would be required to address the ecological consequences, particularly in order to provide for the reinstatement of lost habitats and to make the necessary provision for protected species. I accept that the new and complementary habitats, if delivered as intended, would provide net gains for biodiversity but this would not be until some time later and would only be brought about after a period of considerable harm. Notwithstanding the various enhancements within the restoration scheme therefore, I consider that the proposal as a whole would result in a moderate net disbenefit in ecological terms. Local businesses close to the site would also experience some adverse effect, in the short term.
88. Despite the mitigation and enhancement measures within the proposal, I consider there would remain some negative effects in relation to landscape, outlook, ecology and the local economy. As such, the proposal would fail to satisfy part (a) of MLP policy M7. Also, it follows that there would be some conflict with MLP policies M23, M24 and M36.

### **Issue 3: national, local and community benefits**

89. Together, the adverse effects on landscape, outlook, ecology and the local economy mean that the proposal could not be made environmentally acceptable by conditions and the mitigation measures dealt with through the planning obligation. These adverse impacts represent the remaining harm to be weighed in the balance against the other benefits which the proposal would deliver.

#### *Supply and Demand*

90. It is expected that some 10-25% of the 520,000 tonnes of coal would be coking coal. There was some dispute as to whether it would be possible for power stations to make full use of the non-coking coal. Although I appreciate that the use of some types of coal may have presented technical difficulties in the past, the Appellant has provided confirmation that coal similar to that which would be won from the Bradley site has been accepted and used by power stations recently<sup>24</sup>. Also, although national energy policy seeks to move towards a low carbon economy, the statistics indicate that demand for coal will almost certainly continue throughout the period this site is likely to be in production. Even though the total amount of coal consumed may decline, it

---

<sup>24</sup> Mr Garner, Appx 18

would still be at a level well in excess of the quantities which could be supplied from Bradley. This would be the case even if alternative sources of supply such as the Lochinvar site were also to come on-stream. In addition, whilst there are technological developments currently in progress which may well lead to alternative forms of power generation in the longer term, they are unlikely to obviate the demand for coal or coking coal during the period this site would be in production.

91. Having regard to all these factors therefore, I consider that the projected supply of coal should be taken to represent a national benefit carrying great weight, in accordance with its status within NPPF as a mineral of national importance and in line with projections of the country's continuing reliance on fossil fuels.

*The environmental benefits of indigenous coal*

92. The provision of indigenous coal would represent a reliable source of supply, albeit of a relatively small proportion of overall demand and over a comparatively short period of time. This would be a national benefit carrying modest weight.
93. With regard to carbon emissions, it stands to reason that a fuel source transported across a shorter distance would produce lower transport-related CO<sub>2</sub> emissions. The extent of this benefit, as quantified within the Updated ES, appears reasonable<sup>25</sup>. However, in the context of the part which unabated coal-fired powered stations play in the generation of carbon emissions, I consider this represents a very modest national benefit.
94. It was contended that the consequences of emissions from coal-fired powered stations on climate change, along with the costs of measures to combat climate change, should be taken into account. I do not agree. This would require quite a convoluted exercise. It would be necessary to separately identify the effects of emissions from coal-fired powered stations on climate change and the proportion of public spending directed at addressing that effect. It would then be necessary to assess what proportion should be attributed to the effects of the appeal scheme. In view of the series of assumptions and estimates such a process would entail, very little reliance could be placed on any figure ultimately arrived at, so that it would be unlikely to have a material effect on the outcome of the appeal.

*Employment and economic impacts*

95. According to the Appellant, the site would support up to 38 jobs directly. Whilst the Appellant company provides examples of the proportion of local people employed on other UK Coal sites, the identity of any future operator at Bradley is unknown so this cannot be taken to represent a reliable indication of the likely approach which that operator might take. However, Schedule 5 of the planning obligation sets out a scheme aimed at providing local training and employment opportunities. With that in mind, I consider that the proposal would deliver a modest local benefit in relation to employment.
96. Through displacing imports, there would be some modest benefit to the balance of payments, in proportion to the amount of coal supplied.

---

<sup>25</sup> Updated ES Appx 12.3: 4.84Kg compared to 61.75Kg of CO<sub>2</sub> per tonne transported, or about 8% less, if the coal was transported from Bradley to a UK power station rather than from Russia

### *Unstable land*

97. There have been instances where land within the site has been fenced off as unsafe due to the presence of old mine workings. The Appellant contends such collapse could occur anywhere within the site and the land owners report that past collapses have presented problems for the current agricultural use. I take the point that specific remediation measures would be extremely costly. Nevertheless, it is a requirement of the proposal that the agricultural areas of the restored site should be suitable for such use. Consequently, the fact that the restored site would no longer be subject to instability issues does not represent a further benefit, over and above restoration.

### *Ecological benefits*

98. Measures to enhance the habitats within the site have already been taken into account in assessing environmental acceptability. However, the arrangements for the gifted land, the extended period of aftercare and the management of adjacent woodland are all separate from the restoration scheme itself so that they fall to be considered at this stage.
99. The planning obligation provides for a Habitat Management Plan to be secured by way of s39 of the Wildlife and Countryside Act 1981 covering the habitat areas, the restricted land, the silvicultural land and the gifted land.
100. Through the Habitat Management Plan, the ecological value of a substantial area of land could be enhanced. This would include the silvicultural land adjacent to the site, which would be managed for the purpose of regeneration of native species for a 15 year period from the commencement of development. These areas would also be subject to aftercare for an additional period of 10 years.
101. The gifted land would be some 21ha in area, transferred after restoration works were completed. The arrangements include a commuted sum and 10 annual payments which, on the evidence available, would be reasonable to cover maintenance costs. It has to be acknowledged that the focus of a nature reserve would be ecological rather than recreational, so that the benefit would be of local rather than community value. However, the gifted land would be a permanent arrangement so that this benefit would endure long after the adverse impacts of the proposal had faded. In conjunction with the other elements of the Habitat Management Plan, this represents a local benefit of considerable value.

### *Community liaison*

102. It is proposed to set up a liaison group to provide a mechanism for contact between the operator and those living locally. Such a mechanism has been shown to operate satisfactorily elsewhere, as indicated in the comments from the Shildon and Tow Law sites. The proposed levy of 10p per tonne would provide a fund of about £52,000. It was clear from the representations received that there would be considerable scope for such funds to be deployed amongst groups within the local community. To my mind, these represent modest local benefits of the scheme.
103. The planning obligation also provides an undertaking not to allow the winning or working of minerals within those areas identified as Restricted Land. The largest such area is that closest to Douglas Terrace, which was formerly

part of the proposed surface mining area. This aspect has already been taken into account when assessing the environmental acceptability of the proposal so it does not represent an additional benefit to be weighed at this stage.

*Whether the benefits would clearly outweigh the remaining adverse impacts*

104. The local and community benefits associated with the proposal would comprise a modest contribution to employment opportunities, a considerable ecological benefit and modest benefits with regard to community liaison and funds for community groups. Although the balance is a fine one, I am not persuaded they would be sufficient to clearly outweigh the residual adverse impacts identified. As such, the proposal fails to satisfy part (b) of MLP policy M7 so that the negative presumption applies. This, together with the conflicts with other MLP policies, means that the proposal is contrary to the development plan as a whole.
105. However, NPPF paragraph 149 requires that national as well as local and community benefits should be taken into account. Once great weight is accorded to the benefits of mineral extraction, along with modest weight in relation to security of supply, reduced transport-related carbon emissions and contribution to the balance of payments, these would be sufficient, in my judgement, to shift the balance so that the benefits would clearly outweigh the residual adverse impacts identified. In this respect therefore, the proposal would satisfy NPPF paragraph 149 and policy 57 of the emerging local plan.
106. Whilst the proposal is contrary to the development plan, that plan contains policies which are no longer up to date as a result of more recent national planning guidance. NPPF paragraph 215 states that weight should only be given to such policies according to their degree of consistency with current policies. MLP policy M7 differs particularly with regard to the negative presumption and its failure to allow for national benefits to be taken into account. Also, in the absence of any clear identification of the special character or quality of the landscape within the AHLV and criteria for protection, policy M23 is not consistent with the approach in NPPF paragraph 113. The fact that these considerations have not been carried forward in policies 39 and 57 of the emerging local plan is a further indication of the extent to which MLP M7 and M23 are seen as no longer being up to date.
107. The differences in approach between policies in the Local Plan and in NPPF are significant. They greatly reduce the weight which can be attached to the conflict with the adopted development plan. Consequently, the approach within NPPF constitutes an important material consideration in the assessment of this proposal. In my view, it is sufficient to outweigh the conflict with the development plan.

**Other matters**

108. The changing fortunes of the Appellant company gave rise to significant concerns as to whether the site would be restored as proposed, especially in view of the reported difficulties in financing restoration of sites in Scotland and Leicestershire<sup>26</sup>. However, I am satisfied that the arrangements within the planning obligation would be adequate to ensure sufficient funds would be available to complete the restoration of the site at all phases of the proposal.

---

<sup>26</sup> See ID15.44, the MacKinnon Report

They are also necessary, given the uncertain standing of the Appellant company.

109. The question of whether a grant of permission on this site would serve as a precedent for the many other areas within the Derwent Valley which have potential for surface mining of coal was also a matter of particular concern. These concerns relate to the landscape impacts of a series of sites which would each take some time to recover as well as the cumulative environmental impacts, especially on local amenity. The point is noted in some of the earlier appeal decisions which have been provided dating back to 1971<sup>27</sup>. Also, I understand that a previous local plan included a 'no go' policy for opencast mining in this locality.
110. Clearly, my conclusions in relation to this appeal show that sufficient grounds can be demonstrated to support a proposal for surface mining of coal in this locality. However, there are two main reasons why it does not necessarily follow that it provides a 'foot in the door' for future proposals. First of all, much of the concern around future proposals relates to the potential for cumulative adverse effects. NPPF paragraph 144 specifically expects the impacts from multiple sites in a locality to be considered. If a cumulative effect was identified, it would have to be taken into account. Secondly, each proposal must be considered on its own merits in relation to all other relevant effects, including on landscape. If another proposal was to come forward, it would have to be shown to be acceptable in its own right, as has been the case here, notwithstanding that earlier proposals have been refused and dismissed on appeal. In a similar vein, a number of references have been made to a recent appeal decision at Halton Lea Gate<sup>28</sup>. Whilst I have had regard to the findings in that decision on particular points which have also been argued at this inquiry, I have determined this appeal on its own merits, on the basis of evidence provided.

### **Conditions and Planning Obligation**

111. An agreed list of suggested conditions was provided and this formed the basis for the rather extensive discussion of conditions at the inquiry<sup>29</sup>. Helpfully, the PVN also provided comments on the proposed conditions. The Council advised that its preferred approach was to use an overarching condition to set out all those matters where subsequent approval would be required and then to structure the later conditions according to the different phases of the proposed development. In the Council's experience, this provided clarity for monitoring purposes and for the operator. For the Appellant, it was confirmed that this approach had worked satisfactorily in the past. The conditions contained in the Annex to this decision have been imposed with that approach in mind, albeit with some amendments and re-ordering to improve clarity, to avoid duplication (the Council accepted its approach was, on occasion, 'belt and braces'), and to accord with the advice in Planning Practice Guidance (PPG).
112. Defining the permission: conditions 1-3 are necessary to define the permission, in the interests of good site management and to provide clarity for monitoring. Although the PVN would have preferred to see more generous

---

<sup>27</sup> GKW, PoE paragraphs 5.1-5.36 reviews 10 previous appeal decisions

<sup>28</sup> APP/P2935/A/11/2164056

<sup>29</sup> The list underwent revisions during the course of the inquiry. For clarity, this section of the Decision is based on the version provided on 22 October 2014.

provision for community involvement during archaeological investigations, I consider that the written scheme of investigation, which has already been agreed, provides an appropriate balance between community interest and the need to ensure that the work is carried out to the requisite standard. At a later point, the Council suggested a condition (57) to deal with the deposit of the archaeological record. However, since this is already covered within the agreed scheme, a separate condition is unnecessary. Condition 4 is the standard commencement condition. A four year period had previously been considered and the Appellant initially sought to retain this in view of some of the required preparatory measures such as the access and translocation of Great Crested Newts. The date of commencement is defined as 'the earliest date on which the winning and working of minerals begins'<sup>30</sup>. Although I appreciate that it may take some time to complete some of the preparatory measures, I am not convinced that this is sufficient reason to warrant an extended date for commencement. Given the changed circumstances of the Appellant and the consequent uncertainty as to the identity of the operator, the Council also sought to tie the start of preparatory works with the commencement of development. However, even allowing for any uncertainty, this is not sufficient reason to warrant such additional control.

113. Subsequent approval: condition 5 is the first overarching condition identifying those matters to be addressed before site preparation works begin and is necessary to protect amenity and to ensure a satisfactory form of development. The condition is worded so that it identifies the key elements of each required scheme, with subsequent conditions setting out further details as appropriate. I have reworded 5(a) and 5(d) so that they relate to the relevant sections of the Updated ES and to remove unnecessary duplication. As regards planting, 5(e)(vi) need only address any areas not covered by aftercare arrangements. Condition 6 then deals with matters to be addressed once coal extraction has commenced. The justification for the proposal relies, in large part, on the characteristics and quality of the restoration scheme. It is therefore reasonable for this condition to identify those elements within the restoration scheme which will be important to re-establishing the finer grain of the site, so as to protect the character and appearance of the landscape. This condition also highlights that there will be a requirement for aftercare.
114. It is for the operator to ensure that all other necessary permits and consents have been obtained so that the suggested condition on this matter would be unnecessary.
115. Completion: conditions 7-9 set out dates for cessation, restoration and to provide for any unanticipated change in circumstances. They are necessary to ensure the timely restoration of the site.
116. Site Preparation: condition 10 sets out details of the timing for the various preparation measures. It is necessary to allow for monitoring of the site to ensure the development is carried out in an orderly manner as well as to protect local living conditions.
117. Working Period: controls over the hours of operation contained in conditions 11 and 12 are necessary in the interests of residential and local amenity. Residents were concerned at the particular implications for road safety of additional HGV traffic passing through East Stanley at times when children

---

<sup>30</sup> The Town and Country Planning (Minerals) Regulations 1995, Reg. 3



would be travelling to or from school. However, the Transport Assessment indicates the additional traffic movements associated with the site would not materially affect current levels of road safety. It would be unreasonable therefore, to impose any further restrictions on traffic movements

118. Access and highway matters: conditions 13- 16 are necessary in the interests of highway safety.
119. Soil stripping and storage: this section of the proposed conditions covered several detailed matters. I have imposed conditions 17-22 to ensure adequate monitoring of this aspect of the development so as to ensure the site can be satisfactorily restored. Others, however, would be unnecessary since they would duplicate measures which should be dealt with through the Soil Handling and Management Manual, as indicated in the draft soil handling strategy in the Updated ES.
120. Site working: conditions 23 and 24 are necessary to ensure stability and in the interests of visual amenity. Given the findings of the ecological surveys, conditions 25-29 are appropriate in the interests of nature conservation.
121. Site maintenance, buildings, and environmental protection: conditions 31- 38, setting out the requirements for site maintenance, control of buildings and plant on site and details in relation to noise, blasting, dust and pollution control, are all reasonable in the interests of residential and visual amenity and protection of the environment. I see no reason for the suggested restriction on the processing of imported materials, especially in view of the limit on the number of vehicle movements within condition 15. Also, discharges of water would be a matter for pollution control.
122. Restoration: conditions 39 - 57 set out various details concerning restoration and replacement of soils. These further conditions are necessary where the matters have not been covered to the same level of detail in the Draft Soil Handling Strategy, to set out the relevant requirements and to ensure that the site is satisfactorily restored.
123. Aftercare: the remaining conditions (58-79) relate to aftercare and are all necessary to ensure that the land is treated for an appropriate period after the initial restoration to bring it to a satisfactory standard. I have reworded some conditions for clarity, particularly 58 and 60 so that the beginning of the aftercare period and the arrangements for annual review reflect the advice in PPG. I have not imposed others which repeat requirements elsewhere, such as that aftercare should be carried out as approved.

#### *The planning obligation*

124. My consideration of the various provisions within the planning obligation has shown that all of the measures would be necessary to make the development acceptable in planning terms. All of the provisions would be directly related to the development and would be fairly and reasonably related in scale and kind, in accordance with the requirements of Planning Practice Guidance and the statutory tests.
125. In the Council's view, there remains some risk that the Restricted Land could still be worked for minerals since the interests of the Church Commissioners and the Coal Authority have not been bound by the planning obligation, having regard to the powers available under the Mines (Working Facilities and

Support) Act 1966. However, I am satisfied that due weight should attach to this particular part of the planning obligation, since the interests of the surface owners have been bound and the remaining interests are indirect ones.

### **Conclusions**

126. Whilst the proposal is contrary to the adopted development plan, the most relevant policies of that plan are not consistent with more recently published national planning policy. The differences in approach are of such significance that they greatly reduce the weight which can be attached to the conflict with the adopted plan. It has been shown that the proposal would provide national as well as local and community benefits which would clearly outweigh the residual harm. The finding that the proposal would satisfy the requirements of NPPF should therefore prevail.

127. For the reasons given above, I conclude that the appeal should succeed.

*K.A. Ellison*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ruth Stockley of Counsel

She called Philip Barker M Phil, CMLI	Director, Glen Kemp (Newcastle) Ltd
Gordon Halliday MA, M UrbD, PgCert PSM MRTPI	Planning Consultant

### FOR THE CPRE/DVPS:

Mr GK Wilson CPRE/DVPS

### FOR THE APPELLANT:

Tim Corner QC

Assisted by Andrew Fraser-Urquart of Counsel

They called David Bolton, FIQ	Head of Surface Mines for UK Coal Surface Mines Ltd
Philip Garner	Director General of the Confederation of UK Coal Producers (CoalPro)
Michael Holliday BA (Hons) MPhil MLI	Director, FPCR Environment and Design Ltd
Dr Suzanne Mansfield, MCIEEM, MLI	Director FPCR Environment and Design Ltd
Niall Hammond. BA(Hons), MIFA	Director, Archaeo-Environment Ltd
P. Hepworth BSc FIOA	Managing Director of Hepworth Acoustics
C Mark Dawson, BSc, MA Dip APC, Dip NVC CEnv, MIES, MIAQM, MIA, FRMS	Technical Director and Principal Environmental Scientist, Wardell Armstrong
Dr David Blythe MIMMM, MIQ, FGS CEng CGeol	Director DAB Geotechnics Ltd
Daniel Godfrey, MSc, MA (Cantab), MCIHT, CMILT, TPP	Principal Transport Planner URS Infrastructure & Environment UK Ltd
John Dickinson BSc (Hons), Dip TP, MA, MRICS	Director of Environmental Planning, Signet Planning

INTERESTED PERSONS WHO SPOKE AT THE INQUIRY:

Mary Wilson	local resident
Brenda Bell	local resident
Marjorie Briggs	Secretary of Derwent Valley Partnership and local resident
Carol Rocke	member of Pont Valley Network and local resident
Dawn Metcalfe	Collierley Primary School
Mike Hosking	local resident
Jean Findlay	local resident
Joe Rhind	local resident
June Davison	local resident
Julia Triston	local resident
Stuart Cowley	local resident
Tracy Gillman	local resident
Robert Mason	local resident
Michael Jones	local resident
Rosemary Morris	Chair, Derwent Valley Area Partnership
Lynn Morton	Burnopfield Environmental Awareness Movement
Leslie Rutherford	local resident
Cllr Ivan Jewell	Member, Burnopfield and Dipton, Durham Council
Anne Grainger	Coal Action Network
Patrick Carr	Source and Summit Training
Joanne Carr	local resident
Cllr Watts Stelling	Member, Leadgate, Ebchester and Medomsley Division, Durham Council
Stephen Leary	Loose Anti-Opencast Network
Barbara Seale	local resident
Alison Hemsley-Kaine	local resident
Caitlin and Caitlin	pupils at Collierley Primary School
Tim Triston	local resident
Nina Adamson	local resident
Peter Brown	local resident
John Dodds	local resident
Freddy Blues	local resident
Gordon Poad	local resident
Fiona Clelland	B&B operator and local resident
Lulu Poad	local resident
Lin Cartwright	Interested Person
Michael Harbinson MD	Interested Person and Durham Bird Club member
Liam Carr	local resident; lecturer in biology and environmental science, Newcastle college
David Marrs	Chair, Pont Valley Network
Karen Adamson	Vice-Chair, Pont Valley Network
J Davison	local resident
Cllr Alan Shield	Member, Leadgate, Ebchester and Medomsley Division, Durham Council
Guy Hutchinson	Interested Person
Tom Bradley	Interested Person
Pat Glass	MP
Dr D Vaughan	local resident
Mr R Peart	local resident
Mike Litchfield	DVPS

Eric Morton  
 Karen Thompson  
 Jadwiga Billewicz

Burnopfield Environmental Awareness Movement  
 local farmer  
 local resident

Inquiry Documents

**Inquiry 1:**

- 1 Minutes of PIM
- 2 Letter from Durham County Council withdrawing the noise objection
- 3 Statement of Common Ground
- 4 Draft Conditions
- 5 Draft s.106 Agreements/Undertakings
- 6 Signed copy of final s.106 Obligation
- 7 Additional viewing points suggested by third parties
- 8 Third party submissions
- 9 Additional third party letter
- 10 Site visit itinerary
- 11 Core Document list
- 12 Agreed Note re Community Infrastructure Levy Regulations 2010
- 13 Position Statement re substitution of s.106 Unilateral Obligation by an Agreement

**Inquiry 2:**

ID14	Note to PIM on UK Coal group of companies dated 2 June 2014
ID15	ID 15 Interested Parties - List of speakers - v3
ID 15	List of persons wishing to address the inquiry, prepared by PVN
	Letters and other documents from interested persons which were accepted at the inquiry:
15.1	J Cason
15.2	P Clough
15.3	EM Wilson
15.4	B Bell
15.5	M Briggs
15.6	C Rocke
15.7	D Metcalfe (letters from children at Collierley Primary School)
15.8	J Triston, incl supplementary statement
15.9	T Gillman, incl The True Cost of Coal to Communities, December 2010 ('the Douglasdale study')
15.10	M Jones
15.11	R Morris
15.12	L Morton, incl extent of land owned by BEAM
15.13	S Marshall
15.14	L Rutherford
15.15	Cllr I Jewell
15.16	A Grainger
15.17	P Carr
15.18	not used
15.19	Cllr Watts Stelling
15.20	B Seale
15.21	A Hemsley-Kaine

15.22	Z Triston
15.23	T Triston
15.24	N Adamson
15.25	P Brown
15.26	J Dodds
15.27	F Blues
15.28	G Poad
15.29	D Almond
15.30	F Clelland
15.31	L Poad
15.32	L Cartwright
15.33	Dr M Harbinson
15.34	L Carr
15.35	D Marrs, Chair, Pont Valley Network
15.36	K Adamson, Vice-Chair, Pont Valley Network
15.37	Cllr A Shield
15.38	Extract from HoC debate, Mr Hutchinson
15.39	J Davison – photographs
15.40	J Baker
15.41	S Wild
15.42	S Cole
15.43	L Carswell
15.44	Pat Glass MP, including Mackinnon Report
15.45	M Litchfield
15.46	T Bradley – statement of J Hansen (undated)
15.47	M Proud, Jolly Drovers
15.48	Eric Morton
15.49	K Thompson (incl images on CD)
15.50	H Rocke
15.51	J Billewicz
ID16	Supplementary reports to Updated ES: Badger Survey Report June 2014 Bat Survey Report Oct 2014
ID17	Planning Obligation (S106 Agreement)
ID18	List of suggested conditions
ID19	Extract from The Journal, March 2014, provided by Mr Leary
ID20	Comments from PVN on suggested planning conditions and s106

Documents submitted by UK Coal

**Inquiry 1:**

UKC1 Press Release - Longannet

UKC2 Noise Note - Additional Definitions and Time periods for short term operations

UKC3 Bradley Employees

UKC4 D Bolton response to A Grainger

UKC5 Additional Information re Archaeology

UKC6 Total UK Coal Permitted Surface Mine Tonnage

UKC7 Note from D Bolton - West Billingside Farm

UKC8 Note from D Bolton - Dust Complaints at Stony Heap

UKC9 List of Sites started and restored

UKC10 Nabarro Note on Bradley Unilateral Obligation

- UKC11 Niall Hammond Overlay Plan
- UKC12 Note on "Conserve and Enhance"
- UKC13 Opening statement
- UKC14 List of witnesses
- UKC15 Extract from PPS7
- UKC16 List of objectors and map showing locations
- UKC17 Extract from Shotton Opencast report
- UKC18 Closing submissions

**Inquiry 2:**

UKC19	Opening statement
UKC20	Solar power and energy storage, Morgan Stanley Research 28/7/2014
UKC21	Lochinvar coking coal project, New Age Exploration Ltd Sept 2014
UKC22	Update on status of the Applicant, 14/10/14
UKC23	Proposal to preserve spoil tip (Plan 176D51A)
UKC24	Costs associated with the gifted land
UKC25	Corrections to cross references within Mr Hammond's PoE
UKC 26	Note in response to Mr Morton
UKC 27	Note in response to Ms Thompson
UKC 28	Closing submissions

Documents submitted by Durham County Council

**Inquiry 1:**

- DCC1 Potland Burn sub soil mound S4 - view east
- DCC2 Potland Burn sub soil mound S4 - view west
- DCC3 Note re Planning Obligation
- DCC4 Note on cumulative impact
- DCC5 Note on derelict land
- DCC6 Note on highway improvement works
- DCC7 Closing submissions

**Inquiry 2:**

DCC 8	Note on emerging local plan, incl extracts from examination documents and policies map
DCC 9	Suggested Aftercare condition
DCC 10	Closing submissions

Documents submitted by CPRE/DVFN

**Inquiry 1:**

- R6.1 Response to rebuttal evidence document
- R6.2 Report of County Planning Officer 13 February 1974
- R6.3 Extract re Hobson Opencast from Development Control Sub Committee dated 13 September 1977
- R6.4 Extract re Ploughsett Opencast from Development Control Sub Committee dated 8 June 1982
- R6.5 Response to Mr Garner's rebuttal
- R6.6 Decisions by Inspectors and/or Secretary of state
- R6.7 Longannet CCS Project Cancelled
- R6.8 Longannet CCS Project Cancelled
- R6.9 Longannet CCS Project Cancelled
- R6.10 Scunthorpe Run down

R6.11 Demand forecast for coal extrapolated from 1950-1978

R6.12 Closing submissions

**Inquiry 2:**

R6.13	Opening statement
R6.14	Coal Classification System
R6.15	CoalTech: Carbon burnout
R6.16	Combustion of low volatile coals
R6.17	Closing submissions

Core Documents - **Inquiry 1:**

CD1	(a) Planning Application and Environmental Statement (b) Environmental Addendum July 2009 (c) Environmental Addendum August 2011 (d) Environmental Statement July 2014
CD2	Pre-Application Correspondence between UKC and LPA
CD3	Post – Application Correspondence between UKC and LPA.
CD4	Report to Committee
CD5	Decision Notice
CD6	Minerals Local Plan 2000
CD7	Nabarro letter to PINS
CD8	Nabarro letter to DCC
CD9	Billingside Committee Report
CD10	Billingside Decision Notice
CD11	Billingside Inspector's report
CD12	Jolly Drovers Committee Report
CD13	Jolly Drovers Minutes of Committee Meeting
CD14	Billingside Ponds Committee Report
CD15	Billingside Ponds Decision Letter
CD16	UK Coal landholding in Derwent Valley
CD17	Draft s106 Agreement
CD18	Existing Features Plan 176/D01d
CD19	Site Plan 176/D02d
CD20	Restoration Plan 176/D03d
CD21	Good Practice Guide for Handling Soils - Natural England
CD22	Agreed draft section 39 agreement
CD23	Derwentside Local Plan
CD24	Regional Spatial Policy for the North East
CD25	ASDU Report, Billingside Ponds, August 2010
CD26	Agreed Zones of Theoretical Visibility
CD27	DCC Statement of Case
CD28	Appellant's Statement of Case
CD29	Statement of Common Ground (October 2011)
CD30	Regulation 22 Information, 24 August 2011
CD31	Stopping Up Application under s247 TCPA
CD32	Previous Workings Plan 176/D41
CD33	The Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001
CD34	BS 4142 1997
CD35	BS5228: Part 1 2009



CD36	BS5228: Part 2 2009
CD37	Calculation of Road Traffic Noise
CD38	Noise from Opencast Coal Sites: A Study into Prediction Accuracy, Hepworth Acoustics
CD39	BS 6472: Part 2 2008
CD40	Guidelines for the Environmental Assessment of Road Traffic – Institute of Environmental Assessment
CD41	British Standard 7385 Part 2 - Evaluation and Measurement for Vibration in Buildings
CD42	Design Manual for Roads and Bridges, Volume 11, Section 3 – Environmental Assessment, Part 1, Air Quality
CD43	Minutes of Bradley Committee Meeting
CD44	Mineral Extraction and Archaeology and PPS5 Attachment
CD45	Scheduled Monuments (Department of Media, Culture and Sport)
CD46	Landscape Character Assessment: Guidance for England & Scotland, 2002 – SNH / Countryside Agency
CD47	Photography and photomontage in landscape and visual impact assessment, Advice Note 01/11: Landscape Institute
CD48	Draft National Planning Policy Framework

#### Documents added for **Inquiry 2**

CD49	Minerals Local Plan Saving Direction
CD50	Section 39 agreement dated 16 January 2012
CD51	Derwentside Local Plan Saving Direction
CD52	Agreed Zones of Theoretical Visibility Updated 2014
CD53	DCC Statement of Case dated 27 January 2014
CD54	Appellant's Statement of Case dated 28 January 2014
CD55	Stopping Up Application under s247 TCPA dated 16 July 2014
CD56	The Landscape Institute and IEMA's GLVIA 3rd Ed 2013
CD57	Scheduled Monuments & Nationally Important Non-scheduled Monuments dated October 2013
CD58	National Planning Policy Framework March 2012
CD59	National Planning Practice Guidance (relevant extracts as agreed)
CD60	The County Durham Plan Submission Draft - April 2014 (relevant extracts)
CD61	The Setting of Heritage Assets' - English Heritage, 2011.
CD62	The Quarries Regulations 1999
CD63	Section 106 agreement dated 16 January 2012
CD64	Arun District Council v Secretary of State for Communities and Local Government [2013] EWHC 190 (Admin)
CD65	First Inspector's Decision Letter dated 23 February 2012
CD66	Natural England - 'National Character Area Profile: 16. Durham Coalfield Pennine Fringe (2013)'
CD67	BS 5228 - Part 1: 2009+A1: 2014
CD68	BS5228: - Part 2: 2009+A2: 2014
CD69	UK Coal Mining Limited v Secretary of State for Communities and Local Government and another [2013] EWHC 2142 (Admin)
CD70	Letter from Nabarro to DCC dated 4 August 2014 regarding the restoration plan
CD71	Letter from DCC to Nabarro dated 8 August 2014 regarding the Section 78 appeal

CD72	External consultation responses in relation to the updated Environmental Statement
CD73	UK Coal's representations on The County Durham Plan Pre-Submission Draft – Consultation 2013
CD74	Statement of Common Ground

## **Annex: conditions**

### DEFINING THE PERMISSION

- 1) The development hereby approved shall be carried out in accordance with the following plans and documents:
  - i) Description of working method as contained in the Updated ES Volume 1, Chapter 3, parts 3.3-3.11
  - ii) Drawing No. 176/D01e/1 'Existing Features'
  - iii) Drawing No. 176/D02e/1 'Site Plan' (as amended by drawing 176D 51A)
  - iv) Drawing No. 176/D03f 'Restoration Plan'
  - v) Drawing 176 Figure 3.1e 'Phasing Plan 6 Months'
  - vi) Drawing 176 Figure 3.2e 'Phasing Plan 12 Months'
  - vii) Drawing 176 Figure 3.3e 'Phasing Plan 24 Months'
  - viii) Drawing 176 Figure 3.4e 'Phasing Plan 32 Months'
  - ix) Drawing 176 Figure 3.5e 'Phasing Plan 36 Months'
  - x) The Written Scheme of Archaeological Investigation and Mitigation contained in the Updated ES Volume III, Appendix 10.7
- 2) A copy of this decision, including all the approved plans and documents, along with any legal agreements and subsequent amendments, shall always be on display in the site offices and subsequently, shall be made available to all persons with responsibility for the site's aftercare and management.
- 3) The MPA shall be given at least seven days prior written notification of the date of commencement of the following:
  - (i) site preparation works
  - (ii) the winning and working of coal
  - (iii) the extraction of coal
  - (iv) the export of coal from the site.
- 4) The development hereby permitted shall begin not later than three years from the date of this decision.

### MATTERS REQUIRING SUBSEQUENT APPROVAL

- 5) Development shall not begin until schemes for the following have been submitted to and approved in writing by the MPA. Those details required by Condition 3(a) through to Condition 3(o) shall all be submitted and approved before any site preparation works begin. The site shall be operated in accordance with the approved schemes and details.
  - (a) A definitive Soil Handling and Management Manual based on the Report on Soils, Land Quality and Agriculture and the Draft Soil Handling Strategy at Appendices 11.1 and 11.2 of the Updated ES, Volume III which shall clearly describe the proposed soil stripping, handling and replacement methods to be used at the site, details of the proposed soil depths upon restoration and plant and machinery to be used.
  - (b) A noise monitoring scheme, including the exact locations of noise monitoring points and proposed monitoring frequency. The locations of noise monitoring points shall be chosen so as to minimise the possibility of effects due to off-site noise.
  - (c) A blast vibration monitoring scheme which shall identify suitable monitoring locations as well as mitigation measures and measures to be implemented during blasting operations to minimise the effects of air overpressure, and details of the proposed monitoring frequency. The scheme shall also include details of the siting of warning flags and notice boards and

procedures for informing occupiers or users of potentially affected properties of blasting procedures.

- (d) A dust action plan, based on the Draft Dust Action Plan contained in the Updated ES, Volume II Appendix 6.1, including the exact locations of monitoring points and proposed monitoring frequency and methodology to be used for assessing monitoring results. The period of monitoring shall commence within 2 months of the date of this decision and shall continue until the replacement of topsoil is completed;
- (e) Details of any hedgerow, tree, and shrub planting to be carried out and translocation of hedgerows to take place prior to the commencement of the development, which shall include:
  - (i) identification of the hedgerows to be translocated, their intended location and methodology for undertaking these works;
  - (ii) the species to be planted and the percentage of the total to be accounted for by each species;
  - (iii) the size of each plant and the spacing between them;
  - (iv) the preparations to be made to the ground before planting;
  - (v) the fencing off of planted areas;
  - (vi) a maintenance and management programme, including for any planting not covered by aftercare arrangements;
  - (vii) a timetable for implementation.
- (f) Details of drainage arrangements and surface water management during site preparation and working life of the site.
- (g) Details of the water treatment systems to be installed in the Water Treatment Areas including the positioning within the area and construction of them and their dimensions and of the pipes connecting and discharging from them and facilities for the removal of suspended solids from surface water run-off.
- (h) Details of the type and height of fencing to be provided around the site boundary and within the site.
- (i) Details of the design and construction of the access.
- (j) A layout plan which makes provision for a temporary car park within the site to accommodate operatives and construction vehicles during development of the site.
- (k) Details of the wheel cleaning equipment to be installed and arrangements for its use, to ensure vehicles leaving the site are thoroughly cleaned of mud before entering the public highway.
- (l) Details of the design and location of the site compound including buildings, fixed plant and machinery to be used on the site and of the proposed coal stocking and process area and plant yard and details of the illumination to be used on site.
- (m) Details of the protection pads at the crossing points over the gas main.
- (n) Details of the notice boards to be placed at the site entrance. These shall be of durable material and finish and shall indicate:
  - (i) the name, address, and telephone number of the company responsible for the operation of the site and contact details for an official who will be available to deal promptly with any complaints;
  - (ii) instructions for use of the approved traffic route, to be placed so as to be clearly visible to all drivers of heavy goods vehicles exiting the site.
- (o) A travel plan containing an overview of the transport implications for the proposed development, a survey of travel patterns and details of measures to be taken to promote sustainable means of transport for staff and visitors.

- 6) Within six months of commencement, schemes for the following shall be submitted to and approved in writing by the MPA. Development shall be carried out in accordance with the approved details.
- (a) Details of the restoration of the site, which shall include:
    - (i) the final contours for the site (at 2 metre intervals), indicating how such contours tie in with the existing contours on adjacent land;
    - (ii) the replacement of soils including depths and handling and replacement methods;
    - (iii) a scheme to provide for the management of the restored ground within any areas on site identified as feeding grounds used by badgers, to promote the maximum recolonisation with invertebrate.
    - (iv) the drainage of the restored site;
    - (v) the erection of fences;
    - (vi) the planting of trees and hedges, to include the numbers species and percentages of species to be planted; size and spacing; ground preparation; fencing; subsequent maintenance and management;
    - (vii) the reinstatement of and provision of additional drystone walls;
    - (viii) the routes of proposed public rights of way, details of the surfacing and any other works associated with them and a timetable for their provision.
    - (ix) the provision of appropriate site interpretation material based on the results of the archaeological works;
    - (x) measures to ensure that the risk of erosion is minimised and the use of agricultural machinery is not unduly restricted;
  - (b) A strategy for the aftercare of the land for five years.

#### COMPLETION

- 7) All extraction shall cease by no later than 27 months from the date of commencement of the development.
- 8) The site shall be restored within 12 months of the cessation of extraction or, if this period extends beyond the end of September, by the end of July the following year.
- 9) In the event of extraction ceasing or significantly reducing for a period of 6 months from that specified in the approved detailed phasing programme, the MPA shall be notified in writing within one month of the date of such cessation or reduction. Within 3 months of that date, a revised scheme for the restoration of the site or modification of the detailed phasing programme for the site, including timescales for completion, shall be submitted to the MPA for its written approval. The revised scheme shall be implemented as approved.

#### WORKS REQUIRED FOR SITE PREPARATION

- 10) The MPA shall be notified, in writing, within two working days of each of the following works being carried out:
- (a) the construction of the approved site drainage cut-off ditches, water treatment areas and other drainage facilities appropriate to the area to be stripped;
  - (b) the formation of the site offices and compound;
  - (c) the formation of the site access;
  - (d) perimeter fencing and fencing alongside alternative rights of way;
  - (e) protective fencing alongside hedgerows and trees;
  - (f) the installation of wheel cleaning equipment;
  - (g) the provision of notice boards;

- (h) the provision within the site of a water supply for the agreed dust suppression measures and sufficient number of water bowsers and/or dust suppression equipment.

#### WORKING PERIOD

- 11) Operations shall only take place within the following hours:

##### Site operations

07.00 to 19.00 Monday to Friday

07.00 to 12.00 Saturday

##### Coal haulage hours

07.00 to 18.00 Monday to Friday

07.00 to 12.00 Saturday

##### Maintenance

07.00 to 19:00 Monday to Friday

07.00 to 16:00 Saturday

With the exception of pumping, no working or operations including the maintenance of vehicles and plant shall take place outside of these hours or at any time on Bank, or other public holidays, save in cases of emergency when life, limb, or property are in danger. The Mineral Planning Authority shall be notified as soon as is practicable after the occurrence of any such operations or working.

- 12) Notwithstanding the operational hours set out in condition 11, no mineral extraction, overburden or soils handling operations shall take place within 200m of Brooms Farm or Our Lady and St Josephs Church House prior to 08.00 hours Monday to Saturday.

#### ACCESS AND PROTECTION OF THE PUBLIC HIGHWAY

- 13) Access for all vehicles to and from the site shall be via the access as shown on Drawing No. 176/D02e/1 'Site Plan'.

- 14) No coal shall be taken from the site until the access has been formed in accordance with the agreed details.

- 15) The total number of heavy goods vehicles entering and leaving the site shall average no more than 64 (32 in and 32 out) Monday to Friday when calculated over any four week working period (Mondays to Fridays) and 30 (15 in and 15 out) on Saturdays. A record of all goods vehicles leaving the site shall be maintained by the operator and a certified copy of this record shall be afforded to the MPA within 2 working days of such a request.

- 16) The loads of all laden coal lorries leaving the site shall be fully covered by sheeting.

#### SOIL STRIPPING AND STORAGE

- 17) The MPA shall be given at least two working days notice in writing of any intended individual phase of topsoil or subsoil stripping.

- 18) The MPA shall be given the opportunity to verify that the full depth of topsoil has been satisfactorily stripped prior to the commencement of subsoil stripping.

- 19) A minimum stand-off distance of 2 metres shall be maintained between soil storage mounds and the site boundary and/or site drainage ditches.

- 20) No topsoil, subsoil or soil making materials shall be removed from the site.

- 21) Within three months of the commencement of soil stripping, and every six months thereafter, the MPA shall be supplied with a plan indicating the area stripped of topsoil and subsoil, the location of each soil storage heap, and the quantity and nature of material within the mounds together with details of the type of plant used to strip/store those materials. A balance of the quantities of material

stored with the proposed depth and texture of the soil profile to be replaced following restoration shall also be provided.

22) An annual soils management audit report shall be submitted by 31 January each year detailing all soil movements for the previous 12 months as well as calculations of soil volumes and outstanding restoration tasks.

#### SITE WORKING

23) A strip of land at least 12 metres wide shall be maintained at existing ground levels adjacent to any highway, except where the storage of topsoil and subsoil has been approved.

24) Overburden and soils shall only be stockpiled in the areas shown on Drawing No. 176/D02e/1 'Site Plan', or as subsequently approved, to heights not exceeding those shown on the plan.

25) At all times works should be carried out in line with a method of working to be agreed in writing with the MPA prior to works starting on site. The working method shall take into account the best available information and techniques in relation to protected species, including their protection during working and restoration, as works are completed in any area. Advance notification of changes in the agreed working programme shall be given to the MPA.

26) Checking surveys shall be carried out prior to the commencement of soil stripping and prior to each phase of working to ensure no badger setts have been established on site. If setts have been established or badgers are found to be foraging over the site, an impact assessment and mitigation strategy prepared by a suitably qualified person shall be submitted to and approved in writing by the MPA. The mitigation strategy shall be adhered to in full.

27) No site clearance works or development affecting potential bat roost trees shall take place until details of a scheme of mitigation measures in relation to bats, in accordance with those set out in the Environmental Statement Addendum 2009 Annexure A, paragraph 3.15, have been submitted to and approved in writing by the MPA. The scheme shall include provision for the inspection of potential bat roost trees immediately prior to felling and details of the location and design of bat boxes. The site shall be operated in accordance with the approved scheme.

28) No site clearance works or development affecting trees, scrub, ground vegetation or other semi-natural vegetation shall take place between March and August inclusive unless survey work immediately prior to the start of works confirms that breeding birds are absent. If nesting birds are found then work in that area must be avoided until the birds have fledged.

29) No site clearance works or development affecting trees, scrub, ground vegetation or other semi-natural vegetation shall take place until details of the proposed location and design of nest boxes (within the site and within retained habitat) and of barn owl nest boxes in accordance the Updated ES, Chapter 9, paragraphs 9.8.21 and 9.8.28, have been submitted to and approved in writing by the Mineral Planning Authority, together with a timetable for implementation. Development shall be carried out as approved.

#### SITE MAINTENANCE

30) From the commencement of the development, until restoration of the site, the following site maintenance operations shall be carried out:

- (a) the maintenance of fences in a stockproof and secure condition, between any areas used for development and adjoining agricultural land;
- (b) the care and maintenance of trees and hedgerows to be retained within the site boundary and treatment of those affected by disease, in accordance

with accepted principles of good woodland management and good arboricultural practice, including the provision of protective fencing;

(c) the maintenance and cleaning of all the hard surfaced access roads within the site over which licensed road vehicles operate;

(d) the maintenance of drainage ditches, water treatment areas, and the clearance of mud and silt from water treatment areas to avoid reducing their capacity for intercepting sediment;

(e) all areas of the site, including undisturbed areas and all topsoil, subsoil, soil making material and overburden mounds, shall be managed to minimise erosion and shall be kept free from injurious weeds (as defined by The Weeds Act 1959). Cutting, grazing or spraying shall be undertaken, as necessary and appropriate to the approved after-use of the land where the materials in mound are to be replaced, to control plant growth and prevent the build up of a seed bank of such weeds, or their dispersal onto adjoining land.

#### BUILDINGS, PLANT AND MACHINERY

31) Notwithstanding the provisions of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, no buildings, fixed plant or machinery other than approved by this permission under Condition 5 shall be erected or placed on the site without the prior written approval of the Mineral Planning Authority.

#### NOISE

32) The Noise Monitoring Scheme shall provide that the noise emitted from operations on the site shall not result in noise levels greater than those listed below, except when temporary operations are taking place.

Brooms Farm	55dB LAeq, 1Hr (free field)
Pont Road	55dB LAeq, 1Hr (free field)
Douglas Terrace	50dB LAeq, 1Hr (free field)

33) During periods of temporary operations (soil stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance) the Noise Monitoring Scheme shall provide that the noise emitted from operations on the site shall not result in noise levels greater than 70dB LAeq, 1Hr (freefield) as measured at Brooms Farm, Pont Road and Douglas Terrace. The duration of such activities shall not exceed 8 weeks in relation to each of the respective noise monitoring properties in any 12 month period.

34) The Noise Monitoring Scheme shall:

- (i) provide that the MPA shall be given at least 2 working days notice in writing prior to the commencement of any temporary operations;
- (ii) provide that on request, the operator shall, within 2 working days furnish the MPA with the particulars of the measurements recorded and the plant and equipment operating on the site at the time;
- (iii) identify measures to minimise noise emissions from plant and machinery used on site, including use of reversing warning devices.

#### BLASTING

35) Blasting operations shall not take place at the site until a test blast has been fired to allow the vibration characteristics of the rock within it to be calculated, and the frequency and timing of blasting has been agreed in writing with the MPA beforehand. Blasting operations shall be restricted to 2 blasts per day between the following times:

Monday to Friday



09:00 hours to 09:05  
09:55 hours to 10:05  
10:55 hours to 11:05  
11:55 hours to 12:00

14:00 hours to 14:05  
14:55 hours to 15:05  
15:55 hours to 16:00

No blasting shall take place outside these hours or at any time on Bank or other public holidays, save in cases of emergency when life, limb, or property are in danger. The Mineral Planning Authority shall be notified as soon as is practicable after the occurrence of any such emergency operations or working.

36) The blast vibration monitoring scheme shall provide that:

- (i) No component of the peak particle velocity of ground vibration resulting from the blasting shall exceed 12mms/second at any time during the working of the site at the nearest occupied residential property and, in each six month period of working, 95% of blasts shall not exceed 6mms/second;
- (ii) All blasts shall be monitored for peak particle velocity in three mutually perpendicular planes. On request, the operator shall, within 2 working days furnish the MPA with the particulars of the measurements recorded;
- (iii) Each blast shall be preceded by the sounding of a siren, and notices giving details of blasting operations and warning flags shall be placed at the positions agreed by the MPA before blasting commences. The siren, notices and position at which flags are to be erected will be maintained throughout the duration of minerals extraction operations. Occupiers of adjacent residential properties shall be notified of blasting procedures on site in accordance with agreed details;
- (iv) Details of measures to minimise the effects of overpressure;
- (v) That no blasting shall take place within 500m of any part of Douglas Terrace and Hedley Terrace.

#### DUST

37) The Dust Action Plan shall include:

- (i) Details of all measures to minimise and control dust nuisance, including dust control equipment;
- (ii) Details of monitoring methods and the location of dust monitoring stations;
- (iii) Arrangements for the monitoring of wind direction and speed;
- (iv) A strategy identifying normal, extreme and critical conditions;
- (v) The measures to be triggered during periods of extreme and critical conditions;
- (vi) Arrangements for reporting to the MPA and for recording and review.

#### POLLUTION CONTROL

38) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank it contains plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund. The bund shall

be sealed with no drain for removal of contained liquids. Any bund contents shall be bailed or pumped out under manual control and disposed of safely.

#### RESTORATION

39) All areas of hardstanding, including site compounds, access road and haul roads, shall be broken up and removed from the site or buried at sufficient depth not to affect the final restoration of the site, unless they are to be retained in accordance with the approved plans.

40) All water treatment areas shall, unless to be retained in accordance with the approved plans, be emptied of slurry, filled with dry inert material, and restored to levels shown on the approved restoration plan.

41) All fixed equipment, machinery, and buildings shall be removed from the site.

#### REPLACEMENT OF OVERBURDEN

42) The final placement of overburden into the voids of completed workings shall be graded to prevent the material becoming saturated and waterlogged. Overburden shall be replaced to such levels, and in such a way that, after the replacement of subsoil and topsoil, the contours of the restored land conform to the approved restoration contours. The MPA shall be notified in writing when replacement of overburden has been completed and shall be given an opportunity to inspect the surface before further restoration works are carried out.

#### REPLACEMENT OF SUBSOIL

43) The MPA shall be notified in writing, with at least two working days notice prior to each phase of subsoil replacement.

44) Prior to the replacement of subsoils, the surface onto which it is to be placed shall be scarified to alleviate compaction, and surface picked of any stones or other materials capable of impeding normal agricultural or land drainage operations.

45) No movement, replacement or cultivation of subsoil shall be carried out during the months of October, November, December, January, February and March inclusive, without first obtaining the written approval of the MPA for the proposed working methods and period of working.

46) The stripped and stored subsoil or similar material shall be respread in accordance with the Soil Handling and Management Manual and the Restoration Scheme, as appropriate to the intended after-use. Any proposal to replace uniform subsoil types in a single layer by loose-tipping methods shall only be permitted subject to a trial demonstration and subject to the written approval MPA during the restoration phase.

47) Each layer formed in accordance with Condition 46 shall be rooted and cross rooted to its full depth by a heavy duty subsoiling implement with winged tines set no wider than 600mm apart. Any non-subsoil type material, or stones larger than 225mm in any dimension, shall be removed from the surface and not buried within the respread subsoil.

48) All areas of exposed subsoil, not previously excavated, shall be rooted to 450mm depth at 600mm spacings to relieve compaction, and surface picked to remove any obstructions to cultivation.

49) Following compliance with Conditions 47 and 48, the surface shall be graded to ensure that, after replacement of topsoil, the contours of the landform conform to the approved restoration contours.

50) The MPA shall be given the opportunity to inspect each stage of the work completed in accordance with Conditions 46, 47 and 48 prior to further restoration being carried out, and shall be kept informed as to the progress and stage of all

works. A record plan of the progress of restoration shall be maintained at the site office.

#### REPLACEMENT OF TOPSOIL

51) The MPA shall be notified in writing, with at least two working days notice prior to each phase of topsoil replacement.

52) The respreading of topsoil shall only be carried out when the material and the ground on which it is to be placed are in a suitably dry and friable condition, and there shall be sufficient time for subsoiling, cultivation and reseedling to take place and be completed under normal weather conditions before the end of September.

53) No movement, replacement or cultivation of topsoil shall be carried out during the months of October, November, December, January, February and March without first obtaining the written approval of the MPA for the proposed working methods and period of working.

54) Topsoil shall be respread in accordance with the approved Soil Handling and Management Manual and the Restoration Scheme, as appropriate to the intended after-use, to a form corresponding to the contours shown on the approved restoration plan.

55) The MPA shall be given the opportunity, with 48 hours advance notice, to inspect each stage of the work completed in accordance with Condition 54 prior to further restoration being carried out, and shall be kept informed as to the progress and stage of all works.

#### MAINTENANCE OF SITE RESTORATION RECORDS

56) During the whole restoration period, the developer shall maintain on site separate plans for the purpose of recording successive areas of overburden, subsoil and topsoil replacement approved by the MPA.

57) Within 3 months of the restoration of the final topsoil layer, the developer shall make available to the MPA a plan with contours at sufficient intervals to indicate the final restored landform of the site, together with a record of the depth and composition of the reinstated soil profiles.

#### AFTERCARE

58) The aftercare period for each part of the site will begin once the restoration condition for the relevant part of the site has been met.

59) Every year during the aftercare period the developer shall arrange an annual review meeting to be held before 30th November, to which the following parties shall be invited:

- (a) the Mineral Planning Authority;
- (b) Natural England (or successor);
- (c) all owners of land within the site;
- (d) all occupiers of land within the site;
- (e) representatives of other statutory and non-statutory bodies as appropriate.

The developer shall arrange additional aftercare meetings as required by the Mineral Planning Authority.

60) Not less than 4 weeks prior to the annual review meeting, a report shall be submitted to the MPA recording the operations carried out on the land since the date soil replacement operations were completed, or since the previous annual review meeting, and setting out the intended operations for the next 12 months, including works to rectify failures which have been identified as necessary by the MPA.

#### CULTIVATION AFTER REPLACEMENT OF TOPSOIL

61) As soon as the ground is sufficiently dry following the satisfactory replacement of topsoil, the land shall be subsoiled using an agricultural winged tine subsoiler, operating at a depth and tine spacing agreed in writing beforehand with the MPA. At least seven days notice of the intention to carry out these works shall be given to the MPA and such works shall only proceed subject to the written approval of the MPA.

62) Any stones lying on the surface after compliance with Condition 61 which are larger than would pass through a wire mesh with a spacing of 100mm, together with other objects liable to obstruct future cultivations, shall be removed from the surface and either be buried below the subsoil or removed from the site.

63) Following compliance with Condition 62 the land shall be worked to prepare a seedbed suitable for the sowing of grass seeds or other approved crop.

64) As soon as practicable following compliance with Condition 63, and no later than the end of September, the land shall be sown with a short-term grass seed mixture or other approved crop, the details of which shall have been submitted to and approved in writing by the MPA prior to the commencement of topsoil replacement.

65) Where adverse weather conditions or other delays prevent compliance with Condition 64, alternative treatment of the reinstated soils to stabilise them over the winter period shall be submitted to and approved in writing by the MPA.

#### PROVISION OF SURFACE FEATURES

66) From the date of commencement of the aftercare period on any part of the site, the following works shall be carried out within the relevant part of the site:

- (i) the installation of water supplies for livestock shall be completed within 12 months;
- (ii) the erection of stock-proof fences and gates shall be completed within 24 months;
- (iii) stone walls and access tracks shall be completed within 24 months (and prior to the commencement of any underdrainage installation) except where alternative details have been submitted to and approved in writing by the MPA;
- (iv) hedgerows shall be planted within the first available season following the completion of soils replacement; and
- (v) proposed woodland areas shall be sown with an agreed grass seed mix within the first available season, the details of which shall be submitted to and approved in advance in writing by the MPA. Trees shall then be planted in suitably prepared ground during the next available planting season.

67) The works referred to in Condition 66 shall be carried out in accordance with details set out in the report prepared in accordance with Condition 60. The MPA shall be notified at least 4 weeks before commencement of, and no later than 4 weeks after completion of, each of the above works.

#### DRAINAGE AND WATER SUPPLY

68) Following the completion of each phase of restoration, surface drainage works (including watercourses, field boundary ditches, and surface grips) shall be installed as soon as practicable following soils replacement, to intercept run-off, prevent soil erosion, and avoid flooding of the land. During each calendar year, such drainage works shall be completed prior to the end of September and maintained or improved throughout the aftercare period.

69) A comprehensive agricultural field drainage system, conforming to the normal design criteria for restored land, and in accordance with a scheme to be submitted to and approved in writing beforehand by the MPA, shall be installed at a

time to be agreed no earlier than the first annual aftercare meeting and no later than 24 months from the commencement of the aftercare period.

70) At least 7 days notice of the intention to commence works to the installation of any underdrainage shall be given to the MPA. Underdrainage works shall proceed only subject to their approval in writing by the MPA.

71) Within three months following the installation of the approved underdrainage, two copies of both the final drainage record plan and the up-to-date site survey plan (showing final restoration contours at 2 metre intervals) shall be submitted to and approved in writing by the MPA.

#### CULTIVATION AFTER INSTALLATION OF FIELD DRAINAGE

72) As soon as the ground is sufficiently dry after compliance with Condition 69, the agricultural land shall be subsoiled, using an agricultural winged tined subsoiler, operating at a depth, and tine spacing approved in writing by the MPA. During the cultivation process, any exposed stones larger than 100mm in any dimension, together with other objects liable to obstruct future cultivation shall be removed from the site. At least seven days notice of the intention to carry out such works shall be given to the MPA and such works shall only proceed subject to the written approval of the MPA.

73) Following compliance with Condition 72, the agricultural land shall be worked to prepare a seedbed suitable for the sowing of grass seeds or other crop approved in writing by the MPA prior to sowing. During the cultivation process any stones lying on the surface which would not pass through a wire mesh with a spacing of 100mm, together with other objects liable to obstruct future cultivation, shall be removed from the surface and not buried within the restored soil profile.

74) By no later than the end of August following compliance with Condition 73, the agricultural land shall be sown with a long-term grass seeds mixture, the basis of which shall be perennial ryegrass and white clover. Details of the mixture including species and seed rate shall be submitted to and approved in writing by the MPA before sowing commences.

#### ESTABLISHMENT AND MAINTENANCE OF GRASS SWARD

75) During the aftercare period the following shall be carried out in respect of the agricultural land:

(a) the soil shall be tested annually, and fertiliser and lime shall be applied in accordance with good agricultural practice, and at a rate targeted to achieve the following nutrient levels under the Index System described in the latest version of the Ministry of Agriculture, Fisheries and Food Leaflet RB209 "Fertiliser Recommendations" or equivalent:

Potash - Index 2

Phosphate - Index 2

pH - 6.0

(b) reseeding any areas where a grass sward fails to become well established with an approved species mixture.

(c) the grass sward to be reduced to 50 – 100mm in length by cutting or grazing before the end of October.

(d) the condition of the grass sward to be inspected annually, with appropriate measures taken to control weed infestation.

(e) no vehicles, (with the exception of low ground pressure types required for approved agricultural work), machinery or livestock shall be permitted on the land during the months of November, December, January, February and March, without the prior consent of the MPA.

#### HABITAT AREAS AND AMENITY AREAS

76) A detailed specification including a modified programme of soil resspreading, cultivation, seeding, fertilising and cutting shall be separately submitted to and approved in writing by the MPA prior to the commencement of the aftercare period, for any approved conservation habitat area or amenity area.

#### MAINTENANCE OF HEDGES AND TREES

77) Hedges and trees shall be maintained during the aftercare period in accordance with good woodland and/or agricultural practice, such maintenance shall include:

- (a) the early replacement of all dead, damaged or diseased plants.
- (b) weeding early in each growing season, and as necessary thereafter to prevent the growth of plants being retarded.
- (c) maintaining any fences around planted areas in a stock proof condition.
- (d) appropriate measures to combat all pests and/or diseases which significantly reduce the viability of the planting scheme.

#### COMPLETION AND AFTERCARE

78) No later than 6 months prior to the target date for the completion of aftercare on any part of the site, the developer shall prepare a report on the physical characteristics of the restored land and, in respect of the agricultural land, shall incorporate proposals to demonstrate that, by the end of the aftercare period, this will be restored, so far as it is practicable to do so.

79) The period of aftercare shall be deemed to have been successfully completed following a period of 5 years effective management of those parts of the site to be restored to agriculture, as confirmed in writing by the MPA.