



## Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 08-11/02/11  
Ymweliad â safle a wnaed ar 10/02/11

gan Ian Osborne YH BA DipTP MRTPI  
Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad: 06/05/11

## Appeal Decision

Inquiry held on 08-11/02/11  
Site visit made on 10/02/11

by Ian Osborne JP BA DipTP MRTPI  
an Inspector appointed by the Welsh Ministers  
Date: 06/05/11

**Appeal Ref: APP/U6925/A/10/2129921**

**Land at Ffos-y-Fran Land Reclamation Scheme, East of Merthyr Tydfil, CF48 4AE**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission for the variation of Condition 37 imposed on planning permission APP 152-07-014 dated 11/04/05 so as to permit the limited despatch by road of up to 5% of the annual output of coal from the site, or a maximum of 50,000 tonnes of coal per annum (whichever is the lesser) via the Cwmbargoed Disposal Point.
- The appeal is made by Miller Argent (South Wales) Limited against the decision of the Merthyr Tydfil County Borough Council.
- The application Ref P/08/0316 dated 14/07/09 was refused by notice dated 23/12/09.
- Condition 37 of the 2005 permission states:  
*No coal shall be transported from the site except to the Cwmbargoed Disposal Point for onward transmission by rail.*
- The reason given for this condition is:  
*To define the means of coal transportation, to ensure onward transmission by rail, in the interests of highway safety, residential amenity and sustainability.*
- The 2005 permission was granted by the Planning Decisions Committee of the National Assembly for Wales and is for the Ffos-y-Fran Land Reclamation Scheme, incorporating the extraction of coal by opencast methods, being the final phase of the East Merthyr Reclamation Scheme

**This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 and supersedes that issued on 11 March 2011.**

**Summary of Decision: The appeal is allowed and planning permission granted subject to conditions as set out in the Formal Decision below.**

### Introduction

1. The Council's decision notice states that permission is refused for the movement by road of up to 100,000 tonnes of coal from the site, but with no time period specified. However it is clear that the revised application dated 14/07/09 was for the movement by road from the Cwmbargoed Disposal Point [CDP] of no more than 5% of the annual output of coal from the land reclamation site [LRS] or a maximum of 50,000 tonnes whichever is the lesser. Given that regular monitoring of tonnages would be much easier to undertake than of percentages of annual output, I have therefore determined this appeal on the basis that the proposal is to move a maximum of 50,000 tonnes of

coal a year from the LRS by road from the CDP. At the inquiry both the Appellants and the Council agreed to this clarification of the proposal.

2. Also at the inquiry the Appellants confirmed that their application was made under section 73 of the Act for planning permission for the development of land without complying with condition 37 subject to which the 2005 permission was granted, but subject to a suitable replacement condition. A possible replacement condition was discussed at the inquiry. In addition, since if I allowed this appeal a new permission would be granted, all the other conditions imposed on the 2005 permission were discussed, as was the need for a new section 106 obligation equivalent to that which accompanied the 2005 permission, together with the terms of the new obligation offered with the appeal application.
3. I understand the disappointment of many local residents that permission was granted for the LRS by the National Assembly in 2005 albeit followed by protracted litigation. I also appreciate that they currently have concerns about the way in which the LRS is being operated. Nevertheless, as I indicated at the inquiry, I can neither review that permission nor consider whether its conditions are being properly observed. My responsibility extends only to the determination of the application for the variation of condition 37, though strictly that application can only be for the removal of this condition and its replacement by the condition which I have attached to this permission. At the same time, whilst I have altered the wording of many of the other 58 conditions imposed on the 2005 permission, I am only able either to update them so as to reflect the present situation or to make their wording clearer, rather than to consider either their substance or compliance with them.
4. On 20/08/10 the Planning Decisions Branch [PDB] of the Assembly Government indicated that the appeal proposal falls within the prescribed limits for development requiring an Environmental Impact Assessment [EIA]. The PDB noted though that the Council had already undertaken a screening opinion in respect of the appeal application and had concluded that, as the proposal would not have significant adverse environmental effects, an EIA was not required. Nevertheless, the PDB considered the issue afresh but agreed with the Council's view that the proposal is unlikely to have significant environmental effects in terms of its nature, size and location. Accordingly the PDB considered that an EIA is not required and that the appeal may therefore proceed.
5. However, at the inquiry both the Council and local residents contended that, if this appeal were to be allowed, in the light of the judgement in *R oao Louisa Baker v Bath and East Somerset Council [2009] EWHC 595 (Admin) – [Baker]* - an EIA covering both the LRS and the CDP, together with the proposed change to condition 37, would be required before permission could lawfully be granted. The power to determine whether an EIA was needed for this appeal rests with Welsh Ministers (delegated to the PDB in this case) and not with me. It is clear from the evidence submitted at the inquiry that the PDB took the *Baker* judgement into account in coming to their view that an EIA was not needed. Even though I have allowed this appeal, I do not consider that it is necessary therefore for me to determine whether a fresh EIA is required. However, had it been necessary for me to do so, having considered all the evidence submitted at the inquiry and in writing, including the recent permissions at the Cwmbargoed Disposal Point by both the Methyr Tydfil and Caerphilly County Borough Councils, I would have agreed with the view of the PDB that a new EIA is not required in this appeal.

6. Because sufficient information was not available at the inquiry about the availability of freight facilities grants in Wales, I invited the Appellants to submit further information in writing within a week of the close of the inquiry. They have done so and I have therefore taken it into account even though the Council made no response within the prescribed timescale. I have also taken into account a late written representation from a local resident who attended the inquiry but who felt unable to give her evidence then, together with the Appellants' written response to them.

### Conditions 37 and 6

7. Condition 37 was first suggested by the Council at the time of the call-in inquiry in 2004 which resulted in the 2005 permission Ref APP 152-07-014. The draft condition was not challenged by the Applicants at that inquiry (now the Appellants) nor did they seek its judicial review when permission was granted. At the present inquiry they explain that in 2004 their firm intention was that all coal from the LRS would go by rail to the Aberthaw Power Station [APS]. They also accept that this was the basis on which the Environmental Statement [ES] for that called-in application had been produced.
8. In my view this condition requires no more than that all coal from the LRS must go to the CDP – which takes place by lorry - and thence be transported by rail. There is no minimum or maximum distance specified by which it must or may travel by rail. Currently all coal from the LRS leaves the CPD by rail, though some weeks about 1,000 tonnes of it is taken only as far as Barry Docks, and most weeks a further 1,000 tonnes or so is taken to the Port Talbot Steelworks [PTS] rather than all of it being taken to the APS. However, as condition 37 does not specify the end destination of this rail-borne coal, I consider that taking some of it by rail to Barry Docks, or to the PTS or to, for example, the Drax Power Station in Yorkshire, has been in accordance with this condition.
9. I have specifically considered the reason given for this condition. This reason has three elements: highway safety, residential amenity and sustainability. Only the last of these is given by the Council in their decision notice (as corrected) but it is clear to me from the evidence at the inquiry that, unless adequately controlled, the proposal would result in harm to highway safety because of the use of the Bogey Road by LRS coal lorries from and to the CPD. I have therefore made highway safety part of the first main issue in this appeal. As condition 37 is specifically concerned with the transportation of coal from the CPD, I consider that in this context the reference to 'sustainability' can properly be applied as meaning sustainable transport.
10. The Council now also contend that condition 6 of the 2005 permission requires that all coal from the LRS must go to the APS by rail, since this condition states that '*The development ...shall be carried out ... in accordance with the submitted Environmental Statement ... unless subsequently amended with the written approval of the Planning Authority*'. No such written variation has ever been approved by the Council. However, it is not a matter for me to determine whether there has been any breach of condition 6, nor would it be right for me to come to a conclusion about whether the new condition 37 in the permission which I have granted is overridden by condition 6 from the 2005 permission, and which I have repeated. Such a determination would need to be made either in response to an application for a lawful development certificate under section 191 or 192 of the amended Act, as appropriate, or on appeal against the refusal of such a certificate or against any enforcement notice issued by the Council.

## Main issues

11. From the above I consider that the main issues in this case are: first, the effect of the proposed movement of up to 50,000 tonnes of LRS coal a year by road from the CDP, in the light of both local and national policies and advice relating to sustainable transport, and also on highway safety on the Bogey Road; and second, whether there is sufficient justification for the proposed movement of such coal by road, either in terms of local need for dry steam coal [DSC] or for on-site geological reasons, to outweigh any harm on the first main issue.

### First main issue

#### *Sustainable transport*

12. It is clear from the Appellants' own evidence that, other things being equal, in general the movement of coal by rail results in only about one quarter of the carbon dioxide emissions to the atmosphere compared with transport by road. Even when the circumstances of this particular proposal are taken into account, movement of all the LRS coal from the CDP by rail to the APS would result in only about 74% of the carbon dioxide emissions compared with 90% of the output of the LRS going by rail to the APS, 5% going by rail to the PTS, and 5% being distributed by road from the CDP.
13. If the present arrangement were continued whereby 90% goes by rail to the APS, 5% goes by rail to the PTS and 5% goes by rail to Barry Docks and thence to further destinations by road, then movement of all coal by rail from the CDP to the APS would result in only about 68% of the emissions of carbon dioxide of this proposed combination of rail and road movement. In terms of carbon dioxide emissions therefore, the proposal would be marginally less harmful than the present lawful arrangement, though materially more harmful than the all-rail arrangement intended in 2004.
14. Policy MIN1 of the 1996 adopted *Mid Glamorgan (Merthyr Tydfil County Borough) Replacement Structure Plan 1991-2006* indicates that proposals for mineral extraction and associated development will only be permitted where, amongst other things, measures can be taken to reduce damage or disturbance to the environment to acceptable levels. I consider that, since the appeal application is for the development of land without complying with condition 37 subject to which the 2005 planning permission was granted, this policy is clearly applicable in this case. I also consider that in this context 'environment' includes the atmosphere.
15. In my view, whilst the proposed variation of condition 37 would result in a material increase in carbon dioxide emissions compared with an all-rail arrangement to the APS, nevertheless, since no more than 50,000 tonnes a year would be moved by road from the CDP, this would reduce damage to the environment compared with the present lawful operation involving the movement of this amount of LRS coal to Barry Docks and then from there by road to various destinations. The proposal would thus not be out-of-accordance with this structure plan policy. This would probably be true irrespective of the particular destination/s for up to 50,000 of LRS coal moved direct from the CDP by road.
16. Policy GR1 of the 1999 adopted *Merthyr Tydfil Borough Local Plan* is specifically concerned with derelict and unsightly land rather than with mineral extraction. However, since the development concerned in this appeal is the permitted Ffos-y-Fran LRS as a whole, I consider that Policy GR1 is potentially applicable. This policy makes provision for the reclamation of derelict or unsightly land subject to 5 criteria. Whilst

none of these is itself clearly relevant in this appeal, nevertheless I consider that the objectives of this policy include the desirability of land reclamation taking place in an environmentally responsible manner. I note that the appeal site, or at least most of it, is identified under sites DL13 and DL14 on the local plan Proposals Map as being suitable for land reclamation, but also for coal recovery. Whilst the conventional meaning of the latter term relates to the recovery of coal from existing tips, rather than virgin coal from the ground, nevertheless, bearing in mind that the description of the LRS permitted in 2005 specifically incorporates the extraction of coal by opencast methods, I consider that Policy GR1 is partially relevant in this case. On the evidence before me, therefore, since the proposed variation of condition 37 would result in only a very minor change to this very large permitted LRS, I do not consider that the appeal proposal would be out of accordance with the objectives of Policy GR1 of the local plan.

17. The most relevant and up-to-date national advice on the control of coal extraction is *Minerals Technical Advice Note 2 : Coal* [MINTAN2] issued in January 2009. Of particular relevance in this appeal is Appendix O on best practice for transport. This states that proposals based on rail transport should be more favourably considered (than those based on road transport) - *my parenthesis*. The advice continues by stating that proposals not based on rail transport should be accompanied by an explanation as to why this is not possible. It also indicates that where rail transport is available, consideration should be given to limiting the amount of output despatched by road.
18. National planning policy on the winning and working of minerals is set out in *Minerals Planning Policy : Wales* [MPPW] issued in December 2000. This indicates in paragraph 42 that the National Assembly wishes to see (minerals) freight carried by rail or waterway rather than by road wherever this is economically feasible, and specifically refers to freight facility grants being available for infrastructure improvements to encourage the removal of freight from road to rail transportation. This paragraph of MPPW refers to *TAN 18: Transport* [TAN 18] issued in 1998 but since then a new TAN 18 has been issued in March 2007, though I do not consider that this later advice fundamentally changes the pro-rail preference in MPPW. The movement of coal from the CDP by waterway is not feasible.
19. Freight facilities grants are still available from the Assembly Government to provide or upgrade private rail facilities where capital expenditure is involved, and are likely to remain available for some time at least. The Council contend that the Appellants have not sufficiently investigated the possibility of the existing rail siding which serves the Aberthaw Cement Works [ACW] being modernised and upgraded in a similar way that the PTS have recently upgraded their facilities. Although the Appellants do not appear to have considered this possibility prior to the inquiry, and indeed at first seemed to dispute the existence of such a connection to this cement works, nevertheless, they now accept that such a rail link to the Vale of Glamorgan line exists, though they point out that the facility is rather old and has not been used for some years.
20. The movement of coal by rail from the CDP is clearly only economically feasible where customers have the ability to receive coal by this means. Whilst the ACW may yet invest in facilities to re-use their existing rail siding, as may other present or future large customers, nevertheless the position remains that there is likely to be a substantial number of smaller customers for DSC from the LRS for whom it will never be economic to install rail facilities. I consider therefore that the movement by road of

up to 50,000 tonnes of coal a year from the CDP would not materially conflict with national policy or technical advice.

### *Highway safety*

21. The Bogey Road, which runs between the A4060(T) at the Mountain Hare roundabout and the minor north/south road at its eastern end, is narrow, winding and steep in places. It is not suitable therefore along the whole of its 3 kms or so for two-way lorry traffic in my view. There is a vehicular access from this road to the CPD near its eastern end, which is within Caerphilly County Borough, and another to the disused AJ Williams coal depot slightly further west within Merthyr Tydfil County Borough. This road also serves some 10 or so dwellings at its western end at Incline Side.
22. The north/south minor road in Caerphilly County Borough, which is called Mountain Road to the north of the T-junction with the Bogey Road, and Fochrhiw Road to the south of it, connects with the former A465 some 3 kms to the north of this junction. From the T-junction of this minor road with this former trunk road the latter connects with the junctions of the present A465(T) Heads of the Valleys Road, both at Dowlais Top to the west and at Rhymney Bridge to the east. There is a separate vehicular access to the CPD from Fochrhiw Road for light vehicles south of the junction with the Bogey Road.
23. This road divides the LRS more or less into two, and for most of its length does not come within the 2005 permitted area. However, about a third of the way along it from the west, its former route over a narrow railway bridge has been bypassed as part of the LRS by a diversion to avoid this old bridge. A short length of this diversion is formed by a standard-width, two-way carriageway on a new bridge, beneath which there is an on-site haul road between the two main parts of the LRS. This short length of the Bogey Road is within the LRS permitted area. Lorry access direct into the CPD from the LRS is a substantial distance further east along this road over a traffic light-controlled crossing of this highway which is operated and kept clean by the Appellants.
24. Were either laden or empty LRS coal lorries to be permitted to use the Bogey Road, in my view they would be a danger to other road users because of the narrowness of much of the length of this highway, together with its steepness and lack of forward visibility in places. The narrowness of the carriageway is not only a hazard in itself but also causes the overrunning of soft verges which often brings loose material onto the carriageway, thereby resulting in a slippery surface.
25. I consider therefore that the only satisfactory means of avoiding such highway danger being caused by the appeal proposal is for LRS coal lorries to be prohibited from using most, if not the whole, of the length of the Bogey Road. Without such a means of prohibiting lorries used for carrying LRS coal from the CDP from using this road, the proposal would thus cause material harm to highway safety. If the use of this road were suitably restricted though, LRS coal lorries would then be confined to using the route northwards to the Heads of the Valleys Road. I deal with this matter in detail below in relation to planning conditions and obligations.

### *Conclusion*

26. I conclude therefore on the first main issue that the proposed movement of up to 50,000 tonnes of LRS coal a year by road from the CDP would not cause material harm to the objectives of sustainable transport, either in terms of local or of national

policies and advice relating to such transport. However, without suitable safeguards the proposal would result in danger to highway safety on the Bogey Road.

27. In the light of this conclusion I consider that it would have been justified to allow the appeal without the need to assess the second main issue. Nevertheless, in case a different conclusion were subsequently to be reached on this first issue, I have also considered the second main issue which I identified at the inquiry.

## **Second main issue**

### *Local need*

28. The aim of helping satisfy a local need for DSC featured large in the Appellants' reasons for making the application in July 2009. At that time they pointed out that, as Tower colliery at Hirwaun had recently ceased production, there was an unmet need from local customers for domestic use for similar coal to that which had been mined there. They now accept however that the immediately local market for such coal is unlikely to be more than about 5,000 tonnes a year. Instead they contend that the local market for domestic coal should include the whole of South Wales, together with some places further away, and also that there is a demand for DSC from the recreational steam railway and other steam engine markets, both from within Wales and from further afield.
29. The Council requested details of these two principal markets for DSC before determining the application. However, apart from general letters of support from their coal factors based in England, and also some from mainly South Wales coal merchants and the local Brecon Mountain Railway, I consider that the Appellants' evidence on this matter is sketchy at best.
30. I conclude therefore that there is no demonstrable local need for up to 50,000 tonnes a year of DSC even if the whole of Wales is taken to mean the local area. I accept that the supply of DSC to consumers both in Wales and England may save imports of such coal from other countries. Nevertheless, whilst this could possibly be a material consideration in the context of the whole United Kingdom economy, as the evidence in this appeal is so tentative, it would be unwise for me to attach more than minimal weight to this import-saving, macro-economic argument.

### *On-site geological conditions*

31. This topic was only raised by the Appellants as a possible major consideration rather late in the day, and even then was not given much prominence by them until quite recently. I do not consider therefore that any criticism can fairly be made of the Council in not making specific reference to it in their reasons for refusal, nor in their statement of case for this appeal, nor in not giving it detailed coverage in their evidence for the inquiry. Further, it was hardly mentioned at all in the statement of common ground prior to the inquiry. None of this however absolves me from giving this matter close attention.
32. Whilst the Appellants were aware as far back as 2004, or even earlier, that some of the coal seams which they wished to work contained a high proportion of sulphur – up to 5% - they hoped that by blending they would be able to sell all the coal from the LRS to the APS. In the event the flue gas desulphurisation method which this power station finally adopted resulted in the Appellants being unable to blend out their most sulphurous seams so as to achieve a weighted average of no more than 1.15% sulphur content, and which had become the maximum level acceptable to the power

station. The unacceptability of high sulphur coal in the blend for the power station only became clear towards the end of 2007. This high sulphur coal from various seams constitutes about 10% of the total annual output of the LRS, that is, some 100,000 tonnes.

33. The Appellants have now identified an outlet for some 50,000 tonnes a year of this high sulphur coal at the PSW, which is now sent there by rail. They have also attempted to sell such coal to the ACW but the absence of modern rail facilities there means that this works cannot at present be supplied by this means. However, it is really a matter for the cement works to decide whether to do so, rather than expect the Appellants to have to take on this task. In addition, they have experimented with sending one trainload of such coal to the Drax power station where evidently it is chemically acceptable. I was not told why this experiment has not been repeated but, on the other hand, neither the Council nor local residents were able to cast any credible doubt on the seriousness or good intentions of this failed experiment.
34. The position remains therefore that there are about 50,000 tonnes a year of high sulphur DSC for which there is not an identified outlet served by rail. I have considered the Council's contention that, since the Appellants receive a higher price per tonne for coal delivered by road than for coal delivered in bulk by rail, there is little or no incentive for them to find a rail-served bulk outlet for any of this coal. However, in the absence of clear evidence from the Council or their supporters that such outlets exist in practice, I attach little weight to this micro-economic point.
35. I conclude therefore on this matter that, because of on-site geological conditions, it is not possible to dispose of the whole output of the LRS at the APS as was intended in 2005, largely because of the particular flue gas desulphurisation method adopted by the power station. About half of this high sulphur coal is sent to PSW by rail but the other half needs to be sent to most, if not all, of the other present or potential customers by road. In my view it would be less environmentally harmful in terms of carbon dioxide emissions to do so by road direct from the CPD, irrespective of the location of those customers, rather than indirectly but lawfully from Barry Docks as at present.
36. I have considered the matter of the degradation of this relatively soft DSC each time it is mechanically handled but, as this is within the Appellants' control to improve, if not eradicate, by using different handling techniques, I attach little weight to their argument in this respect. However, I note that if this coal is handled fewer times, as would be the case if it leaves the CDP by road, there would probably be marginally less waste of this important mineral resource. I have also considered the view of some local objectors that this high sulphur coal should either be left in the ground or at least put back into the void as progressive restoration proceeds. This too would be a waste of an important mineral resource in my view and is not, therefore, an acceptable solution to the problem of dealing with the quite small amount of such coal obtained from the LRS.

### *Conclusion*

37. Overall I conclude on this issue that, whilst there is insufficient justification for the proposed movement of high sulphur coal by road on the grounds of local need – however that term may reasonably be applied – there is sufficient justification for on-site geological reasons to outweigh any harm on the first main issue which may in the event be held to exist.



## Conditions and obligations

38. In addition to a revised condition 37, I have also considered the continuing applicability of all the other conditions imposed on the 2005 permission. In the interests of consistency I have retained the numbers of the conditions on that permission, though in some cases a condition is now indicated as being deleted, since it is not relevant to the permission which I have granted. Since reasons were given individually for all the conditions imposed in 2005, or for small groups of them, I have also set out reasons in this way, though this would not be normal practice in cases where an Inspector makes the decision. All the new conditions and their reasons are set out in the attached Schedule.
39. I have considered all the conditions discussed at the inquiry in the light of the advice in Welsh Office Circular 35/95 on *The Use of Conditions in Planning Permissions* which is still in force. In particular I have paid attention to the 6 tests for conditions set out in paragraph 14 of that advice and to the recommended wording of conditions.
40. In dealing with many of the conditions where their substance is carried forward from the 2005 permission, but which need to be updated to reflect the current situation, I have cross-referred to the 2005 conditions those which I have imposed. However, this means that the permission which I have granted is not wholly comprehensible within its own covers. It is necessary therefore before this permission is implemented for a document to be compiled by the Appellants setting out the way in which all such conditions have been complied with or have been discharged. This compendium will need to be agreed with the Council and I have, therefore, imposed condition 7(2) accordingly.
41. The new condition 37 needs to repeat the present restriction on the movement of all coal from the LRS initially to the CDP. I have therefore imposed condition 37(1). Further, in order properly to regulate the permitted movement of coal by road from the CDP, new condition 37(2) needs to restrict the amount of LRS coal which can be taken away by lorry; 37(3) needs to specify the vehicular access point to the CDP which may be used; 37(4) needs to limit the maximum number of laden coal lorries which may leave the CDP each day, together with the maximum number which may leave in any one hour; 37(5) needs to require that the loads on such lorries are adequately sheeted; 37(6) needs to require that the wheels and undersides of such lorries are cleaned before they enter the public highway; and 37(7) needs to specify that before any movement of LRS coal by road from the CDP starts there shall be in force a Traffic Regulation Order [TRO] along most of the length of the Bogey Road. Although the CDP is outside the permitted LRS, nevertheless, since the CDP land is under the control of the Appellants for planning purposes, I consider that the conditions which I have imposed can properly be applied to this land.
42. I consider that condition 37(2) is needed in order to prohibit more than 50,000 tonnes a year of LRS coal being moved from the CDP, since more than this amount would begin to undermine the sustainable transport credentials of the LRS. Condition 37(3) is required in order to ensure that only a safe access is used by lorries coming to collect or take away LRS coal. Condition 37(4) is necessary for the protection of highway safety by prohibiting too many LRS coal lorries leaving the CDP on any day or during any part of a day. Condition 37(5) is needed both for the protection of highway safety by seeking to prevent the spillage of loads onto the highway, but also for the protection of amenity to prevent dust being blown off laden lorries. And condition 37(6) is needed for the protection of highway safety by seeking to prevent loose material being carried onto the highway by LRS coal lorries.

43. Turning to condition 37(7), I have paid particular attention to the routes which LRS coal lorries ought to be able to use to and from the CDP. The Appellants offer a section 106 obligation which would specify which roads in the locality could be used by such lorries but which would expressly prohibit use of the Bogey Road to the west of the direct access point to the CDP. Since the drivers of such lorries would be under the control of the haulage operators contracted to the Appellants, the latter contend that such restrictions could be applied and would be effective.
44. However, as paragraph 5 of Appendix O to MINTAN2 makes clear, neither planning conditions nor obligations are an appropriate means of controlling the right of passage over public roads. The appropriate mechanism is an Order made under section 1 of the Road Traffic Regulation Act 1984 restricting all traffic above a specified axle weight. This means though that if such an order were made in respect of most of the Bogey Road, all vehicles above the specified axle weight traffic would be prohibited, unless they were lawfully calling at sites or premises along the controlled length.
45. Apparently there used to be a weight restriction on this road but this has been made ineffective by the recent diversion which avoids vehicles passing over the old railway bridge. There was also a physical width restriction on that bridge in order to protect its parapets, though whether that restriction was the subject of the TRO is not clear. In my view a physical width restriction is generally more effective than a weight restriction, since the latter is more difficult to enforce. However, it will be a matter for the Council as the local highway authority to decide the method of restriction and also the precise length of the Bogey Road to which the TRO should apply. Condition 37(7) therefore requires the TRO to be in place before LRS coal lorries can come to and go from the CDP. This Order would also substantially reduce the existing number of heavy lorries which use this road, to the benefit of the residential amenity of residents of Incline Side.
46. Whilst paragraph 5 of Appendix O indicates that planning conditions can require access to be angled such that vehicles are prevented from turning in a particular direction where regulations are in force to reinforce that direction, nevertheless as there are no details before me of any such physical works, I consider that an appropriate TRO would be sufficient in this particular case. On the other hand in order to remind drivers of LRS coal lorries leaving the CDP about the direction they should take, I have imposed a requirement for suitable signage as condition 37(8).
47. The legal agreement between the Appellants and the Council relating to the payment of community benefit money is not affected by the appeal proposal and, in any case, is outside planning legislation. However the section 106 obligation which accompanied the 2005 permission and which provides a bond to cover the cost of the restoration of the site should the Appellants be unable or refuse to do so is potentially a relevant consideration in this appeal. I have though also taken into account the existence of section 6 of the Mid Glamorgan County Council Act 1987. This makes provision for a local planning authority to require a satisfactory '*... landscaping ... preservation, restoration ... reinstatement ... or aftercare*' bond from private operators of coal extraction sites before a permission is started or, as the case may be, continues, in order to secure the performance of any relevant conditions subject to which planning permission is granted. Such bonds are generally known simply as restoration bonds.
48. Paragraph 20 of Appendix B to Welsh Office Circular 13/97 on *Planning Obligations* and which is also still in force, indicates that if there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition which satisfies the policy tests in Circular 35/95 is preferable because it enables a developer

to appeal to the Secretary of State (now Welsh Ministers). Whilst no such appeal could be made against any condition which I imposed, nevertheless, the principle remains that in general a condition is to be preferred to an obligation. Paragraph 65 of MINTAN2 recognises the existence of the Mid Glamorgan Act and paragraph 66 indicates that the 10-year derogation for the successors of the British Coal Corporation (which in my view included the Opencast Executive) has now expired. The Council confirm that section 6 of this local Act is applicable in this case.

49. Whilst it is the case that section 6 of this Act also applied in 2005, nevertheless the National Assembly chose at that time to accept the section 106 obligation made under the 1990 planning legislation. I acknowledge that MINTAN2 postdates the 2005 permission. Nevertheless, in the interests of consistency I consider that the planning obligation now offered by the Appellants, as revised, signed and dated at the inquiry, is an acceptable means of dealing with the provision of a restoration bond. Covenant 3.1 of this obligation deals with this bond.
50. In addition, covenant 3.2 deals with the keeping and making available for inspection of records relating to the dispatch (thus) of coal by road from the site. In my view, since all coal from the LRS must still go first to the CDP, the site for the purposes of this obligation can only mean the CDP, notwithstanding the definition in part 1 of the obligation, and also because the CPD is under the control of the Appellants for planning purposes. Its boundary is defined on the plan attached to the obligation and the access for LRS coal lorries is clearly marked on this plan as point Z. I appreciate that point Z is within Caerphilly County Borough but as this is an existing, well laid-out access, I do not consider that a separate planning permission is required from that Council for the use of this access by LRS coal lorries. Although this plan also shows the proposed routes to and from the CDP that would have been used by such lorries if there had been a routeing agreement, instead of a TRO being made for most of the Bogey Road, nevertheless I do not consider that this extra routeing information invalidates either the obligation plan or the obligation itself.
51. Covenant 3.3 indemnifies the Council in respect of its costs arising from the formulation and promotion of any TRO deemed necessary or desirable in respect of roads in the vicinity of the site within their area. Since it would not be necessary in my view for the TRO to cover the short length of the Bogey Road in Caerphilly County Borough, the terms of this covenant will be sufficient. Further, as the expenditure of money will be necessary by the Council in making this order, it is appropriate that this matter be dealt with under this obligation rather than by a planning condition. It is partly because of the length of time that the bringing into force of this order is likely to take that I have specified – in condition 1 - that the development which I have permitted will have up to two years before it must start.
52. At the inquiry the Council confirmed that they are content with the terms of the submitted section 106 obligation and I have no reason to believe therefore that they will not readily seek to promote the necessary TRO for the Bogey Road and to bring it into force. I conclude therefore that it is both necessary for and relevant to the development which I have permitted.

### **Adjacent coal depot and proposed heat from waste plant**

53. I have had regard to the planning status of the disused AJ Williams coal depot and the extent to which this might be a fallback position which the Appellants could rely on if this appeal had been dismissed. In my view the planning status of this site is by no means clear cut and could only be settled by an application made under either section

191 or 192 of the 1990 Act, as amended. However, as the Appellants do not seriously seek to rely on the movement of coal by rail to this yard in accordance with condition 37 of the 2005 permission, or for example by conveyor (though this would probably need a separate permission) and then by road from this former coal depot, I would not have regarded it as a fallback position of substantial weight had I otherwise been minded to dismiss this appeal.

54. As for the proposed Covanta heat from waste plant at Brig-y-Cwm, this would be on a site to the south of the disused coal depot beyond the existing railway line, but it would also use part of the coal depot during the construction phase. However, I understand that this proposal is shortly to be considered by the Infrastructure Planning Commission, and it would thus be unwise of me to predict the outcome. This proposed development is thus also of little weight as a material consideration in the determination of the present appeal.

### **Other sustainability matters**

55. I have had regard to the contentions of both the Council and local residents that the appeal proposal should be assessed in terms of whether it would constitute sustainable development as such, and whether the word 'sustainability' in the reason for condition 37 should be construed accordingly. In my view, however, the proper test in this case is whether the proposed movement of LRS coal by road direct from the CDP would constitute sustainable transport. Nevertheless, even when assessed in the light of the wider sustainability objectives of both the LRS as a whole and of national policy, I do not consider that those objectives will be materially compromised by the minor alteration of the means of movement of LRS coal from the CDP which I have allowed.

56. I have also considered the view of local residents that the burning of coal for domestic purposes should not be encouraged, and that it is unacceptable for the APS to continue to burn coal in the absence of carbon capture. However, as neither of these matters is before me for determination, they have not affected my decision.

### **Overall conclusion**

57. Taking into account all the evidence presented at the inquiry and in writing, I conclude therefore that, with suitable planning conditions and accompanied by a new section 106 obligation, the proposed movement of up to 50,000 tonnes a year of LRS coal by road from the CDP would be environmentally acceptable and would be a proportionate response to the on-site geological conditions with which the Appellants must be able to deal in an economic manner.

### **Formal Decision**

58. For the above reasons I hereby allow this appeal and grant planning permission for the Ffos-y-Fran Land Reclamation Scheme, east of Merthyr Tydfil, incorporating the extraction of coal by opencast methods, and being the final phase of the East Merthyr Reclamation Scheme in accordance with application Ref P/08/0316 dated 14/07/09 without complying with condition 37 subject to which planning permission Ref APP 152-07-014 was granted on 11/04/05 by the Planning Decisions Committee of the National Assembly for Wales, but subject to the conditions in the attached Schedule.

*Ian Osborne*

Inspector

## Schedule of Conditions

### Commencement of development

1. The development hereby permitted shall start not later than the expiration of 2 years from the date of this decision.

#### *Reason*

*To comply with Section 91 of the Town and Country Planning Act 1990 and to prevent any protracted delay in the implementation of this permission.*

2. Written notification of the date of the proposed start of the development hereby permitted shall be submitted to the Local Planning Authority not less than 56 days beforehand.

#### *Reason*

*In the interests of clarity as to which permission is being implemented.*

### Duration of works

3. All coal extraction from the development hereby permitted shall cease no later than 06 September 2022.
4. Final restoration of the land shall be completed no later than 06 December 2024 and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme.
5. Any building, plant, machinery, hard standing or other works associated with the coal extraction hereby permitted (or any discrete phase thereof) shall be removed from the land within 42 days of the completion of restoration, and the affected areas shall be reinstated in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority; and that scheme shall be submitted no later than 56 days prior to the cessation of coal extraction (or any discrete phase thereof).

#### *Reason*

*To co-ordinate the duration of the development hereby permitted with the end dates permitted under APP 152-07-014.*

### Approved plans and documents

6. The development hereby permitted shall not be carried out other than wholly in accordance with the details shown on the submitted drawings; with the details approved pursuant to condition 6 of permission APP 152-07-014; and in accordance with the 2003 Environmental Statement and supporting documents, unless the Local Planning Authority gives written consent to any variation.

#### *Reason*

*For the avoidance of doubt as to the extent and nature of the development hereby permitted.*

### **Availability for inspection of approved plans and documents**

- 7(1) From the start of the development hereby permitted until the completion of the restoration and aftercare of the land, a copy of this planning permission, together with all relevant plans and documents already approved and any other plans and documents subsequently approved in accordance with this permission, shall be permanently kept and made available for public inspection during normal working hours at both any site office and at the offices on the Cwmbargoed Disposal Point.
- 7(2) Before the development hereby permitted starts there shall be submitted to the Local Planning Authority for their approval in writing a compendium of all plans and other documents approved pursuant to conditions imposed on permission APP 152-07-014; and the approved compendium shall be made available for public inspection in accordance with condition 7(1) above.

#### *Reason*

*To ensure that the site operator, the Local Planning Authority and members of the public have access to the relevant documents on site, and to avoid ambiguity as to the nature and extent of this permission.*

### **Method of working**

8. The development hereby permitted shall not be carried out other than wholly in accordance with the Method of Working Statement approved by the Local Planning Authority pursuant to condition 8 of permission APP 152-07-014.

#### *Reason*

*To ensure satisfactory implementation, completion and restoration of the permitted land reclamation scheme.*

### **Areas of excavation for coal extraction**

9. The surface areas of coal extraction hereby permitted shall not extend beyond the orange pecked lines indicated on Plan FLRS/PA1 and as required by condition 9 of permission APP 152-07-014.

#### *Reason*

*To define and limit the surface area of the permitted coal extraction, and to protect residential amenity.*

### **Depth of working**

10. No coal extraction hereby permitted shall take place below the Lower 4 Feet (basal) seam in the principal extraction area, below the Hafod seam in the northeast coal extraction area, or below 10 metres (below existing ground level) in the southwest and southeast coal extraction areas, as indicated on Plan FLRS/PA1 and as required by condition 10 of permission APP 152-07-014.

#### *Reason*

*To define the vertical extent of the permitted coal extraction, to limit the environmental effect of the development, to protect the hydrogeology of the site and to protect residential amenity.*

## Direction of working

11. The direction of opencast working hereby permitted shall be from south to north, as indicated on Plans FLRS/ES3/1-4, and as required by condition 11 of permission APP 152-07-014.

### Reason

*To minimise the potential impact on residential amenity and to achieve early reclamation of those areas of the site closest to residential areas.*

## Overburden mounds

12. The northern overburden mound of the development hereby permitted shall not exceed 475m AOD; the southern overburden mound shall not exceed 410m AOD; and the eastern overburden mound shall not exceed 465m AOD.

### Reason

*For the protection of visual amenity.*

## Hours and days of operation

13(1). Except in emergencies (i.e. circumstances in which the site operator has reasonable cause for preventing injury to persons or serious damage to property) in order to maintain the safe operation of the site (notification of which shall be given to the Local Planning Authority in writing as soon as is practically possible) or unless the Local Planning Authority has agreed otherwise in writing, no operations (i.e. any physical works including the starting/warming/revving of any internal combustion engine, motor vehicle or other machinery) other than water pumping or servicing to water pumps or environmental monitoring, shall be carried out on the site, except between the following times: -

- Normal site operations (other than those activities specified below)

Monday – Friday:	0700 - 2300 hrs
Saturday:	0700 - 1700 hrs

- On-site coal haulage

Monday – Friday:	0700 - 1900 hrs
Saturday:	0700 - 1300 hrs

- Blasting:

Monday - Friday	1000 - 1300 hrs and 1400 - 1600 hrs
Saturday	1000 - 1300 hrs

- Removal of existing waste tips

(Deleted)

- Formation and removal of baffle mounds, and the stripping and replacement of soil within a 300 metre radius of any dwelling

Monday - Friday	0800 - 1900 hrs
Saturday	0800 - 1300 hrs

13(2). No work shall be undertaken on site in connection with the development hereby permitted on Sundays or Public/Bank Holidays, except in the case of emergencies as specified in the first paragraph of condition 13(1).

*Reason*

*For the protection of residential amenity.*

### **Dust control**

14. The development hereby permitted shall not take place other than wholly in accordance with the dust suppression and air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 14 of permission APP 152-07-014 and based on the measures set out in the 2003 Environmental Statement referred to in condition 6 of that permission.
15. The dust suppression measures to be employed shall use the Best Available Technology Not Entailing Excessive Cost for the monitoring and control of dust which may arise directly or indirectly as a result of site activities. In particular:
- A sufficient number of spraying units shall be provided and maintained in efficient working order so as to ensure that haul routes and other areas traversed by vehicles are kept damp during dry weather.
  - All spraying vehicles shall have an adequate water supply at all times.
  - There shall be regular and effective maintenance of haul roads.
  - The exhausts and through-body exhaust systems of all vehicles and other plant shall be fitted so as to prevent exhaust gases being emitted downwards.
  - Effective dust collection systems shall be fitted to all blast hole drilling machines before such machines are operated.
  - Prior to all blasting, all arisings from blast hole drilling shall be bagged and disposed of safely.
  - The tipping or removal of overburden shall cease temporarily or be relocated within the overburden storage area whenever the Local Planning Authority considers that wind strength and direction may result in a significant dust nuisance, and notifies the site operator accordingly.
  - The construction of all baffle mounds shall cease temporarily or be relocated whenever the Local Planning Authority considers that the wind strength and direction may result in significant dust nuisance and notifies the site operator accordingly.
  - The site operator shall provide and maintain a sufficient number of vapour masts so as to ensure that an effective vapour screen can be produced at any point in the site.
  - All baffle bunds shall be sealed and seeded as soon as practicable after they have been constructed in such a way as to minimise wind blown material from adversely affecting nearby dwellings.



*Reason*

*To protect the amenity of local residents from the potential effects of dust arising from the permitted development.*

**Air quality**

16. The development hereby permitted shall be monitored in accordance with the air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 16 of permission APP 152-07-014.

*Reason*

*To protect the amenities of local residents from the potential adverse effects of dust arising from the permitted development.*

**Noise**

17(1) With the exception of those activities indicated in conditions 18 and 22 below, any noise arising from the development hereby permitted shall not exceed the following *dBLAeq, 1hr* by reference to the following specific noise monitoring locations.

<b>Ref No.</b>	<b>Location</b>	<b>0700-1900 hrs</b>	<b>1900-2300 hrs</b>
1	Blaen Dowlais	55	42
2	Japonica Drive	54	42
3	Mount View	55	42
4	Incline Side	55	42

17(2) The development hereby permitted shall be monitored by the site operator in accordance with the scheme approved by the Local Planning Authority in accordance with condition 17(b) of permission APP 152-07-014.

18. During baffle mound construction and removal, soil stripping and removal of soil heaps, noise levels shall not exceed a daytime noise level of *70 dBLAeq, 1hr* over periods not exceeding eight weeks in any one year.
19. Efficient silencing equipment shall be fitted to and used by all vehicles and other plant and machinery on site and shall be efficiently maintained in accordance with the manufacturer's recommendations.
20. All haul roads in direct line of sight and within 500 metres of any dwelling shall be adequately screened, where practicable, to attenuate noise levels.
21. Equipment operating on a 24-hour basis, such as pumps, shall be placed in acoustic enclosures and positioned away from noise sensitive locations where practicable.
22. The rating level of noise emitted from such pump enclosures shall not exceed the existing background noise level by more than an amount to be agreed in writing by the Local Planning authority before the development hereby permitted starts.

*Reason*

*To protect the residential amenity of neighbours.*

## Blasting

23. All blasting required for the development hereby permitted shall be designed so that the ground vibration measured as peak particle velocity (PPV) shall not exceed 8mm per second at any residential or similarly sensitive property; and the design limit shall ensure that the ground vibration for at least 95% of all blasts in any 20 week period shall not exceed a PPV of 6mm per second.
24. Blasting shall be limited to four blasts a day between the hours of 1000 to 1300 and 1400 to 1600 hours (two blasts per time window) and no blasting shall be carried out on Sundays or Bank/Public Holidays, nor in the hours of darkness.
25. The development hereby permitted shall not be carried out other than wholly in accordance with the type of vibration monitoring station required by condition 25 of permission APP 152-07-014; all vibration monitoring stations shall be retained in the locations approved in writing by the Local Planning Authority; and all monitoring data shall be made available for inspection by the Local Planning Authority on request.
26. No blasting shall be carried out within the 300m blast exclusion zone indicated on Dwg No MMAG/BLAST/01 as required by condition 26 of permission APP 152-07-014.

### *Reason*

*To protect the amenity of the local environment, including of neighbours.*

27. The level of vibration at the boundary of the adjoining railway land shall not exceed a maximum peak particle velocity of 12mm per second.

### *Reason*

*To maintain the integrity of the adjoining railway line.*

## Highways

28. There shall be no vehicle access in connection with the development hereby permitted to or from the public highway other than at points X & Y shown on Dwg No FLRS/PA1; and there shall be none for coal lorries associated with the development hereby permitted other than at point Z on the plan attached to the section 106 obligation which accompanies this permission.
29. Other than at crossing point X there shall be no movement of lorries or plant from the development hereby permitted to/from the Cwmbargoed Disposal Point on the public highway unless otherwise agreed in writing by the Local Planning Authority.
30. The use of access point Y by vehicles and other plant shall be restricted solely to the entry and exit of plant and support vehicles associated with the development hereby permitted.
31. The development hereby permitted shall not take place other than wholly in accordance with the engineering details of access for points X and Y required by permission APP 152-07-014.
32. The surface of the highway crossing at point X shall be retained in good condition for a distance and width of not less than 100 x 6 m in accordance with the details approved by the Local Planning Authority in accordance with condition 32 of permission APP 152-07-014; and the access at point Y shall be similarly retained in good condition for a distance and width of not less than 50 x 6m.

33. All vehicles using access points X and Y in connection with the development hereby permitted shall pass through the wheel cleaning facilities provided in accordance with condition 33 of permission Ref APP 152-07-014; and the vehicle cleaning facility at point Z on the Cwmbargoed Disposal Point shall be retained in good working order for the duration of the transportation of coal from the development.

*Reason*

*For the protection of highway safety and of residential amenity.*

34. (Deleted)

### **Parking provision**

35. Employee parking for the development hereby permitted shall be in accordance with the requirements of condition 35 of permission APP 152-07-014; and such parking provision shall be retained for the duration of the development.

*Reason*

*For the protection of highway safety.*

### **Transportation of coal**

36. All vehicles entering the highway from the development hereby permitted shall do so in a clean condition; and all vehicles transporting coal from the land reclamation scheme entering the Bogey Road from the Cwmbargoed Disposal Point shall first have their wheels and undersides cleaned on site in the existing vehicle cleaning facility on that land.

*Reason*

*To avoid the deposit of loose material on the highway.*

37(1). Except as permitted by condition 37(2) all coal from the development hereby permitted shall be taken to the Cwmbargoed Disposal Point for onward transmission by rail.

37(2). No more than 50,000 tonnes of coal a year from the development hereby permitted shall be transported from the Cwmbargoed Disposal Point by road.

37(3). All vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point at point Z shown on the plan attached to the section 106 obligation which accompanies this permission; and all vehicles arriving at the Cwmbargoed Disposal Point to transport such coal shall also use this same access.

37(4). No more than 20 vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point each day; and no more than 5 such lorries shall leave this disposal point in any one hour.

37(5). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their loads covered in accordance with details to be first approved in writing by the Local Planning Authority.

37(6). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their wheels and undersides cleaned before leaving this land in accordance with details to be first approved in writing by the

Local Planning Authority; and the approved means of vehicle cleaning shall thereafter be retained in good working condition until the transportation of all such coal ceases.

37(7). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be in force a Traffic Regulation Order in respect of that length of this road determined appropriate by the Merthyr Tydfil County Borough Council; and if at any time that Order ceases to have effect all transportation by road of such coal shall cease until a replacement order comes into force or unless the Local Planning Authority gives written consent to any variation.

37(8). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be submitted to the Local Planning Authority for their approval in writing details of signage to be erected at the exit from that land informing the drivers of vehicles transporting such coal of the need to observe the requirements of the TRO and to advise them of the route which they should follow to the A465(T) Heads of the Valleys Road; the approved signage shall be erected before any coal from the development hereby permitted is transported by road from the disposal point; and all such signage shall thereafter be retained until the transportation of all such coal ceases.

*Reason*

*To define the means of coal transportation from the land reclamation site via the disposal point, and in the interests of the achievement of sustainable transport and for the protection of highway safety and residential amenity.*

**Importation of materials**

38. No waste material (statutorily controlled or otherwise) or minerals for blending purposes shall be imported either to the land reclamation scheme hereby permitted or the Cwmbargoed Disposal Point except with the prior written approval of the Local Planning Authority.

*Reason*

*To define the scope of this permission and in order to prevent development on a scale or of a nature not presently envisaged and not considered acceptable for planning purposes, particularly in terms of amenity but allowing for the continuation of lawful activities at the existing rail siding within both the permitted land reclamation scheme and the disposal point.*

**Preparation and storage of materials**

39. No materials, including minerals excavated from the development hereby permitted shall be stocked on the land other than within the designated areas shown on the plans approved under permission APP 152-07-014, other than those necessary for enabling works.

*Reason*

*For the protection of amenity.*

**Plant and machinery**

40. All cranes and other jibbed machines used in connection with the development hereby permitted shall be so positioned that the jib or any suspended load shall not swing

over railway land, or within 3 metres of the nearest rail track if the boundary of the railway land is closer than 3m from the permitted scheme.

41. All cranes, machinery and construction plant used in connection with the development hereby permitted shall be so positioned and used to prevent the accidental entry onto railway land of such plant, or loads attached thereto, in the event of failure.

*Reason*

*For the protection of the safety of rail traffic.*

### **Environmental management plan**

42. Before the development hereby permitted starts an Environmental Management Plan [EMP] shall be submitted for the written approval of the Local Planning Authority for each phase of the development, as required by condition 42 of permission APP 152-07-014; and the EMP shall be implemented in accordance with the approved scheme, save as otherwise provided for by other conditions of this permission.

*Reason*

*For the protection of the environment.*

### **Groundwater monitoring and protection**

43 (Deleted)

44. Once the development hereby permitted starts the groundwater monitoring scheme approved by the Local Planning Authority in accordance with condition 44 of permission APP 152-07-014 shall continue for the duration of the development.

*Reason*

*To prevent pollution of the water environment.*

45. If during the course of the development hereby permitted any contamination of a nature not previously identified is encountered, representative samples shall be tested by the site operator to determine the nature and extent of any such contamination in order to evaluate the risk it might present to controlled waters; if the contamination could materially affect controlled waters at/below the site and cannot be dealt with by measures set out in the Method Statement, then no further operations shall be carried out in the affected area until the site operator has submitted to the Local Planning Authority for their written approval an addendum to the Method Statement or unless the Local Planning Authority give written consent for any variation; and this addendum shall specify how this contamination must be dealt with and what measures must be implemented before operations continue.

*Reason*

*To ensure that the development complies with the details approved under permission APP 152-07-014 for the protection of controlled waters.*

### **Construction phase works**

46. The development hereby permitted shall not be carried out other than wholly in accordance with the Method Statement approved by the Local Planning Authority in accordance with condition 46 of permission APP 152-07-014.

*Reason*

*For the protection of amenity*

**Foul and surface water drainage**

47. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme for the disposal of foul sewage approved by the Local Planning Authority in accordance with condition 47 of permission APP 152-07-014.
48. The development hereby permitted shall not be carried out other than wholly in accordance with the detailed plans for a comprehensive drainage and lagoon system to intercept and treat surface water from the land reclamation site approved by the Local Planning Authority in accordance with condition 48 of permission APP 152-07-014.

*Reason*

*To prevent pollution of the water environment.*

**Site illumination**

49. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme of illumination approved by the Local Planning Authority in accordance with condition 49 of permission APP 152-07-014; the approved lighting scheme shall be retained in good working condition for the duration of the development; and shall then be removed upon its completion.

*Reason*

*To minimise undue glare and distraction in the interests of residential amenity and highway safety.*

**Land restoration**

50. (Deleted)
51. The development hereby permitted shall not be carried out other than wholly in accordance with the strategy for progressive restoration and management approved by the Local Planning Authority in accordance with condition 51 of permission APP 152-07-014.
52. In the event of a cessation of the extraction of coal prior to the completion of the approved restoration and management strategy, and which constitutes a permanent cessation within the terms of paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990, within 6 months of the cessation of such extraction there shall be submitted to the Local Planning Authority for their approval in writing a scheme for the restoration of the land which shall include details of reclamation and aftercare; and the approved scheme shall be implemented within 3 years of such approval (excluding any aftercare measures) unless the Local Planning Authority gives written consent to any variation.

*Reason*

*To ensure that the land is restored to a condition capable of beneficial use in the event of the early cessation of coal extraction, and for the protection of visual amenity.*

## **Aftercare**

53. The development hereby permitted shall not be carried out other than wholly in accordance with the phased aftercare schemes to be approved by the Local Planning Authority in accordance with condition 53 of permission APP 152-07-014.

### *Reason*

*To comply with the requirements of Schedule 5 of the Town and Country Planning Act 1990 and to ensure that the reclaimed land is correctly husbanded to bring it to the standard required for agricultural, amenity, and conservation use.*

## **Agricultural water supplies**

54. The site operator shall ensure that any flow of water used for agricultural purposes that is adversely affected by the development hereby permitted is reinstated in a satisfactory manner, including the provision of alternative supplies during the course of such remedial operations.

### *Reason*

*To ensure that agricultural use can be maintained.*

## **Archaeology**

55. The development hereby permitted shall not be carried out other than wholly in accordance with the phased Programme of Archaeological Work approved by the Local Planning Authority in accordance with condition 55 of permission APP 152-07-014.

56. For the duration of the development hereby permitted the site operator shall retain the services of an archaeologist approved by the Local Planning Authority who shall undertake a watching brief over recognised archaeological features throughout the excavation and restoration period of the land reclamation scheme.

### *Reason*

*To protect or record the archaeological features on the site.*

## **Protected habitats and species**

57. The development hereby permitted shall not be carried out other than wholly in accordance with the requirements of Schedules 2 and 5 of the Conservation of Habitats and Species Regulations 2010 in respect of any protected habitats or species on the land reclamation site, as required by condition 57 of permission APP 152-07-014 but as may be modified by the 2010 Regulations.

### *Reason*

*To safeguard any protected habitats or species within or around the permitted land reclamation scheme.*

## **Liaison committee**

58. Once the development hereby permitted starts the site operator shall continue to organise the site liaison committee established in accordance with condition 58 of permission APP 152-07-014.

*Reason*

*To ensure that the local community has an understanding of the work being carried out on the land reclamation and opencast coal site, and that the site operator and any contractor are aware of local community concerns.*

**Environmental liaison officer**

59. Once the development hereby permitted starts the site operator shall continue to employ an environmental liaison officer approved in writing by the Local Planning Authority who shall oversee all soil stripping/storage, the restoration scheme, habitat re-creation and landscaping works, as required by condition 59 of permission APP 152-07-014.

*Reason*

*To ensure that the site is reclaimed in an acceptable manner and to a condition capable of beneficial afteruse, in the interests of the protection of residential and visual amenity, and for general public benefit.*

**Abbreviations used in the above Decision**

ACW	Aberthaw Cement Works
APS	Aberthaw Power Station
CDP	Cwmbargoed Disposal Point
DSC	Dry Steam Coal
EIA	Environmental Impact Assessment
ES	Environmental Statement
LRS	Land Reclamation Scheme
MINTAN2	Minerals Technical Advice Note 2 (on coal)
MPPW	Minerals Planning Policy Wales
PDB	Planning Decisions Branch
PTS	Port Talbot Steelworks
TAN 18	Technical Advice Note 18 : Transport
TRO	Traffic Regulation Order



## Persons who appeared at the inquiry

### For the Appellants

Mr Rhodri Price Lewis QC

instructed by Mr Christopher Bowes of  
DLA Piper UK LLP, Manchester

He called

Mr Stephen Tillman BSc(Hons) MSc CEng

Director of Appellant Company

Mrs Charlotte Brewin BSc MSc(Dist) AMIEMA

Principal Consultant, RPS Planning and  
Development, Cardiff

Mr William Ryan BA(Hons) BTP MRTPI

Principal Planner, SLR Consulting, Cardiff

### For the Council

Miss Mary Cook

of Counsel, instructed by Mr Gareth Chapman,  
Chief Executive, Merthyr Tydfil CBC

She called

Mr Norman Davies BSc(Econ) DipTP MRTPI

Town Planning Manager, Merthyr Tydfil CBC

### For Mrs Elizabeth Condron and other local residents

Dr Paul Stookes PhD MSc LLB

Solicitor-Advocate, Richard Buxton  
Environmental & Public Law, Cambridge

### Interested persons

Mrs Alyson Austin

Local resident, Bradley Gardens,  
Mountain Hare, Merthyr Tydfil

Mr Royston Stanley Thomas

Local resident, Incline Side, Mountain Hare,  
Merthyr Tydfil

Mr Terry Evans

Local resident, Mount View, Mountain Hare,  
Merthyr Tydfil

Mr Anthony Chaplin

Merthyr Initiative Group, Andrews Close,  
Heolgerrig, Merthyr Tydfil

Mr Leon Stanfield

Resident, Cyfarthfa Gardens, Cefn Coed-y-  
Cwmmer, Merthyr Tydfil

## Documents

- Doc 1 Notification of the inquiry sent out by the Council
- Doc 2 Letter received in response to that notification
- Doc 3 Statement of Common Ground, including plans submitted with appeal application
- Doc 4.1 Proof of evidence of Mr Norman Davies
- Doc 4.2 Appendices to Mr Davies' proof, with list of contents, and including plans and a compact disc.
- Doc 5.1 Proof of evidence of Mr Stephen Tillman
- Doc 5.2 Appendices to Mr Tillman's proof, with list of contents, and including plans and photographs
- Doc 6.1 Proof of evidence of Mrs Charlotte Brewin
- Doc 6.2 Appendices to Mrs Brewin's proof, with list of contents
- Doc 7.1 Proof of evidence of Mr William Ryan
- Doc 7.2 Appendices to Mr Ryan's proof, with list of contents
- Doc 8 Copy of section 106 unilateral undertaking made by the Appellants, including appendices
- Docs 9.1-3 List of persons represented by Dr Paul Stookes, written representation by Mrs M H Dunn including appendices and photographs, and response by Appellants
- Doc 10 List of Inquiry Core Documents. Documents bound separately
- Doc 11 Letters of support from potential customers for high sulphur coal submitted by Appellants
- Doc 12.1-5 Copies of planning permissions relating to the Cwmbargoed Disposal Point
- Doc 13 Copy of email relating to proposed Brig-y-Cwm heat from waste plant
- Doc 14 Copy of 2003 planning application for land reclamation scheme and opencast coal extraction
- Doc 15 Copy of Environmental Statement which accompanied the 2003 application
- Doc 16 Bundle of correspondence relating to 2003 Environmental Statement for proposed land reclamation and opencast scheme
- Doc 17 Bundle of correspondence relating to possible need for a fresh Environmental Statement if this appeal allowed
- Doc 18 Copy of Guidance for Applicants for Freight Facility Grants in Wales and related correspondence
- Doc 19 Copy of section 6 of the Mid Glamorgan County Council Act 1987
- Doc 20 Copy of Environmental Management in Organizations : the IEMA Handbook
- Doc 21 Copy of letter from the Chief Planner at the Department for Communities and Local Government in England to Chief Planning Officers in England relating to Environmental Impact Assessment following the *Baker* judgement
- Doc 22 Copy of EEC Council Directive dated 27 June 1985 on the assessment of the effects of certain public and private projects on the environment
- Doc 23 Copy of judgement in *R oao Elizabeth Condron and Merthyr Tydfil County Borough Council and others [2009] EWHC 1621 (Admin)*
- Doc 24 Copy of judgement in *R oao Lousis Baker v Bath and East Somerset Council and others [2009] EWHC 595 (Admin)*
- Doc 25 Copy of judgement in *R oao Elizabeth Condron and Merthyr Tydfil County Borough Council and others [2010] EWCA Civ 534*

## Plans

- Plan A Site plan and vehicular access points approved under permission Ref APP 152-07-014
- Plan B Blast exclusion zone plan approved under permission Ref APP 152-07-014
- Plans C.1-4 Phasing and restoration plans approved under permission Ref APP 152-07-014
- Plan D Plan attached to section 106 unilateral undertaking now made by the Appellants
- Plan E Appeal application site boundary and location plan. Appendix B to Mr Tillman's proof
- Plan F Deep and opencast coal mines in South Wales. Appendix C to Mr Tillman's proof
- Plan G Site location plan of proposed Tower opencast coal scheme

## Photographs

- Photo 1 Aerial photo of south east part of land reclamation and opencast site, together with the Cwmbargoed Disposal Point, the AJ Williams coal depot and the site for proposed Coventa heat from waste plant, undated but recent, submitted by the Council
- Photos 2.1-2.3 Aerial photos of Aberthaw Cement Works showing existing rail connection, dated 2001, submitted by the Council