



meeting **PLANNING AND LICENSING COMMITTEE**

date **30 SEPTEMBER 2008**

agenda item number

**4**

**Corporate Director (Communities)**

#### **ASHFIELD DISTRICT 4/2007/0904**

**PROPOSAL: COAL RECOVERY SCHEME FROM THE FORMER LANGTON COLLIERY SPOIL HEAP AND RECLAMATION INCLUDING WOODLAND, SCRUB, DRY GRASSLAND, AND WETLAND WITH ENHANCED RIGHTS OF WAY NETWORK, AND REINSTATEMENT OF EMPLOYMENT LAND**

**LOCATION: FORMER LANGTON COLLIERY SPOIL HEAP AND INDUSTRIAL LAND OFF BEAUFIT LANE, NEAR PINXTON**

**APPLICANT: ATH REGENERATION LIMITED**

#### **Purpose of report**

1. To consider a planning application for the recovery of coal from the former Langton Colliery spoil heap with restoration to a combination of woodland, scrub, dry grassland and wetland with additional rights of way. The key issues relate to visual impact, HGV movements, protected species, noise and restoration.
2. The recommendation is to grant conditional planning permission subject to planning permission for the proposed development also being granted by Derbyshire County Council and the signing of a legal agreement.

#### **The site and surroundings**

3. The application area covers land within both Nottinghamshire and Derbyshire either side of the M1 motorway approximately 1.5 kilometres south east of junction 28 of the motorway. The village of Pinxton, in Derbyshire, is to the north west of the site with Kirkby in Ashfield approximately two kilometres to the north east and Selston approximately 1.5 kilometres to the south (see Plan 1).

4. The Nottinghamshire part of the application site, to the east of the motorway, covers an area of 24.9 hectares and is a colliery spoil heap associated with the former Langton Colliery (see Plan 2). The former colliery was located further to the east. The spoil heap is bordered to the west by the motorway and to the north by the B6019 (Pinxton Green and Kirkby Lane), on which are located a number of isolated properties. A mature hedgerow runs along this boundary and continues along the eastern boundary of the site, beyond which are Langton Hall and Langton Hall Farm. The south of the site is bordered by the River Erewash and a now disused railway line which served the former colliery and the former Bentinck colliery beyond that. This line links with an operational line further south. With the exception of the motorway and Pinxton, the area surrounding the site is predominately in agricultural use with a few isolated properties.
5. The spoil heap, which has a maximum height of 128 metres above Ordnance Datum (AOD), is predominately covered by rough grassland although some small areas are bare, exposing the colliery spoil beneath. There are small areas of woodland and scrub in the north west corner of the site and on the southern boundary close to the former mineral railway and the River Erewash. The Maghole Brook crosses the north west corner of the site before passing underneath the motorway through a culvert.
6. Kirkby Footpath Number 17 runs along the southern boundary of the site next to the River Erewash linking with Pinxton Footpath Number 27 in Derbyshire and Kirkby Footpath Number 18 to the south. To the north of the B6019 is Kirkby Bridleway Number 12 which travels in a northerly direction.
7. There are three Sites of Importance for Nature Conservation (SINCs) close to the southern and south eastern boundaries of the site: the Kirkby Bentinck Dismantled Railway Spoil SINC, described as a 'naturally vegetated spoil heap and valuable dismantled railway habitat'; the Langton Meadow SINC, a 'notable coal measures grassland'; and the Langton Marshy Grassland SINC, 'interesting marsh, swamp and damp grasslands of both botanical and zoological interest'.
8. There are also two Mature Landscape Areas (MLAs) close to the site. The Dumbles MLA commences on the northern side of the B6019 and continues north towards the A38 and is characterised by small to medium sized pasture fields. The Kirkby Park MLA is to the south east of the application site and is described as a varied and undulating coalfields farmlands landscape surrounding the River Erewash.
9. To the west of the motorway, the Derbyshire side of the site covers an area of 5.2 hectares. The majority of this forms part of an industrial estate with three industrial units and areas of hardstanding. The remainder of the industrial estate is to the immediate north and west. The southern and eastern fringes of this part of the site are vegetated with trees and scrub. The River Erewash runs to the south of the site while the Maghole Brook, having passed through a culvert under the motorway from the Nottinghamshire side of the site, meanders in a southerly direction, mainly through other sections of culvert, before entering the River Erewash.

10. The two parts of the application site are joined by an underpass beneath the motorway.

### **Proposed development**

11. As the application site falls within both Nottinghamshire and Derbyshire, planning applications have been submitted to both authorities. A report for Derbyshire County Council's Regulatory Planning and Control Committee is being prepared which assesses the impact of the proposed development in that county.
12. It is proposed to recover approximately 445,000 tonnes of coal from the former colliery spoil heap which contains an estimated 2.6 million tonnes of spoil material. This equates to approximately 17% of recoverable coal. A summary of the proposed development can be found on the key fact sheet.
13. Initial developments on the site would involve the installation of the washing plant and press house on the Derbyshire side of the site along with associated offices and infrastructure, including a noise attenuation barrier to the south of the site. The Maghole Brook would be diverted into an open channel running alongside the motorway embankment, although one small section of culvert would be required to allow HGVs access to and from the processing area and the extraction area on the other side of the motorway.
14. On the spoil heap, soils would be stripped from part of the site and placed into a continuous soil bund along the northern, north eastern and southern boundaries and would be seeded. Also, a surface water cut-off ditch would be created around the perimeter of much of the site which would feed into a number of settlement ponds on the southern boundary.
15. Part of Kirkby Footpath Number 17 alongside the River Erewash would be diverted from a point close to and to the west of the disused railway line around the southern, eastern and northern perimeter of the site before connecting with the B6019. Users could then either link with Kirkby Bridleway Number 12 or continue along the B6019 before turning left onto Beaufit Lane and travelling south to Pinxton Footpath Number 27. These measures are proposed as Kirkby Footpath Number 17 and Pinxton Footpath Number 27 join in the motorway underpass, through which dump trucks laden with colliery spoil are proposed to travel.
16. An initial box cut would then be excavated from the north western section of the spoil heap and this material would be temporarily stockpiled and graded on the south east section of the spoil heap. This box cut would be required to allow mobile plant to access and excavate the remainder of the spoil heap. Mobile plant required on site at this stage would be a backactor used to excavate the colliery spoil, five dump trucks to transport the colliery spoil to the plant site and one grader to form and maintain internal haul roads.

17.

<b>KEY FACT SHEET</b>	
<b>TOTAL SITE AREA</b>	30.1 hectares (24.9 hectares in Nottinghamshire and 5.2 hectares in Derbyshire).
<b>PRESENT USE OF SITE</b>	Non-productive agricultural grassland to the east (Nottinghamshire) of the M1 and industrial land to the west (Derbyshire).
<b>PROPOSED AMOUNT OF MATERIAL TO BE PROCESSED</b>	2.6 million m <sup>3</sup> of colliery spoil to be excavated from land in Nottinghamshire in order to recover approximately 445,000 tonnes of indigenous coal. The remaining spoil would be returned to the spoil heap site and the site ultimately restored.
<b>OTHER DEVELOPMENTS ON SITE</b>	Mineral processing area to be set up on industrial land in Derbyshire to process the spoil material and recover the coal.
<b>DURATION</b>	Excavation and processing of material expected to take two years and nine months. Restoration of the site to take a further three months.
<b>PHASING</b>	Excavation proposed to take place in 19 separate cuts working in a generally south-west to north-east direction.
<b>PROPOSED HOURS OF OPERATION</b>	Excavation and transport of material to the processing site, and vehicular movements from the site proposed between 0700hrs to 1900hrs Monday to Friday and 0700hrs to 1300hrs on Saturdays. Mineral processing proposed 24 hours a day between 0700hrs on Monday to 1300hrs on Saturday. No operations would be carried out on Sundays, Bank or Public Holidays.
<b>TRAFFIC</b>	All HGVs to and from the site would access the site from Beaufit Lane in Pinxton. All HGVs would travel north along Town Street/Alfreton Road/Pinxton Lane and then east onto Mansfield Road to the M1, junction 28. All cars would enter and exit the site off Greensquare Road, off Beaufit Lane. Maximum 27 HGV trips per day (54 movements), maximum 40 car trips per day (80 movements).
<b>EMPLOYMENT</b>	The proposed development would create an estimated 35 jobs during the working of the site.
<b>PROPOSED RESTORATION</b>	The spoil heap would be restored to a combination of woodland and scrub planting (8.8 hectares with the planting of approximately 22,000 trees), 2km of new hedgerow planting, 7.2 hectares of dry grassland and wetland, and 7.6 hectares of agricultural land. The industrial land would be reinstated for long-term business use.

18. The first phase, or cut, would be an area to the south of the box cut in the south west corner of the spoil heap. Material would be excavated and transported by dump trucks through the underpass beneath the M1 motorway to the processing plant area to the west. Material would then continue to be excavated in a succession of cuts progressing in a north east direction, although the area subject to the stockpiling of material from the box cut would not be excavated at this time.
19. Upon entering the processing area, the excavated spoil would either be placed directly into the wash plant feed hopper or stockpiled for later use. Material fed into the feed hopper would travel along a picking belt where unwanted items such as wood etc would be removed. The material would then be fed into the wash barrel where coal, which is less dense than shale, would be separated in a slurry medium. The plant would be capable of processing 300 tonnes of material per hour. The separated coal would then be screened with oversized material being crushed before being further separated from the shale material and dewatered.
20. The finished coal product would be stockpiled prior to transport off site and it is anticipated that the coal would be sold for use in coal-fired power stations. The applicant proposes to enter into a legal agreement regarding the routing of HGVs from the site. This would direct all HGVs leaving the site access on Beaufit Lane in a northerly direction along the B6019 Town Street and Alfreton Road up to the junction with the A38 Mansfield Road. HGVs would then turn right and head towards the M1 at junction 28. It is not proposed to allow HGVs to either travel south along Beaufit Lane and Station Road towards Selston or to turn right off Beaufit Lane onto the B6019 Kirkby Lane towards Kirkby in Ashfield. An average of 25-27 HGVs would enter and leave the site per day (50-54 movements) along with between 25 and 40 cars (50-80 movements).
21. Excavation operations within Nottinghamshire would take place between 0700hrs and 1900hrs Mondays to Fridays and 0700hrs and 1300hrs on Saturdays. In order to process the amount of material that would be delivered to the processing area during that time, it is proposed to operate the processing plant 24 hours a day from 0700hrs on Mondays to 1300hrs on Saturdays. There would be no working within any part of the application site on Sundays, Public or Bank Holidays.
22. The shale discard, having been separated from the coal, would be dewatered and, using a loading shovel, would be loaded onto dump trucks and returned to the colliery spoil heap along with slurry sludge which would have been passed through a pressing plant in order to dewater it.
23. The returned spoil would first be deposited and spread by bulldozer on the box cut area before being placed on the previously worked phases in order to progressively restore the site using soils stripped from future cuts. Following the excavation of the first twelve cuts, with cut twelve being in the north east corner of the site, excavation would continue in the south eastern corner where the discard from the box cut was stockpiled. Excavation would be

carried out from west to east with the final cut being on the eastern boundary of the site.

24. It is anticipated that it would take approximately 2½ years to recover all the coal from the site which would follow a period of two months during which site preparation works would take place. Once the final discard material had been returned to the spoil heap site, final restoration works would take place over a three month period followed by a proposed five year aftercare period.
25. Although approximately 445,000 tonnes of coal would be recovered through the proposed development, the final proposed landform would be similar in scale to that which presently exists due to the bulking up of the discarded material, although it would be shaped slightly differently. The site would be restored to a mixture of woodland, small fields, dry grassland and wetland.
26. The woodland area would be located around the periphery of the site with the majority of the dry grassland habitat covering much of the southern half of the site. Agricultural grassland would cover much of the northern half of the site with fields created by hedgerow planting. A seasonal wetland area would be formed along the southern boundary of the site close to the River Erewash. A permissive bridleway is proposed linking Kirkby Footpath Number 17 at the south of the site with Kirkby Bridleway Number 12 to the north.
27. The majority of the processing area in Derbyshire would have all the plant and other infrastructure removed and would be available for redevelopment. The area around the diverted Maghole Brook would be planted using indigenous species and, where possible, the translocation of species from the existing line of the brook.
28. The application is accompanied by an environmental statement, following a scoping opinion given by the County Council in August 2007. The environmental statement has assessed a number of environmental effects and mitigation measures relating to the proposed development, including:
  - (a) Soils, land quality and agriculture;
  - (b) Archaeology and cultural heritage;
  - (c) Contamination;
  - (d) Transport;
  - (e) Geology, hydrogeology and hydrology;
  - (f) Landscape and visual effects;
  - (g) Noise;
  - (h) Air quality and dust; and
  - (i) Ecology.

29. The environmental statement also includes an assessment of the proposed development in relation to energy policy and the need for coal, planning policy and a socio-economic assessment.
30. In April 2008, six months after the submission of the application, some additional information was submitted in support of the application including:
  - (a) A Geo-Environmental Site Investigation Factual and Interpretative Report;
  - (b) A Water Vole Mitigation Strategy;
  - (c) An addendum to the Flood Risk Assessment;
  - (d) A Hydrological and Hydraulic Study of the Maghole Brook;
  - (e) A Traffic Management Strategy; and
  - (f) Revisions to the Noise and Air Quality and Dust chapters of the environmental statement.

### **Background/relevant planning history**

31. The area of the site in Nottinghamshire was used for the disposal of colliery spoil from the adjacent Langton Colliery until the colliery closed in 1966. The restoration of the spoil heap began in 1968 and was completed in 1970.
32. In 1992, a planning application (reference 4/23/91/0462) to recover coal from the spoil heap was refused permission by the County Council's then Environment Committee. Whilst having similarities to the present application, the major difference was that it was proposed to site the coal washing plant area on land to the east of the present application area, immediately south of Langton Hall. The application did not include any development within Derbyshire.
33. It was considered that the proposal would be contrary to policies in the then Structure Plan as it would result in a serious visual intrusion in a prominent and attractive area of countryside clearly visible from surrounding areas, in particular the M1 motorway which is a major vehicular access to the county. It was also considered that the proposed development would give rise to serious detriment to the amenity of nearby properties due to visual impact, noise, general disturbance and dust while resulting in an unacceptable increase in HGV movements through Pinxton.

### **Consultations**

34. **Ashfield District Council** is to report the application to its Planning Committee on 25 September. Its response will be reported orally. Officer comments have been received from the council's Environmental Health Officer regarding dust and contaminated land. Further information has been requested on these matters.

35. **Derbyshire County Council** has not responded on the application but, as highlighted earlier in the report, the council is considering an identical planning application as the site lies within both counties. The application is due to be reported to their Regulatory Planning and Control Committee in the near future.
36. **Bolsolver District Council** objects to the application as the possibility of using the existing mineral railway to transport coal has not been sufficiently explored in accordance with Policy M3.15 of the Minerals Local Plan. Also, the visual impact and noise impact of the processing area would be unacceptable.
37. In relation to Policy M12.6 of the Minerals Local Plan, it is considered that the impacts on the local community have not been shown to be acceptable while the proposed restoration is not considered to provide a substantial environmental improvement.
38. It is also considered that the proposed development is contrary to policies in the Derbyshire Minerals Local Plan.
39. **Selston Parish Council** is concerned that the proposed HGV routeing, which would direct HGVs away from roads in Selston, would not be totally enforced. Also, the parish council is concerned that HGVs travelling over speed humps would lead to increased noise and spillage of coal.
40. Concerns are also raised regarding the probability of flooding due to recent flooding events in the area and climate change. Also, assurances are sought that water used for washing the wheels of HGVs is not returned to local watercourses.
41. Finally, the parish council considers that the hours of operation are excessive, particularly at weekends.
42. **NCC (Minerals and Waste Policy)** note that Policy M12.6 of the Nottinghamshire Minerals Local Plan deals with the reworking of colliery spoil tips. The policy requires there to be no unacceptable impacts to the environment or local communities while the spoil heap should not have become an attractive landscape or wildlife feature and the proposals should result in substantial environmental improvement.
43. Policy M3.15 of the Minerals Local Plan promotes the bulk transport of minerals and it is noted that a disused railway line runs to the south of the site. This option should be given further consideration.
44. It should also be ensured that the proposed development accords with policies in the plan relating to visual intrusion, screening and noise.
45. **The Environment Agency** objects to the proposed development on the grounds that the temporary sound reduction bund proposed for the processing site is within an area of historical floodplain and could increase flood risk to third parties. No details of lost floodplain storage have been submitted so it is not possible to comment on the effectiveness of the mitigation measures proposed.

46. A condition regarding the storage of oils, fuels and chemicals has been suggested should planning permission be granted.
47. **Natural England** confirms that no Sites of Special Scientific Interest would be affected by the proposed development and it has no objection in terms of impacts to badgers, otters and great crested newts.
48. Regarding bats, the management prescriptions proposed in the environmental statement relating to lighting should be enforced through a planning condition. A condition is also proposed should any reptiles be found at any time during the proposed development.
49. Regarding water voles, the proposed mitigation is supported in principle along with the extension to habitats but full mitigation details should be made a requirement under condition. Invertebrate interest on the site is considered to be of site/local value and the proposed habitat creation should ensure its long term provision.
50. While habitat loss for farmland birds would occur during the course of the proposed development, the proposed restoration would provide long term improvements. A condition is proposed to avoid vegetation removal and soil stripping during the bird breeding season.
51. The mosaic of habitats proposed for the restoration of the site are supported although detailed amendments to the woodland scrub species and dry grassland seed mixes are highlighted.
52. Regarding the soil resource on the site, Natural England does not wish to comment as no Best and Most Versatile land is affected. The proposal to retain all available soils for use in restoration is commended.
53. **Nottinghamshire Wildlife Trust** supports the scheme in principle as it provides solutions to existing problems on the site while enabling a potential increase in Biodiversity Action Plan habitats. However, detailed concerns are raised in relation to the following matters.
54. There has been no wintering bird survey carried out and the timing of the invertebrate and reptile surveys give cause for concern.
55. The loss of open grassland and the noise impacts of the proposed development would have a detrimental impact on breeding and over-wintering birds. Mitigation could be provided through seed rich mixes being used on soil storage mounds and the relaxation in the management of areas of semi-improved grassland that lie both within the site boundary in the south east corner of the site and beyond.
56. While the opening up of the Maghole Brook would be beneficial, the disruption caused during construction works could impact upon water voles and additional features, such as small off-line ponds close to the brook and the River Erewash, should be provided. More information is required regarding the translocation of the water voles.

57. While there are some good proposals in the restoration scheme, detailed concerns are raised regarding the grassland species mix proposed due to the anticipated acidic nature of soils on site. Further details are required regarding the pH of the existing soils, whether additional soils are to be imported or whether ameliorants, such as lime, are to be used.
58. Long term aftercare is required in order to secure the long term continuation of the habitats proposed to be created and to provide meaningful biodiversity gain.
59. **NCC (Nature Conservation)** notes that the survey work indicates that the Nottinghamshire part of the site is of limited nature conservation value, although land in Derbyshire adjacent to the M1 is a candidate County Wildlife Site (the Derbyshire equivalent of a Site of Importance for Nature Conservation). The restoration of this part of the site should be the subject of a condition attached to any planning permission.
60. It is not clear if the pond in the south east corner of the spoil heap is to be retained as part of the restoration of the site and this matter requires clarification. More details are required regarding the impact of lighting on bats through the underpass beneath the M1 motorway.
61. Further details are required on how new water vole habitats are going to be introduced and established before works on the Maghole Brook are commenced.
62. All areas subject to soil stripping should be checked for nesting birds prior to any works, a matter which should be made the subject of a condition attached to any planning permission.
63. Further details regarding the protection of trees, particularly those close to the River Erewash, are required given the area supports ancient woodland features and possibly grass snakes. Further details are also required of the seed mix for the topsoil bunds.
64. The restoration scheme is generally supported but detailed comments are made regarding species mixes in woodland areas, hedgerows and grassland areas, the number of standard trees to be planted within the hedgerows, additional hedgerow planting on the eastern boundary of the site, natural colonisation of wetland/wet grassland species, the use of green hay to diversify the dry grassland areas and details of the pond design in the seasonal wetland areas.
65. **NCC (Landscape)** agrees with the applicant's assessment that the major visual impact of the scheme would be to users of the M1 motorway. However, while the environmental statement states that such views would be for only a short period of time, no account has been taken of periods of congestion or the possible removal of roadside vegetation as part of the M1 widening works. There could be a period of time when coal extraction would be taking place at the same time as vegetation has been removed as part of the M1 widening works. A possible means of mitigation would be to extend the existing southbound fencing adjacent to the motorway to screen the proposed development. Vegetation removal could also have an impact on other viewpoints into the site. More assessment work is necessary in this respect.

66. The removal of the existing grassland from the site has been underplayed in the environmental statement. Conversely, the reseeded of the site with a more diverse sward would have a more positive impact than is stated.
67. No information has been provided on the cumulative impacts of this proposed development and other schemes in the area, such as the M1 widening works and the proposal to reclaim Bentinck void and tip through the importation of non-hazardous and inert wastes.
68. More details are required regarding the lighting during the proposed development in order to assess its landscape and visual impact. The approximate number of lights, their distribution and hours of use require clarification. A plan should be provided showing the protection of existing trees and hedgerows, the location of protective fencing and areas to remain undisturbed.
69. Further confirmation is required regarding the source of plant material to be used in the woodland areas and hedgerows. British provenance material is recommended, preferably grown from seed sourced more locally. An additional hedgerow should be provided to link the southern boundary of the site with the proposed woodland areas to the north. Additional information is required regarding the long term management of the site, particularly the woodland areas as these are extensive.
70. **NCC (Highways)** has no objection to the proposed development based on the number of HGV movements, the existing industrial vehicular access points and the route to be taken from the site.
71. **The Highways Agency** considers the temporary impact of HGVs associated with the proposed development on junction 28 of the M1 motorway to be relatively minor and therefore no objection is raised.
72. **Network Rail** recommend a number of conditions be attached to the granting of any planning permission relating to issues such as drainage; flow rates through culverts that pass beneath the railway; the discharge of storm or surface water; the location of any soakaways or lagoons close to the railway; the location of any cranes and jibbed machines in relation to the railway; and the provision of fencing adjacent to the railway boundary. A number of operational and safety informatives are also provided for the applicant's attention.
73. **NCC (Countryside Access)** asks whether a fenced separated path through the underpass beneath the M1 would be acceptable to the applicant rather than the temporary closure and diversion of Kirkby Footpath Number 17.
74. The new bridleway link proposed as part of the restoration scheme is welcomed although it should be a definitive bridleway and not permissive to ensure its continued existence and its route as proposed is too winding and should follow contours more closely. The exit point onto the B6019 should be considered by the County Council's Road Safety Team. The bridleway should be in a hedged corridor to reduce the use of the site by illegal motorbikes.

75. **The Ramblers' Association** notes that the new bridleway link proposed would make a big contribution to the existing network by providing a north/south link. However, the climbing and snaking route of the new bridleway requires careful thought regarding its surfacing and to aid route finding.
76. The proposal to downgrade the existing Pinxton Footpath Number 27 and Kirkby Footpath Number 17 (part) to permissive bridleway status is not supported.
77. **NCC (Road Safety)** has commented on the proposed new bridleway through the site and the crossing of the B6019 in order to access the existing Kirkby Bridleway Number 12. It is considered that the safest crossing point would be approximately 45 metres to the east of the existing bridleway. This point would be acceptable for low numbers of pedestrians and cyclists but there are concerns about horses crossing at this point. If the development was to proceed as proposed, a case for a bridleway crossing should be made based on likely usage, traffic flows, speed readings and visibility.
78. **English Heritage** does not consider it necessary to be notified of the application.
79. **NCC (Built Heritage)** agrees with the conclusions of the environmental statement that the proposed development would lead to a temporary negative impact on the settings of Cliff Farm and Langton Hall Farm but this would change to a minor beneficial impact following the completion of the restoration of the site.
80. **NCC (Archaeology)** notes that a similar site at Portland Pit revealed some nineteenth century colliery buildings underneath colliery spoil. The buildings were not shown on any historical maps yet the remains were significant and provided useful information. It is considered that similar finds are likely within the application area and so a condition is considered justified requiring an intermittent watching brief with more detailed recording of features uncovered where this is warranted.
81. **NCC (Noise Engineer)** requires clarification or expansion on matters relating to daytime and night time noise levels, expected noise increases resulting from HGV movements generated by the proposed development, monitoring locations, temporary works close to the B6019 (number of machines, distance to machines etc) and the reflective nature of the noise attenuation barrier on the Derbyshire side of the site.
82. **NCC (Land Contamination)** notes that the completed risk assessment has yet to be submitted. Regarding the Geo-Environmental Desk Study Report, the recommendations that require intrusive investigations are accepted.
83. **The Health and Safety Executive** has no comments to make on the application.
84. **The Coal Authority** has no objection to the proposed development.
85. **Central Networks** raise no objection to the proposed development.

86. **Severn Trent Water** has no objection to the proposed development.
87. **National Grid** considers the risk to their networks from the proposed development to be negligible.

### **Publicity**

88. The application has been publicised by means of a number of site notices around the site, along the B6019 and along Kirkby Footpath Number 17, a press notice in the Ashfield Chad and notification letters to 36 residential properties and businesses in close proximity to the site. Site notices and the press notice were again placed after the submission of additional information in April 2008. These measures have been carried out in accordance with the County Council's adopted Statement of Community Involvement.
89. Four letters of objection have been received from residents on Kirkby Lane, Cliff Lane and Town Street, Pinxton raising issues regarding dust, noise, HGVs, the site should be left to continue to regenerate, increased wildlife on site, a similar proposal has already been refused at the site and the cumulative effects with other nearby major developments.
90. In addition to these objections, a total of 239 pro-forma letters (two slightly different letters have been used) have been submitted raising concerns about the continued use of coal to generate electricity despite the need to cut CO<sub>2</sub> emissions. One of the pro-forma letters highlights the need for all planning applications to consider climate change in accordance with the climate change supplement to Planning Policy Statement 1. These letters have been sent from a very wide area such as Retford, Misson, Newark, Lincoln, Manchester, Leeds, Leicester, Derby, Oxford, Cambridge, Buxton, Sheffield, Northampton and Somerset. A large number have been sent from various towns and suburbs in and around Nottingham. Only a small number of pro-forma letters have been sent from residents living in close proximity to the application site.
91. Members need to be made aware that, with all objectors receiving acknowledgement letters from the County Council, four objectors have contacted the County Council claiming to have no knowledge of sending or signing a pro-forma letter. Another six acknowledgement letters have been returned having been sent to unknown addresses.

### **Observations**

92. Detailed observations regarding the application follow and, where appropriate, references are made to concerns which are of greater relevance to the assessment of the application being made by Derbyshire County Council.

#### Planning policy considerations

93. There are a number of key national and local policy considerations associated with this planning application which need to be assessed.

94. National planning policy for coal is contained in Minerals Planning Guidance Note 3: Coal Mining and Colliery Spoil Disposal (MPG3) which was published in 1999. MPG3 highlights that one of the most important differences between coal extraction and many other types of mineral extraction is that “it is not for the planning system to seek to set limits on, or targets for, any particular source or level of energy supply; nor to predetermine the appropriate levels of coal to be produced by deep mine or opencast”.
95. Whereas the County Council, through the Minerals Local Plan, has specific production targets for aggregate minerals such as sand and gravel, which it aims to meet through allocations in the plan, such targets cannot be made for energy minerals such as oil and coal. MPG3 states that “it is for individual operators to determine the level of output they wish to aim for in the light of market conditions, and to determine the acceptability of individual projects”.
96. Regarding market conditions, there has been much publicity in recent times regarding the cost of energy and the link between this and the vulnerability of the UK’s energy supplies now that there is a significant reliance on imported fossil fuels such as gas, oil and coal. The UK’s reliance on imported fossil fuels is expected to increase in future years and this is recognised in the Government’s Energy White Paper, released in May 2007.
97. The White Paper recognises that, despite renewables and other low carbon technologies playing an increasing role in the UK’s energy mix in the future, fossil fuels will continue to be the main source of energy for decades to come. The White Paper also recognises that the UK can, to a degree, reduce its dependence on imported fossil fuels by maximising the recovery of remaining coal reserves where it is economically viable and environmentally acceptable to do so. The environmental acceptability of the application is considered in detail in the remainder of the observations section of this report.
98. MPG3 sets out the criteria for assessing proposals for coal extraction and there is a general presumption against coal development unless certain tests can be met. These tests are:
  - (a) Is the proposal environmentally acceptable or can it be made so through planning conditions;
  - (b) If not, can the environmental impacts be clearly outweighed by local and community benefits.
99. There are other tests relating to national parks, areas of outstanding natural beauty, sites of special scientific interest, national nature reserves and the Green Belt which are not relevant to this proposal.
100. The principle of these tests is carried forward into Policy M12.1 of the Minerals Local Plan and whether these tests can be met or not shall determine whether planning permission should be granted or refused.

101. The Minerals Local Plan also contains Policy M12.6 which is specifically aimed at planning applications to rework colliery spoil tips such as this. The policy states that:
- Planning permission will only be granted for the reworking of a spoil tip if:
- (a) It has not become an established, attractive landscape or wildlife feature;
  - (b) It will not cause an unacceptable environmental impact;
  - (c) It will not cause an unacceptable impact to local communities;
  - (d) It will result in a substantial environmental improvement of the site.
102. Again, the observations in this report consider whether the requirements of this policy are met or not and there are a number of policies in chapters 3 and 4 in the Minerals Local Plan against which the proposed development also needs to be assessed. These include policies on visual intrusion; noise; dust; the water environment; vehicular movements and routeing; and restoration and aftercare.
103. Finally, in relation to planning policy, the issue of climate change has been raised through a large number of pro-forma letters. These letters state that the continued burning of fossil fuels should not be supported due to the release of carbon into the atmosphere resulting in climate change. Planning Policy Statement 1 and the climate change supplement is also highlighted.
104. Whilst these concerns are appreciated, the future burning of coal to generate electricity is not dependant on the determination of this planning application. As highlighted above, the Government sees fossil fuels playing a major part in energy generation for the foreseeable future, despite the increasing use of renewable sources. There are also increasing concerns regarding the nation's reliance on imported fossil fuels at a time when security of supply cannot be guaranteed.
105. So while the need for coal remains, the possibility of sourcing it from previously developed land as opposed to developing previously undeveloped land or importing it should be given consideration to ascertain whether it is possible to do so in an environmentally acceptable manner. Policies in the Minerals Local Plan provide the framework for such an assessment and the environmental acceptability of this application is considered in detail below.
106. Regarding the Planning and Climate Change supplement to Planning Policy Statement 1, this guidance is targeted primarily towards new built development. When determining planning applications, the guidance states that new developments should comply with policies on local requirements for decentralised energy supply; take account of factors such as landform, layout, building orientation, massing and landscaping in order to minimise energy consumption; use sustainable drainage systems; and secure opportunities for sustainable transport. These matters are of little relevance to this application.

107. The only requirements in the supplement which could relate to this application are those to deliver a high quality local environment and provide public and private open space which recognises the opportunities for wildlife and people. Whether the application provides these requirements is considered below as part of the assessment of the application, in particular the sections relating to the ecological impact of the proposed development and the restoration of the site.

#### Landscape and visual impact

108. While the overall design of the proposed development, particularly the direction of working and the location of soil bunds along the northern and north eastern boundaries of the site, should minimise the visual impact of the proposed development for nearby residential properties along the B6019 and elsewhere in accordance with Policy M3.4 (Screening) of the Minerals Local Plan, there is concern about the visual impact upon users of the M1 motorway, particularly those travelling south. This is particularly relevant during the first seven months of coal extraction when works would take place on the western flank of the spoil heap. Further works to the east of the site would be less visible from the motorway and also spoil material would be returned to the site from the processing area allowing the western flank to be built up again as part of the restoration process.
109. At the present time, there is a length of noise attenuation fencing which starts approximately 165 metres north of the point where the B6019 passes under the M1 and extends approximately 300 metres, thereby extending part way down the western boundary of the tip part of the site. This fence would also provide a degree of visual screening between part of the site and the motorway. Following consultation comments from the County Council's Landscape Officer, the applicant was asked to explore the opportunity of providing an extension to this screen which would commence where the existing fence ends and carry on approximately 260 metres south to the southern most point of the western boundary of the site.
110. Unfortunately, the anticipated timing of the proposed development, if granted planning permission, would likely coincide with the widening works to the motorway. It has been confirmed that the existing fence is going to be removed for the duration of the widening works which would therefore lead to an even greater level of visual impact associated with proposed development as views into the site from the motorway would increase. The applicant has also received confirmation from the contractors working on behalf of the Highways Agency that erecting additional fencing or screening would not be permitted on their land, despite the applicant indicating that they would be willing to do so.
111. What needs to be taken into account, however, is the fact that the motorway widening works themselves would also result in a degree of adverse visual impact for motorway users, as can presently be experienced between junctions 26 and 27. It is considered that motorway users could perceive the proposed coal extraction as being an ancillary development to the motorway widening scheme with the two being in such close proximity to each other.

112. What also needs to be considered when assessing this application is that while there would be a temporary period of adverse visual impact at the beginning of the proposed development, this needs to be weighed up against the landscape qualities of the site at the present time and what could be achieved through the restoration of the site.
113. The spoil heap at the present time consists primarily of grassland areas along with small areas of woodland. The application describes the sensitivity of the grassland areas as being low, meaning they would be tolerant to substantial change without there being an adverse impact on the character of the landscape. The County Council agrees with this assessment and, despite there being Mature Landscape Areas adjacent to the site, it is not considered that the site itself can be described as an attractive area of countryside, which is how it was described when the previous planning application was refused on the grounds of serious visual intrusion.
114. In addition to this, the site has limited ecological value and suffers from areas of bare ground and polluted run-off. The proposed development provides the opportunity to address these problems while providing an improved landscape feature as a result of large amounts of woodland and hedgerow planting. This would, in some way, go towards integrating what is presently an open site into the surrounding landscape which is characterised by a pattern of smaller fields. The only compromise made in this respect would be to retain a larger field on the southern slope because of its ecological benefits.
115. The weighing up of the visual impact of the proposed development against the improved final landscape is an important consideration in the assessment of this application.
116. Finally, the County Council's Landscape Officer has raised concerns regarding the lack of detail with respect to lighting. The applicant has since confirmed that the only fixed lighting associated with the proposed development would be on the processing site to the west of the motorway and in the underpass beneath the motorway. No detrimental impact is therefore anticipated in Nottinghamshire in this respect.

#### Ecological impact

117. While the application site is generally considered to be of low ecological value, there are a number of matters that have had to be addressed as a result of the consultation process.
118. Regarding bats, the applicant has confirmed that the measures set out in the environmental statement to minimise the effect of lighting on foraging and roosting bats would be adhered to and this matter could be included in a condition attached to any planning permission. These measures, such as restricting lighting to only what is necessary for health and safety purposes and minimising the amount of upward lighting on the processing site and in the underpass, would reduce the impact of the proposed development on bats to an acceptable level. While the only fixed lighting associated with the proposed development would be within Derbyshire on the processing site to the west of the motorway and in the underpass beneath the motorway, as highlighted

above, it is considered appropriate to include this condition, should planning permission be granted, as it is possible that the bat roosts and their foraging grounds would be within Nottinghamshire.

119. The proposed development would have impacts on breeding and over-wintering birds and the applicant has proposed a number of measures to mitigate against these.
120. Soil storage mounds along the northern, eastern and southern boundaries of the site would be sown with an appropriate seed mix which would include high energy seed yielding plant species. The final details of this seed mix could be secured through an appropriate planning condition. In addition to this, a condition could also ensure that the maintenance of these mounds is carried out at appropriate times during the year to ensure that seed heads are available over the winter.
121. The excavation of the former colliery spoil heap would result in the temporary loss of open habitat for breeding birds, although it is the applicant's contention that the spoil heap is of limited ecological value and would only attract nomadic species which would not necessarily be dependent on the site. Despite this, mitigation is proposed in the form of a piece of land adjacent to the south east corner of the site which is owned by the County Council. This area covers approximately four hectares and the majority of it is designated as a Site of Importance for Nature Conservation (SINC) (the Kirkby Bentinck Dismantled Railway Spoil SINC, described as a 'naturally vegetated spoil heap and valuable dismantled railway habitat').
122. It is considered that a one-off activity involving the clearance of invading scrub on the site would result in the creation of suitable habitat for ground nesting birds which might otherwise have used the spoil heap. Such works would themselves need to take place outside the bird breeding season which runs from March to September. The County Council's Nature Conservation Officer envisages these works costing approximately £2,000 and the applicant has agreed to make a payment of this sum to fund this. As the land in question lies outside the application area, securing the sum of money would need to be achieved through a legal agreement attached to the granting of any planning permission.
123. In addition to the above, any vegetation clearance and soil stripping on the site itself would need to be carried out outside the bird breeding season, a matter which could be dealt with by a suitable planning condition.
124. Water voles have been recorded in both the River Erewash and the Maghole Brook and while the realignment of the brook and the removal of most sections of culvert on the Derbyshire side of the site would ultimately provide improved water vole habitat, the actual works required on the brook have the potential to adversely impact upon this species. In this respect, the applicant has submitted a water vole mitigation strategy as part of the environmental statement.
125. This details how it is proposed to create the new open section of brook, along with its profile and planting, which are considered ideal for water vole habitat. In addition to this, two ditches would be dug between the existing open sections of the brook and the new brook to assist in the movement of water voles to the new

habitat. Once the new section of brook and the ditches had been created, vegetation around the existing brook would be cleared to encourage water voles to move to the new habitat, a process which would be monitored. As soon as it is established that no water voles remain in the existing brook, these would be infilled to prevent the water voles from returning.

126. In addition to the new open brook, the applicant is proposing to excavate some land immediately north of the River Erewash to the east of the motorway. This is primarily in response to the Environment Agency's objection to the application on the grounds of potential increased flood risk as a result of coal stockpiles in the processing area. However, while these measures have resulted in the Environment Agency's objection to the application being withdrawn, the applicant has confirmed that these excavations could be designed with steep banks which again would be attractive habitat for water voles. These excavations, measuring approximately 100 metres in length, would, therefore, serve two beneficial purposes.
127. The applicant has also agreed to provide further off-line ponds along a 60 metre stretch of land adjacent to the section of the Maghole Brook which runs next to the north west corner of the spoil heap. These ponds would be provided as part of the restoration of the site once coal excavation has been completed.
128. All of the above matters could be secured through suitable planning conditions and it is hoped that these measures would lead to the water vole population thriving in the area in the long term. It is therefore considered that the proposed development accords with Policy M3.21 (Protected Species) of the Minerals Local Plan.
129. The threat to reptiles of the proposed development is considered to be low but, as a precaution, it is proposed to attach a condition to the granting of any planning permission requiring appropriate measures to be taken should any reptiles be discovered.
130. There are a number of existing trees and hedgerows around the site, particularly close to the River Erewash and adjacent to the B6019. Concerns have been raised regarding the protection of these during the life of the proposed development but the applicant has confirmed that measures such as suitable stand-off distances marked out with fencing, could be provided. Again, this matter could be secured through a suitable planning condition.

#### Restoration and aftercare

131. While a substantial amount of detail has been submitted with the application regarding the restoration of the site, a revised restoration plan would be required, should planning permission be granted, to take account of a number of improvements that have been secured through the consultation process. These improvements build on the general acceptability of the restoration proposals from relevant consultees.
132. The planning application originally proposed to import lime or ameliorants to mix with soils and then to plant appropriate seed mixes based on the condition of the soils following treatment. Nottinghamshire Wildlife Trust have suggested that,

instead of treating the soils, the seed mixes could be adjusted to suit the soil conditions as they are at present. If the soils are acidic, as is likely to be the case, then an acidic grassland mix could be planted. This course of action has been accepted and conditions could be attached to the granting of any planning permission requiring soil testing to be carried out and seed mixes to be submitted for approval based on the results of these tests. Whatever seed mixes are used, they should be of local provenance if at all possible, a matter which also could be dealt with by a suitable condition.

133. Regarding the woodland, shrub and hedgerow planting, it is considered important to ensure that the species mix planted reflects the local landscape character. With a few minor adjustments, the species proposed in the application are considered acceptable. Like different grassland mixes, the success of different tree and hedgerow species can be partially dependent on the soil conditions so, in order to ensure that the appropriate species thrive, the importation of lime or ameliorants might be required in these areas. Again, the need for these measures would be determined by the results of the soil testing.
134. A suggested additional section of hedgerow along the eastern boundary of the site to link two areas of woodland has been accepted by the applicant and would need to be included in a revised restoration plan.
135. The application proposes the phased restoration of the site using spoil material returned from the processing area once the coal has been extracted. As part of this phased restoration, the applicant has agreed to create a series of micro-habitats in the earliest stages of restoration for the benefit of invertebrates that would be impacted upon by the proposed development. These micro-habitats would include area of bare ground, transitional wetlands, scrapes, ridge and furrow grassland and diverse vegetation structures, such as short and long grass and scrub.
136. The submitted restoration plan also requires amending to reflect the additional water vole habitat that is proposed adjacent to the northern bank of the River Erewash and alongside the eastern bank of the Maghole Brook to the north west of the spoil tip. It is important that these are retained in the long term as part of the restored site.
137. There is an existing ornamental garden pond in the south east corner of the spoil heap which was not originally part of the excavation area. The County Council's Nature Conservation Officer originally sought clarification as to whether this pond would be retained as part of the restored site. The applicant has responded by stating that it is now proposed to work this area as an additional cut at the end of the excavation works. This would add a further three weeks to the working period on site and it is proposed to recreate an open water habitat in this area as part of the restoration of the site. This is considered acceptable and would need to be detailed on the revised restoration plan, should planning permission be granted.
138. Ashfield District Council has raised concerns regarding the contaminated nature of the site at the present time, evidenced by the polluted run-off presently occurring, and wishes to see this addressed through the restoration of the site. In order to achieve this, a condition has been agreed with the district council's

environmental health officer requiring a reclamation strategy to be submitted for approval. This would include a sampling strategy for the washed colliery spoil, soils and any imported materials, including chemical analysis, along with procedures for dealing with any contaminated material found. The overall aim of this strategy is to ensure that the site is successfully restored and does not qualify as contaminated land under the Environmental Protection Act 1990.

139. In order that the proposed restoration of the site and its associated habitats are given the greatest opportunity of succeeding, the applicant has agreed to provide aftercare on the site for a total of ten years. As the standard aftercare period which can be provided under planning condition is five years, the additional five years would need to be secured through a legal agreement. It is therefore considered that the proposed development accords with Policy M4.4 (Landscape Treatment) and Policy M4.9 (Aftercare) of the Minerals Local Plan.

### Highways

140. No objection has been raised by either the Highways Agency or the Highways Authority. The application proposes to direct all HGVs associated with the proposed development towards junction 28 of the M1 and none would be permitted to turn towards Selston, onto the B6019 Pinxton Green or Brookhill Lane. These measures would be covered by a legal agreement attached to the granting of any planning permission.
141. The issue of HGV movements has led to a number of objections to the application being sent to Derbyshire County Council and the applicant has been asked to provide further justification as to why the disused railway line running along part of the southern boundary of the site could not be refurbished and brought back into use for the proposed development. The applicant has responded citing cost as the major reason why this would not be possible, with a figure of approximately £1.8-2.0 million quoted to reinstate track and signalling. This figure does not include any repairs to the bridge which crosses the River Erewash or the installation of a freight loading facility on site.
142. The Minerals Local Plan has a policy (M3.15) which promotes the bulk transport of minerals where this would result in an overall environmental benefit. Where a proposal relies on road transport, the applicant needs to demonstrate that more sustainable forms of transport, such as rail, are not viable. There is a similar policy in the Derbyshire Mineral Local Plan and as any adverse impact as a result of HGVs would be restricted to Derbyshire, it is considered appropriate to leave the assessment of this matter to Derbyshire County Council in their role as minerals planning authority for that county.

### Noise

143. In response to the County Council's Noise Engineer's consultation response, amendments were made to the noise chapter of the environmental statement. The noise engineer is now satisfied that the proposed development would not give rise to any adverse noise impact to residents in Nottinghamshire, either during the daytime or night time. This opinion is not altered by the fact that the proposed development could take place while the existing noise attenuation barrier adjacent to the motorway is removed to allow the widening works to take

place. In fact, if that was the case, existing background noise levels, which are already quite high as a result of motorway traffic, would be even higher and would therefore reduce the noise impact of the proposed development.

144. Regarding the noise barrier proposed to the south of the processing site, it is now proposed to slightly extend this to provide further attenuation to residential properties to the south. The applicant has provided further information regarding the amount of reflected noise there would be as a result of this barrier as there were concerns that noise could rebound off the barrier and cause a detrimental impact to properties in Nottinghamshire. This is no longer considered to be an issue.
145. Conditions relating to noise would be attached to the granting of any planning permission stating the maximum noise levels which would be acceptable throughout the life of the proposed development. These levels would relate to normal daytime activities as well as temporary operations such as soil stripping. Suitable conditions could also be attached requiring noise monitoring to be carried out and also regarding the hours of operation, in accordance with Policy M3.5 (Noise) of the Minerals Local Plan.

#### Dust

146. It is anticipated that dust from the proposed development in Nottinghamshire could be generated by activities such as soil stripping and the creation of soil storage mounds; the excavation of the spoil heap; the transport of material to and from the processing area; and the replacement of material and soils as part of the restoration of the site. In addition to this, the processing, stocking and transport off site of coal on the Derbyshire side of the site has the potential to create dust.
147. The application details the measures proposed to be undertaken in order to minimise dust generation. These include the spraying of internal haul roads; spoil material and coal stockpiles; the fitting of exhausts on mobile plant which do not emit emissions in a downwards direction; the seeding of soil storage mounds; the provision of wheel wash facilities; the sheeting of HGVs leaving the site; and the phased working and restoration of the site in order to minimise the size of the working area at any one time. The applicant is also proposing to monitor dust levels at four specific locations around the site, the precise location of which would be agreed with the planning authority. The results of the dust monitoring would be available to the planning authority on request. These measures are standard for this type of development and accord with guidance in the dust annex to Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Mineral Extraction in England.
148. Ashfield District Council's Environmental Health Officer made some detailed initial comments on the dust chapter in the environmental statement and the applicant subsequently submitted an amended chapter. The council's comments on this amended chapter will be reported orally.
149. Conditions could be attached to the granting of planning permission requiring the above measures to be implemented, including the dust monitoring, subject to any further comments received from Ashfield District Council.

### Environment Agency objection

150. In light of the amendments to the Flood Risk Assessment carried out by the applicant, the Environment Agency has withdrawn its objection, subject to the proposed development being carried out in accordance with those details. As highlighted in the ecological impacts observations above, additional floodplain storage is proposed close to the River Erewash to compensate for the loss of flood storage capacity as a result of the stocking of coal on the processing part of the site. It is therefore considered that the proposed development accords with Policy M3.9 (Flooding) of the Minerals Local Plan.
151. The Environment Agency has suggested a number of conditions which should be attached to the granting of any planning permission relating to the distance between the River Erewash and any workings on site, ensuring that no contaminated run-off and silts enter the River Erewash, and the storage of oils, fuels and chemicals.

### Rights of way

152. The planning application originally intended to provide a new permissive bridleway across the site to link Kirkby Footpath Number 17 to the south of the site with Kirkby Bridleway Number 12 to the north. However, due to concerns raised by the County Council's Highways Accident Investigation Unit regarding the time it would take horses to cross the B6019, it is not considered acceptable to provide such a bridleway on safety grounds. An alternative of providing a signalised crossing is also considered unacceptable due to the potential hazard to road traffic having to stop in an area with restricted forward visibility available.
153. It is therefore proposed to provide a new footpath across the site which would have access for cyclists. The applicant has also confirmed that this footpath would have definitive status rather than permissive status, a matter raised in the consultation process. The footpath would need to be on a slightly different route to that shown on the restoration plan submitted with the application as it is considered that the existing proposed route has gradients which are unnecessarily steep. For road safety purposes, it would be preferable for the new footpath to exit the site approximately 45 metres to the east of Cliff Lane, as recommended by the Accident Investigation Unit. It would also be preferable for the footpath to be at least two metres wide, possibly three, although it is accepted that a wider path could be difficult to achieve on the steep sided slopes of the restored site. These matters could be addressed through the revised restoration plan required under condition should planning permission be granted.
154. This new right of way link would be in accordance with the County Council's Rights of Way Improvement Plan which, in Policy A1-11, states that:

The County Council will seek improvements, at an early stage, to the rights of way network affected by development. The County Council will work with developers and local planning authorities to achieve the maximum benefits for the rights of way network.

### Other observations

155. Network Rail requested a number of conditions be attached to the granting of any planning permission to protect the railway to the south of the site. The applicant has no problem with these conditions with the exception of Network Rail's request that boundary fencing be provided where the railway line is adjacent to the site boundary. Network Rail has since confirmed that, because the line is not in use and has been partially dismantled, such fencing would not be required. It is considered that some of Network Rail's proposed conditions could all be accommodated under a single condition regarding the management of surface water while others would be more suitably brought to the operator's attention as informatives attached to any planning permission.
156. The applicant has confirmed that the proposed condition requiring an archaeological watching brief is acceptable and could be attached to the granting of planning permission.

### **Human Rights Act implications**

157. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol may be affected. The proposals have the potential to introduce impacts of visual amenity, dust and noise upon nearby residential properties. However, these considerations need to be balanced against the wider benefits the proposals would provide in terms of addressing on-site problems and providing a beneficial landscape through the restoration of the site. Members will need to consider whether these benefits would outweigh the potential impacts.

### **Conclusions**

158. The fact that a similar application at the site has previously been refused permission should not be overlooked and one of the reasons for refusal on that occasion – visual impact – is once again a key consideration in the assessment of this present application. However, it is not considered that the site is presently the attractive area of countryside previously described when the last application was refused.
159. It is accepted that it remains a prominent site, particularly when viewed by users of the motorway, and the visual impact of the proposed development would be significant during the first seven months of excavations on site. However, the visual impact is not considered to be as severe as with the previous proposal as the processing site would be located on industrial land in Derbyshire, whereas the original application proposed to site it in Nottinghamshire. Also, the timeframe for mineral extraction with this proposal (2½ years) is shorter than the previous application which anticipated extraction taking anywhere between three and five years. In addition to this, the proposed development, if granted permission, would likely take place at the same time as the widening works to the motorway which itself would cause a significant degree of visual impact.

160. Against this visual impact the benefits that could be achieved should planning permission be granted need to be considered. These benefits include addressing the present problems on site in addition to the ecological and landscape improvements that could be achieved through the restoration of the site, particularly as a result of an extended period of aftercare which could be secured through a legal agreement.
161. It is considered that these long term benefits outweigh the short term impact of the proposed development itself and therefore it is recommended that planning permission be granted.
162. Another reason why the previous application was refused – serious detriment to the amenity of nearby residential properties by reason of visual impact, noise, general disturbance and dust – has been satisfactorily addressed through the proposed development and a number of conditions which could be attached to the granting of any planning permission. It is therefore considered that the proposed development meets the four tests of Policy M12.6 of the Minerals Local Plan.
163. As stated earlier in the report, part of the application site lies within Derbyshire and so an identical planning application has been submitted to Derbyshire County Council for determination. The assessment by Derbyshire County Council has raised other important planning considerations, particularly relating to HGV movements through Pinxton.
164. Members should be aware that planning permission from both authorities is required if the proposed development is to go ahead. Therefore the recommendation to grant planning permission is subject to Derbyshire County Council's Regulatory Planning and Control Committee granting planning permission and the signing of a legal agreement. There would be matters within the legal agreement which have resulted from the assessment of the application by Derbyshire County Council.

### **Statement of reasons for the decision**

165. The County Council is of the opinion that the proposed development gives rise to no material harm, is in accordance with the relevant Development Plan policies and there are no material considerations that indicate that the decision should be made otherwise. The County Council considers that any potential harm as a result of the proposed development would reasonably be mitigated by the imposition of the attached conditions.

### **RECOMMENDATIONS**

166. It is RECOMMENDED that, should Derbyshire County Council resolve to grant planning permission, then the Head of Law and Democracy be instructed to enter into a legal agreement covering the routing of HGVs, a traffic management plan, the payment of a sum of £2,000 by the applicant to the County Council to allow the suitable management of adjacent land for the

benefit of breeding birds, the provision of a definitive footpath across the site with cycle access, the setting up of a liaison meeting for the duration of the development and the provision of an additional five years of aftercare.

167. It is FURTHER RECOMMENDED that, subject to the completion of the legal agreement, the Corporate Director (Communities) be authorised to grant planning permission for the above development subject to the conditions set out in Appendix 1, unless subsequent discussions require detailed amendments to the conditions.
168. Members need to consider the issues, including the Human Rights Act issues, set out in the report and resolve accordingly.

Steve Calvert  
Corporate Director (Communities)

### **Legal Services' comments**

Committee have power to decide the Recommendation. [SHB -11/08/08]

### **Comments of the Service Director - Finance**

The report deals with the planning application and has no direct financial implications. [DJK – 15/09/08]

### **Background papers available for inspection**

1. Letter from English Heritage dated 18 October 2007.
2. Letter of objection from resident on Kirkby Lane, Pinxton received on 22 October 2007.
3. Memo from County Council Project Engineer (Landscape and Reclamation) received on 22 October 2007.
4. Memo from County Council Historic Buildings Officer received on 29 October 2007.

5. Letter from Central Networks dated 30 October 2007.
6. Letter from National Grid dated 30 October 2007.
7. Email from County Council Project Engineer (Noise) dated 1 November 2007.
8. Memo from County Council Minerals and Waste Policy Team received on 5 November 2007.
9. Letter from Natural England dated 6 November 2007.
10. Letter from the Environment Agency dated 7 November 2007.
11. Memo from County Council Area Rights of Way Officer received on 9 November 2007.
12. Memo from County Council Nature Conservation Officer received on 9 November 2007.
13. Letter of objection from resident on Cliff Lane Cottages, Pinxton dated 9 November 2007.
14. Letter from The Ramblers' Association dated 11 November 2007.
15. Letter from The Ramblers' Association dated 14 November 2007.
16. Letter from Nottinghamshire Wildlife Trust dated 15 November 2007.
17. Memo from County Council Landscape Architect dated 28 November 2007.
18. Email from Ashfield District Council dated 29 November 2007.
19. Letter from Health and Safety Executive dated 6 December 2007.
20. Memo from County Council Landscape Architect dated 17 December 2007.
21. Letter from the Environment Agency dated 21 December 2007.
22. Letter from Network Rail dated 3 January 2008.
23. Email from The Coal Authority dated 9 January 2008.
24. Email from the Highways Agency dated 11 January 2008.
25. Letter from Severn Trent water dated 16 January 2008.
26. Email from County Council Archaeological Officer dated 24 January 2008.

27. Email from Natural England received on 24 January 2008.
28. Memo from Highways Authority received on 28 January 2008.
29. Letter from Bolsolver District Council dated 5 March 2008.
30. Letter of objection from resident of Town Street, Pinxton dated 3 April 2008.
31. Letter from Natural England dated 21 April 2008.
32. Letter from English Heritage dated 22 April 2008.
33. Memo from County Council Nature Conservation Officer received on 28 April 2008.
34. Email from Ashfield District Council dated 29 April 2008.
35. Email from The Coal Authority dated 29 April 2008.
36. Memo from County Council Archaeological Officer dated 30 April 2008.
37. Email from County Council Project Engineer (Noise) dated 30 April 2008.
38. Letter from Health and Safety Executive dated 1 May 2008.
39. Letter of objection from resident of Town Street, Pinxton dated 1 May 2008.
40. Letter from Natural England dated 6 May 2008.
41. File note regarding telephone conversation with Network Rail dated 7 May 2008.
42. Letter from Nottinghamshire Wildlife Trust dated 12 May 2008.
43. Memo from County Council Landscape Architect dated 16 May 2008.
44. Letter from the Environment Agency dated 20 May 2008.
45. Memo from County Council Landscape Architect dated 27 May 2008.
46. Memo from County Council Historic Buildings Officer dated 2 June 2008.
47. Email from County Council Project Engineer (Noise) dated 14 July 2008.
48. Email from County Council Landscape Architect dated 25 July 2008.
49. Email from County Council Nature Conservation Officer dated 31 July 2008.
50. Letter from Nottinghamshire Wildlife Trust dated 1 August 2008.

51. Letter from Selston Parish Council dated 13 August 2008.
52. Email from County Council Landscape Architect dated 1 September 2008.
53. Pro-forma letters of objection received on various dates between June and September 2008.

**Electoral Division(s) and Member(s) affected**

Kirkby in Ashfield South      Councillor Yvonne Davidson

PSP.JS/JDS/IY.ep5133  
8.9.2008

## RECOMMENDED PLANNING CONDITIONS

### Extent of planning permission

1. This permission relates to land within the red line on Figure 1.2 received by the MPA on 3 October 2007 insofar as that land which lies within the County of Nottinghamshire.

*Reason: To define the extent of the planning permission.*

### Commencement and duration of the development

2. The development hereby permitted shall be begun within three years from the date of this permission.

*Reason: To comply with the requirements of Section 91 (as amended) of the Town and Country Planning Act 1990.*

3. The Minerals Planning Authority (MPA) shall be notified in writing of the date of commencement at least seven days, but not more than 14 days, prior to the commencement of development.

*Reason: To enable the MPA to monitor compliance with the conditions of the planning permission.*

4. All mineral extraction shall cease within three years of the date of commencement, as notified in accordance with condition 3 above. The MPA shall be notified in writing of the date on which mineral extraction ceases.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy M4.1 of the Nottinghamshire Minerals Local Plan.*

5. All restoration operations in accordance with conditions 49 – 51 shall be completed within three months of the cessation of mineral extraction, as notified under condition 4 above, unless otherwise agreed in writing beforehand by the MPA.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy M4.1 of the Nottinghamshire Minerals Local Plan.*

## Approved details and plans

6. The development hereby permitted shall only be carried out in accordance with the details contained within the application and the environmental statement and its appendices received by the MPA on 3 October 2007, unless superseded by the additional details received by the MPA on 2 April 2008 listed below, or where amendments are made pursuant to the other conditions below, or unless otherwise agreed in writing with the MPA:
- (a) Water Vole Mitigation Strategy received by the MPA on 2 April 2008;
  - (b) Geo-Environmental Site Investigation Factual and Interpretive Report received by the MPA on 2 April 2008;
  - (c) Traffic Management Strategy received by the MPA on 2 April 2008;
  - (d) Revised Noise Chapter, including Addendum, for the environmental statement received by the MPA on 10 April 2008;
  - (e) Revised Air Quality Chapter for the environmental statement received by the MPA on 2 April 2008;
  - (f) Addendum to the Flood Risk Assessment for the environmental statement received by the MPA on 2 April 2008.

*Reason: For the avoidance of doubt and allow the MPA to monitor the site.*

7. From the commencement of the development to its completion, a copy of this permission, including all plans and documents hereby approved and any other plans and documents subsequently approved in accordance with this permission, shall always be available at the site offices for inspection by the MPA during normal working hours.

*Reason: To enable the MPA to monitor compliance with the conditions of the planning permission and to ensure persons involved with the development have access to and are aware of the conditions and approved documents.*

## Revised operational plans

8. No development shall take place until a revised site plan to supersede Drawing Number 002 received by the MPA on 3 October 2007 has been submitted to the MPA and been approved in writing by the MPA. The revised plan shall include details of the additional excavation area in the south east corner of the site and the point at which the diversion of Kirkby Footpath Number 17 meets the B6019, approximately 45 metres to the east of Cliff Lane.

*Reason: For the avoidance of doubt and allow the MPA to monitor the site.*

9. No development shall take place until revised phasing plans to supersede Drawing Numbers 003, 004 and 005 received by the MPA on 3 October 2007 have been submitted to the MPA and been approved in writing by the MPA. These phasing plans shall detail the additional area of extraction in the south east corner of the site. The development shall be carried out in accordance with the approved details.

*Reason: For the avoidance of doubt and allow the MPA to monitor the site.*

## Hours of working

10. Except in the case of emergency when life, limb or property are in danger or with the prior written agreement of the MPA, the development hereby permitted shall only take place within the following hours:

Monday to Friday 0700 hours – 1900 hours

Saturdays 0700 hours to 1300 hours

No development shall take place on Sundays, Bank or Public Holidays

Should any instance occur where works are carried out outside the permitted hours in an emergency where there is a threat to life, limb or property such instances should be notified in writing to the MPA within 48 hours of their occurrence.

*Reason: In the interest of amenity and in accordance with Policy M3.5 of the Nottinghamshire Minerals Local Plan.*

## Noise

11. No development shall take place until a scheme for noise monitoring has been submitted to the MPA and been approved by the MPA in writing. The scheme shall provide details of the following:

- (a) Noise monitoring locations;
- (b) Monitoring equipment to be used;
- (c) Monitoring periods;
- (d) Monitoring frequency;
- (e) The recording of monitoring results, including provision for the results to be made available to the MPA;
- (f) Provision for reviewing and updating the scheme;
- (g) Procedures for actions in the event that noise criteria are exceeded.

The noise monitoring scheme shall be implemented as approved.

*Reason: To control the impact of noise generated by the development and to provide monitoring of this impact in the interests of local amenity.*

12. Except for temporary operations, such as site preparation, soil stripping, bund formation and removal, final restoration, the free-field equivalent continuous noise level  $L_{Aeq}$ , 1hr at the noise sensitive premises nearest the extraction site, due to operations at the site between the hours of 0700hrs and 1900hrs Mondays to Fridays and 0700hrs and 1300hrs on Saturdays, shall not exceed 10 dB(A) above the relevant criterion limit specified at each of the residential properties listed below.

Location	Existing background levels
Jasmine Cottage, Pinxton Green	63
Alva Lodge, Kirkby Lane	54
Cliff Farm, Cliff Lane	51
Langton Lodge, Kirkby Lane	48
Langton Hall	49
Lower Portland Farm	46

*Reason: To ensure that noise impacts associated with the development hereby permitted are minimised in accordance with Policy M3.5 of the Nottinghamshire Minerals Local Plan.*

13. For temporary operations such as site preparation, soil stripping, bund formation and removal, and final restoration, the free-field noise level due to operations at the site at the nearest point to each of the noise sensitive locations listed in condition 12 above shall not exceed 70 dB  $L_{Aeq}$ , 1hr free-field expressed in the same manner as for condition 12 above. Temporary operations shall not exceed a total of eight weeks in any 12 month period for operations close to any individual noise sensitive properties.

*Reason: To ensure that noise impacts associated with the development hereby permitted are minimised in accordance with Policy M3.5 of the Nottinghamshire Minerals Local Plan.*

14. All mobile plant on site, including the processing site, shall be fitted with effective silencers in accordance with the manufacturer's recommendations and maintained in accordance with the manufacturer's specifications.

*Reason: To ensure that noise impacts associated with the development hereby permitted are minimised in accordance with Policy M3.5 of the Nottinghamshire Minerals Local Plan.*

15. All mobile plant on site, including the processing site, and under the control of the applicant, shall only be fitted with white noise reversing alarms at all times.

*Reason: To ensure that noise impacts associated with the development hereby permitted are minimised in accordance with Policy M3.5 of the Nottinghamshire Minerals Local Plan.*

### **Dust**

16. Measures shall be taken to minimise the generation of dust from operations at the site. These shall include, but not necessarily be limited to, any or all of the following steps as appropriate:

- (a) The use of water bowsers to dampen haul roads, coal stock piles, exposed spoil material and other operational areas of the site;
- (b) The regular regrading of internal haul roads;
- (c) The fitting of all mobile plant with exhaust systems which cannot be emitted in a downward direction;
- (d) The grading and seeding of all soil storage mounds;

- (e) The minimisation of exposed surfaces on the spoil mound, both the working area and the area being restored;
- (f) The minimisation of drop heights during the loading;
- (g) Upon request of the MPA, the temporary suspensions of mineral extraction, conveying and processing or soil movements during periods of unfavourably dry or windy weather conditions.

*Reason: To ensure that dust impacts associated with the operation of the development are minimised in accordance with Policy M3.7 of the Nottinghamshire Minerals Local Plan.*

17. Dust monitoring shall be carried out on site in accordance with a dust monitoring scheme which shall have been submitted to and been approved in writing by the MPA before the development is begun. The dust monitoring scheme shall include:

- (a) Details of the method of dust monitoring;
- (b) The location of the dust monitoring points;
- (c) The frequency of the dust monitoring;
- (d) The method of analysis;
- (e) The logging of dust monitoring results;
- (f) The submission of dust monitoring results to the MPA;
- (g) Procedures for implementing corrective actions.

*Reason: To ensure that dust impacts associated with the operation of the development are minimised in accordance with Policy M3.7 of the Nottinghamshire Minerals Local Plan.*

### **Prevention of pollution of surface and ground water**

18. No development shall take place within eight metres of the banks of the River Erewash.

*Reason: To preserve flood risk maintenance access, flood flow conveyance and biodiversity and in accordance with Policy M3.9 of the Nottinghamshire Minerals Local Plan.*

19. The development will result in the loss of floodplain storage in the vicinity of the processing area west of the M1 motorway within Derbyshire. Any loss of flood storage capacity within that area shall be compensated for within Nottinghamshire in accordance with the Flood Risk Assessment Addendum received by the MPA on 2 April 2008 and a scheme for the provision of additional flood storage capacity which shall include details of:

- (a) The proposed landform;
- (b) The design of the landform;
- (c) Details of the addition flood storage capacity;
- (d) Details of the vegetation, establishment and management to create a suitable water vole habitat.

The above scheme shall have been submitted to and been approved in writing by the MPA before any excavation of colliery spoil from the initial box cut.

*Reason: To address increased flood risk to the west of the M1 and in accordance with Policy M3.9 of the Nottinghamshire Minerals Local Plan.*

20. No development shall take place until a scheme for the management of surface water has been submitted to and been approved in writing by the MPA. The management of surface water shall only be carried out in accordance with the agreed scheme.

*Reason: To maintain the integrity of the existing drainage systems and prevent flooding of railway infrastructure or land.*

21. Any facilities for the storage of chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

*Reason: To prevent pollution of the water environment in accordance with Policy M3.8 of the Nottinghamshire Minerals Local Plan.*

### **Buildings, fixed plant and machinery**

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any subsequent amended legislation, no buildings, fixed plant or machinery, other than approved by this permission, shall be erected or placed on the site without the prior written approval of the MPA.

*Reason: To enable the MPA to control the development and to minimise its impact on the amenity of the local area, in accordance with Policy M3.3 of the Nottinghamshire Minerals Local Plan.*

### **Archaeology**

23. Prior to the development being begun, a scheme for an archaeological watching brief shall have been submitted to and been approved in writing by the MPA. The scheme of mitigation shall be carried out in accordance with the approved details.

*Reason: To ensure that adequate archaeological investigation and recording is undertaken prior to the extraction of minerals in accordance with Policy M3.24 of the Nottinghamshire Minerals Local Plan.*

## **Public rights of way**

24. Prior to the excavation of colliery spoil, soil bunds shall be formed along the southern, eastern and northern boundaries of the site, as detailed on Drawing Number 002 received by the MPA on 3 October 2007 to screen the proposed route of the diverted footpath. Where such bunds cannot be provided with stripped soil the boundary shall be fenced, in accordance with details which shall have been submitted to and been approved in writing by the MPA prior to their erection.

*Reason: In the interests of safety for footpath users and to maintain the public right of way network in accordance with Policy M3.26 of the Nottinghamshire Minerals Local Plan.*

## **Protection of water voles and provision of additional water vole habitat**

25. Water voles and their habitat shall be protected and any adverse impacts remedied in accordance with the Water Vole Mitigation Strategy received by the MPA on 2 April 2008.

*Reason: To provide additional habitat for protected species in accordance with Policy M3.21 of the Nottinghamshire Minerals Local Plan.*

## **Protection of bats**

26. Disturbance to bats shall be kept to a minimum throughout the life of the development hereby permitted through the adoption of the following precautions:
- (a) Lighting shall be restricted to those areas where it is absolutely necessary for health and safety and security;
  - (b) The use of low pressure sodium lamps instead of high pressure sodium or mercury lamps. If mercury lamps are used, they shall be fitted with UV filters and the brightness shall be as low as legally possible;
  - (c) Lighting shall be directed to where it is needed to avoid light spillage using light hoods/shields as necessary to direct the light below the horizontal plane at an angle less than 70 degrees;
  - (d) Upward lighting shall be minimal and avoided completely in the underpass beneath the motorway;
  - (e) Lighting shall be timed to provide some dark periods.

*Reason: To provide additional habitat for protected species in accordance with Policy M3.21 of the Nottinghamshire Minerals Local Plan and also to protect the amenity of local residents and users of the motorway.*

### **Protection of reptiles**

27. Should any reptiles be discovered on the site during the course of the development hereby permitted, the MPA shall be immediately notified and works ceased in that locality. A scheme detailing how these reptiles are to be removed/safeguarded/protected shall be submitted to the MPA for approval in writing within 7 days of the presence of reptiles being notified. The reptiles shall thereafter be managed in accordance with the approved scheme.

*Reason: To provide additional habitat for protected species in accordance with Policy M3.21 of the Nottinghamshire Minerals Local Plan.*

### **Protection of existing vegetation**

28. No development shall take place until a scheme detailing those existing trees to be retained and protected and the measures to be taken to protect these retained trees has been submitted to and been approved in writing by the MPA. The approved tree protection scheme shall be implemented as approved and no trees shall be lopped, topped, felled or pruned and nor shall there be any crown lifting without the prior written approval of the MPA.

*Reason: In the interests of amenity.*

### **Protection of adjacent rail lines**

29. Any cranes and jibbed machinery used in connection with the development hereby permitted shall be positioned so that the jib or any suspended load does not swing over adjacent railway infrastructure.

*Reason: To maintain the safety of railway operations.*

### **Soil stripping, handling and storage**

30. The MPA shall be notified in writing at least 5 working days, but not more than 10 working days, before soil stripping is due to commence in any phase, or part phase in the event that a phase is not stripped in its entirety in one stripping campaign.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

31. No turf, soils or overburden shall be removed from the site.

*Reason: To ensure satisfactory restoration of the site, in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

32. A detailed soil-handling scheme for each phase of the development shall be submitted in writing to the MPA at least one month prior to the stripping of any soil from each of the phases of the site. Such a scheme shall include the following details:

- (a) The size, location, volume and composition of soil storage mounds;
- (b) A methodology statement for the stripping, storage and replacement of soil;
- (c) The types of machinery to be used;
- (d) The routes to be taken by plant and machinery involved in soil handling operations;
- (e) The depths of soils to be stripped/replaced;
- (f) The spacing and depth of any post-replacement soil ripping and cultivations.

The development of that phase shall not be commenced until the soil handling scheme for that phase is approved in writing by the MPA and shall thereafter be carried out in accordance with the approved scheme.

*Reason: To ensure satisfactory restoration of the site, in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

33. Site clearance operations that involve the destruction and removal of vegetation on site shall not be undertaken during the months of March to August inclusive, unless otherwise agreed in writing by the MPA.

*Reason: To ensure that breeding birds are not adversely affected by the development.*

34. All soils and any overburden shall be stripped and stored separately to their full depths.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

35. No plant or vehicles shall cross any area of unstripped soils or overburden except where such trafficking is essential and unavoidable for purposes of undertaking permitted operations. Essential trafficking routes shall be marked in such a manner as to give effect to this condition. No part of the site shall be excavated or traversed or used for a road, or storage of soils or overburden, until all available soils and overburden have been stripped from that part.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

36. Soil stripping shall not commence until any standing crop or vegetation has been cut and removed.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

37. Soils and any overburden shall only be stripped when they are in a dry and friable condition and movements of soils shall only occur:
- (a) During the months of April to October inclusive, unless otherwise approved in writing by the MPA;
  - (b) When all soil above a depth of 300mm is in a suitable condition such that it is not subject to smearing;
  - (c) When topsoils is sufficiently dry that it can be separated from subsoils or overburden without difficulty.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

38. Before the development is begun a scheme for the seeding and maintenance of soil and overburden storage mounds shall have been submitted to and been approved in writing by the MPA. The scheme shall take into account the requirement for seed mixes to include high energy seed yielding plant species and that these species shall remain intact during the winter months. All soil and overburden mounds shall be seeded and managed in accordance with the approved scheme and all soil storage mounds that will remain in situ for more than 6 months, or over winter, shall be seeded within 3 weeks of their construction.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

39. Details of the volumes and location of soils and overburden stored on the site shall be submitted to the MPA by 31 December each year.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

### **Soil analysis**

40. Prior to the commencement of excavation of colliery spoil from the site, a scheme for the chemical analysis of stripped soils shall be submitted to the MPA for its approval in writing. The scheme shall include details of the number of samples to be analysed, the provision for the submission of results to the MPA and how the results are to be used to determine the fertiliser requirements, the seed mixes and tree and hedgerow species in the final restoration of the site including, where necessary, the need for the use of imported soil conditioners.

The soil analysis and submission of results shall be carried out in accordance with the approved scheme and soil treatment carried out as approved.

*Reason: To ensure the satisfactory restoration of the site in accordance with Policy M4.4 of the Nottinghamshire Minerals Local Plan.*

## Land contamination

41. Prior to the commencement of excavation of colliery spoil from the site, a reclamation strategy for the land subject to this permission lying to the east of the M1 motorway shall have been submitted to and been approved in writing by the MPA. The reclamation strategy shall include the following details:
- (a) Objectives of the reclamation strategy;
  - (b) Details of the proposals to ensure the reclamation objectives have been met including a sampling strategy for the washed colliery spoil, imported soils and ameliorants, that will include chemical analysis along with on-site observations, visual and olfactory evidence;
  - (c) Details of procedures for dealing with any contaminated material found;
  - (d) Provision for 6-monthly interim reclamation strategy reporting during the course of spoil excavation and restoration operations on a range of matters to be previously agreed in writing by the MPA.

The excavation of colliery spoil, the replacement of the washed discard and restoration of the spoil heap with soils shall be carried out in accordance with the approved reclamation strategy.

*Reason: To ensure that the spoil heap is suitable for the intended use of the land following restoration and to ensure it does not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990.*

42. Following the commencement of colliery spoil excavation operations, an interim reclamation strategy report, as required by condition 41(d) above, shall be submitted to the MPA for its approval in writing on a 6 monthly basis until the completion of restoration operations, as notified to the MPA under condition 51 below.

*Reason: To ensure that the spoil heap is suitable for the intended use of the land following restoration and to ensure it does not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990.*

43. Within 6 months of the completion of restoration operations, as notified to the MPA under condition 51 below, a reclamation strategy verification report shall be submitted to the MPA for its approval in writing. The report shall include details as required under condition 41 (a) – (c) above, details of who carried out the works on site, details and justification of any changes from the reclamation strategy, substantiating data and confirmation that the reclamation strategy objectives have been met.

*Reason: To ensure that the spoil heap is suitable for the intended use of the land following restoration and to ensure it does not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990.*

## Soil Replacement

44. The MPA shall be notified in writing at least 5 working days before each of the following, where applicable:
- (a) Overburden has been prepared ready for soil replacement to allow inspection of the area before further restoration of this part is carried out;
  - (b) When subsoil has been prepared ready for topsoil replacement to allow inspection of the area before further restoration of this part is carried out;
  - (c) On completion of topsoil replacement to allow an opportunity to inspect the completed works before the commencement of any cultivation and seeding operation.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

45. Soils and any overburden shall only be replaced when they and the ground on which they are to be placed are in a dry and friable condition and no movements, respreading, levelling, ripping or loosening of overburden or soils shall occur:
- (a) During the months November to March (inclusive), unless otherwise agreed in writing with the MPA;
  - (b) When it is raining; or
  - (c) When there are pools of water on the surface of the storage mound or receiving area.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

46. Plant and vehicles shall not cross any area of replaced and loosened ground or replaced soils except where essential and unavoidable for purposes of carrying out ripping and stone picking or beneficially treating such areas. Only low ground pressure machines shall work on prepared ground.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

47. Prior to the replacement of soils and any overburden, the final profile of the colliery spoil heap shall be ripped using overlapping parallel passes:
- (a) To provide loosening to a minimum depth of 450mm with tine spacings no wider than 0.6m; and
  - (b) Any rock, boulder or larger stone greater than 200mm in any dimension shall be removed from the loosened surface before further soil is laid. Materials that are removed shall be disposed of off-site or buried at a depth not less than 2 metres below the final contours.

Decompaction shall be carried out in accordance with the MAFF Good Practice Guide for Handling Soils Sheet 19: Soil Decompaction by Bulldozer Drawn Tines.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

48. The re-spread soils shall be rendered suitable for agricultural cultivation by loosening and ripping:

- (a) To provide loosening equivalent to a single pass at a tine spacing of 1.5 metres or closer;
- (b) To the full depth of the topsoil plus 100mm; and
- (c) Any non-soil making material or rock or boulder or larger stone lying on the loosened topsoil surface and greater than 100mm in any dimension shall be removed from the site or buried at a depth not less than 2 metres below the final settled contours.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the Nottinghamshire Minerals Local Plan.*

## **Restoration**

49. Within six months of the date of commencement of the development hereby permitted, as notified under condition 3 above, a revised restoration plan and scheme shall be submitted to supersede Drawing Number 006 received by the MPA on 3 October 2007. In addition to the above drawing, the revised restoration plan and scheme shall include the following details:

- (a) The provision of additional hedgerow planting along the eastern boundary of the site to link existing proposed areas of woodland planting;
- (b) The provision of additional off-line ponds adjacent to the Maghole Brook to the north west of the spoil heap;
- (c) The retention of additional flood storage capacity to the north of the River Erewash;
- (d) The provision of micro-habitats in the earliest stages of restoration, including areas of bare ground, transitional wetlands, scrapes, ridge and furrow grassland and diverse vegetation structures;
- (e) The provision of additional wetland areas in the south east corner of the site close to the location of the existing ornamental pond;
- (f) Details of seed mixes across the site, taking into account the results of soil analyses undertaken under the requirements of condition 40 above, including establishment methods, proportions, sources (which should be of local provenance), sowing rates, methods of establishment of species, areas left for natural regeneration, creation of field margins, ground preparation, cover material and proposed soil profiles;
- (g) Details of woodland, hedgerow and shrub planting, taking into account the results of soil analyses undertaken under the requirements of condition 40 above, including details of proposed species, proportions, size, spacing, positions, densities and fencing;

- (h) The route of the new footpath across the site which shall avoid any unnecessary steep gradients and shall meet the B6019 approximately 45 metres to the east of Cliff Lane.

The restoration of the site shall be carried out in accordance with the approved plan and scheme.

*Reason: To ensure the satisfactory restoration of the site in accordance with Policy M4.4 of the Nottinghamshire Minerals Local Plan.*

50. Landscape planting shall be undertaken during the first seeding and planting seasons following placement of soils in each phase. Any seeding and planting that dies or becomes diseased, damaged or removed within 5 years shall be replaced during the first planting season thereafter with others of similar size and species and maintained, unless the MPA gives written consent for a variation to be replanted.

*Reason: To ensure the satisfactory restoration of the site in accordance with Policy M4.4 of the Nottinghamshire Minerals Local Plan.*

51. The MPA shall be notified of the completion of restoration works required by conditions 49 and 50 above.

#### **Aftercare**

52. Following restoration the site shall undergo aftercare management for a 5 year period for each phase or area of restored land as may have been agreed in writing with the MPA.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the Nottinghamshire Minerals Local Plan.*

53. Prior to any area being entered into aftercare the extent of the area and its date of entry into aftercare shall be agreed in writing with the MPA. The 5 year aftercare period shall run from the agreed date.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the Nottinghamshire Minerals Local Plan.*

54. Within six months of the date of commencement of the development hereby permitted, as notified under condition 3 above, an aftercare scheme and strategy shall be submitted to the MPA for its approval in writing. The strategy shall outline the steps to be taken and the period during which they are taken, to ensure the land is restored and brought back to a satisfactory condition. The aftercare scheme shall include but not be restricted to details of the following:

- (a) Cultivations;
- (b) Weed control;
- (c) Sowing of seed mixtures;
- (d) Soil analysis;

- (e) Keeping of records and an annual review of performance and proposed operations for the coming year, to be submitted to the MPA between 31 March and 31 May each year;
- (f) Drainage amendments;
- (g) Subsoiling and underdrainage proposals;
- (h) Management practices such as the cutting of vegetation;
- (i) Tree protection;
- (j) Remedial treatments;
- (k) Irrigation; and
- (l) Fencing.

The aftercare scheme shall be implemented in accordance with the approved scheme, and subject to any amendments made as a result of the annual review of performance for each phase or area of land as may have been agreed with the MPA.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.10 of the Nottinghamshire Minerals Local Plan.*

55. Site management meetings shall be held with the MPA each year to assess and review the detailed annual programmes of aftercare operations referred to in condition 54(e) above, having regard to the condition of the land; progress in its rehabilitation and necessary maintenance and agree revisions and amendments to the approved aftercare scheme as appropriate.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.10 of the Nottinghamshire Minerals Local Plan.*

#### **Alternative restoration**

56. Should, for any reason, mineral extraction from the application site cease for a period in excess of 6 months, then, within three months of the receipt of a written request from the MPA, a revised scheme for the restoration of the site shall be submitted in writing to the MPA for its approval in writing. Such a scheme shall include details of the final contours, provision of soiling, sowing of grass, planting of trees and shrubs, drainage and fencing in a similar manner to that submitted with the application and modified by these conditions.

*Reason: To secure proper restoration of the site within an acceptable timescale.*

57. The revised restoration scheme approved under condition 56 shall be implemented within 12 months of its approval by the MPA, and shall be subject to the aftercare provisions of conditions 52 – 55 above.

*Reason: To secure proper restoration of the site within an acceptable timescale.*

Notes to Applicant:

1. The applicant's attention is drawn to the content of the letters from Network Rail dated 3 January 2008, the Environment Agency dated 7 November 2007 and 20 May 2008, and Central Networks dated 30 October 2007, copies of which are attached to the decision letter.