



Report to the Secretary of State for Communities and Local Government

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Land off Huntington Lane, Telford

Telford & Wrekin Council

Town and Country Planning Act 1990

Section 78 Appeal by UK Coal PLC

**Proposed surface working of 900,000 tonnes of coal and 250,000 tonnes of
fireclay**

Inquiry held between 28 April and 4 June 2009

Land off Huntington Lane, Telford

File Ref: APP/C3240/A/08/2090405

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ABBREVIATIONS

AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
AQMA	Air Quality Management Area
AQO	Air Quality Objectives
BAP	Biodiversity Action Plan
CWS	County Wildlife Site
DTM	Digital Terrain Model
EA	Environment Agency
EH	English Heritage
EHO	Environmental Health Officer
EIA	Environmental Impact Analysis
ES	Environmental Statement
FC	Forestry Commission
FOTE	Friends of the Ercall
HIA	Health Impact Assessment
JSP	Shropshire and Telford and Wrekin Joint Structure Plan
LDD	Local Development Document
LDF (CS)	Telford and Wrekin Local Development Framework: Core Strategy
LDU	Landscape Description Unit
LNR	Local Nature Reserve
MLP	Shropshire, Telford and Wrekin Minerals Local Plan
NE	Natural England
NLUD	National Land Use Database
NNR	National Nature Reserve
PRoW	Public Right of Way
RSS	West Midlands Regional Spatial Strategy
SAM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
SWT	Shropshire Wildlife Trust
WLP	Wrekin Local Plan
WTA	Water Treatment Area
ZTV	Zone of Theoretical Visibility

File Ref: APP/C3240/A/08/2090405
Land off Huntington Lane, Telford

- The appeal is made by UK Coal Mining Ltd under section 78 of the Town and Country Planning Act 1990 against the failure of Telford and Wrekin Council to give notice within the prescribed period of a decision on an application for planning permission for the working of 900,000 tonnes of coal and potentially 250,000 tonnes of fireclay over 32 months. Site establishment and restoration would take place over 3 months and 6 months respectively.
- The application Ref W2007/1648 is dated 28 November 2007.
- By a letter dated 11 December 2008, the Secretary of State set out the following matters about which she particularly wished to be informed:
 - *a) the extent to which the proposed development would be in accordance with the development plan for the area, in particular the Shropshire, Telford & Wrekin Minerals Local Plan 1996 – 2006 ;*
 - *b) the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement 1: Delivering Sustainable Developments, and accompanying guidance The Planning System: General Principles with particular regard to whether the design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, will preserve or enhance the character and appearance of the area, having regard to the advice in paragraphs 33 to 39 of PPS1;*
 - *c) the extent to which the proposed development would be consistent with Government policies in Minerals Planning Guidance 3: Coal mining and colliery spoil disposal; Minerals Planning Guidance 7: Reclamation of mineral workings; Minerals Planning Statement 1: Planning and Minerals and Minerals Planning Statement 2: Controlling and mitigating the environmental effects of mineral extraction in England;*
 - *d) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable;*
 - *e) whether any permission should be subject to any conditions and, if so, the form these should take; and,*
 - *f) any other matters that the Inspector considers relevant.*

Summary of Recommendation: Allow the appeal subject to conditions attached as Annex A.

Procedural Matters

1. The inquiry opened on 28 April 2009 and sat for 18 days before closing on 4 June. I was assisted during the inquiry and in the completion of the report by a colleague Inspector, Miss E Ord LLB(Hons) LLM MA DipTUS.
 2. The appeal site and its surroundings were inspected, accompanied and unaccompanied, before, during and after the inquiry, including viewing the site from the summit and slopes of the Wrekin. A site inspection, with representatives of the appellant, Telford & Wrekin Council and Little Wenlock Parish Council, also took place during the inquiry on 11 May at one active surface
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mining site at Longmoor, Ravenstone, Leics, and two restored former surface mining sites at Hicks Lodge, nr Ashby de la Zouch, Leics and Bleak House, nr Cannock, Staffs¹.

3. The appeal was recovered by means of a Direction dated 8 December 2008. The reason given for the Direction was that the appeal relates to major proposals involving the winning and working of minerals.
4. Although the appeal was against the non determination of the application, the Council advanced three putative reasons for refusal:

(i) "The proposed development represents a major development which would have an unacceptable and significant adverse impact on the Shropshire Hills Area of Outstanding Natural Beauty and adjoining areas of countryside, their use and enjoyment. The proposals therefore fail to meet the tests of paragraph 8(iii) of MPG 3 by virtue of not being environmentally acceptable, the additional tests of paragraphs 28 and 29 of MPG 3 for an Area of Outstanding Natural Beauty, Policy QE1 of RSS11, saved policy P59 of the Joint Structure Plan, saved policies M3, M7 and M21 of the Joint Minerals Local Plan and saved Wrekin Local Plan policy OL2.

(ii) The general cumulative impact of the proposals set out in paragraph 10.9 of this report² would be significant and in conflict with MPG 3 and MPS 2, and saved policies M2, M3, M4, M7 and M21 of the Joint Minerals Local Plan.

(iii) The noise impact of the proposals, as described in paragraphs 8.1(1) and 10.3 of the report would be unacceptable and contrary to MPS 2, and the relevant saved policies of the Joint Minerals Local Plan M1, M3, M4 and M21."

5. Proofs of evidence (not summaries) are listed as documents of the inquiry: these may not represent the final position of the parties due to cross examination. The opening and closing submissions of the main parties are also listed as documents.
6. A Statement of Common Ground (SoCG) between the Council and the appellant was submitted at the inquiry³.
7. This report includes a description of the site and surroundings, the gist of the evidence submitted at the inquiry and the written representations, my conclusions and recommendation.

The Site and Surroundings

8. The site lies in open, undulating countryside on the south western periphery of the Telford urban area, with the North Shropshire Plain to the north, the West Midlands Green Belt to the east, the Ironbridge Gorge World Heritage Site to the south and the Shropshire Hills Area of Outstanding Natural Beauty (AONB) to the west. The land rises to the west, forming the lower slopes of the Wrekin, a distinctive elevation of some 407m AOD, that offers 360° long distance views of Shropshire from its summit. The Wrekin forms part of a northeast to southwest aligned ridge, which also encompasses Lawrence's Hill and Ercall Hill. To the south, the land falls away towards the Lyde Brook valley.

¹ Doc 3 (UKC 10/9)

² CD12: The Council's report to the Plans Board

³ CD18

9. There is a varied distribution of woodland cover within the environs, with the west and south containing a higher percentage than the north and the east. Much of the woodland in the vicinity of the site, including Short Wood, Limekiln Wood and Ercall Wood is Ancient Woodland, i.e. land under continuous wooded cover since at least 1600.⁴ Agriculture is the predominant land use in the area.
10. Besides the AONB, the South West quadrant of Telford includes several other designations such as Sites of Special Scientific Interest (SSSIs), Local Nature Reserves (LNRs) and County Wildlife Sites (CWSs), Scheduled Ancient Monuments (SAMs) and Ancient Woodland. There is a history of mineral extraction in the wider surrounds, although all former opencast mines within south west Telford closed between the 1940s and 1990s.⁵
11. The area contains a network of recreational routes, some of which are long distance. Public footpaths and restricted byways cross the site, and one runs along the western boundary of the southern part of the site. A small local network of Public Rights of Way (PRoWs) runs between the settlement of New Works and the site boundary.⁶
12. On a large scale, broad basis, "The Shropshire Landscape Typology"⁷ assesses the character landscape of the site as being primarily "Wooded Estatelands" extending eastwards into the "Coalfields". To the west of the site, on the slopes of the Wrekin, is an area of "Wooded Hills and Farmlands". On a smaller scale, the site falls mainly within the discrete Landscape Description Unit (LDU) of "Little Wenlock" (MP/02), which consists of a plateau formed by the coal measures. A small part of Area B skirts the "Telford Fringe" (MP/30) LDU, which is described as woodland abutting the urban expanse of Telford. The "Limekiln Wood" (MP/29) LDU, described as steeply sloping scarp characterised by Ancient Woodland, lies close by⁸.
13. The 93.5 ha site is approximately 200m to the south of a stretch of the M54 motorway, located between junctions 6 and 7. Candles landfill site is situated close by, to the south east. The nearest settlements are New Works (100m to the east) and the Telford suburbs of Lawley and Dawley/Horsehay (600m and 1km to the south east respectively), Little Wenlock (1km south) and Arleston (300m to the north on the opposite side of the M54). A scattered string of dwellings is dotted along New Works Lane near to the site boundary. Two listed buildings, known as Upper and Lower Huntington Farms, lie to the south, in close proximity to the site boundary⁹.
14. The site comprises two parts, namely Area A in the south, and Area B in the north, which are connected by a haul road through New Works Wood SAM. Area A is generally at a higher elevation (about 200m to 240m AOD) than Area B, and its rising topography has an east facing aspect. The far north eastern spur of Area A lies within the AONB. The topography of Area B gradually declines northwards from an elevation of approximately 200m AOD by New Works Wood to 144m AOD in the north eastern corner. Historically this land has undergone

⁴ NLP1 Fig 1

⁵ UKC 3/2 Figs A2 – A7; NLP1 Fig 3

⁶ UKC 11/2 Fig H1; NLP1 Fig 2

⁷ UKC 11/2 App B

⁸ LDU details are at CD 3, Fig 11.2; UKC 11/2 App B & Fig 6

⁹ NLP1 Fig 1

shallow underground mining, evidenced by the remains of bell pits, mine openings and spoil. Such operations ceased in 1970.

15. The current land use over most of the site is pasture, grazed by both sheep and cattle, with the exception of the two fields in the north of Area B, which are arable. New Works Wood, despite its status as a SAM, is not Ancient Woodland. Having regenerated within the last 50 years, it is now dominated by semi-mature trees and undergrowth vegetation.

Planning History

16. The SoCG refers to the planning history of the site¹⁰. There have been four planning applications for coal extraction relating to some part of the appeal site. An application was made in 1988 for an area known as Shortwood, which was refused by the then Shropshire County Council. The site included part of the appeal site, land between Areas A and B and land to the west of Area B. A further application was made in 1992 to extract coal and fireclay from an area known as Shortwood Revised, which extended further northwards to the M54 and included land on the eastern side of New Works Lane. This was also refused.
17. In 1994, an application was made to extract coal and fireclay from a site known as Dawley Road. This covered a smaller area than Shortwood Revised and included all of Area B, New Works Wood and land on the eastern side of New Works Lane. The application was subsequently refused and an appeal withdrawn in order to give the then Shropshire County Council an opportunity to reconsider its position upon the submission on the Dawley II planning application in 1998.
18. The Dawley II proposals covered the same site as the original Dawley Road application and involved the extraction of the same amount of coal and fireclay¹¹. The Secretary of State overruled the Inspector's recommendation and refused the called in application. However, the decision was then quashed in the High Court¹².

The Proposed Development

Minor amendments to the scheme

19. The SoCG describes in detail how the site would operate¹³. Further information is contained within the Environmental Statement (ES) and evidence submitted at the inquiry^{14 15}. The application plans are contained in the ES. However, at the inquiry, it was confirmed that minor alterations to the layout had been made subsequent to the application details in the ES¹⁶. At the southern end of the site, sub spoil mounds S4a and S4b had been replaced by extensions to topsoil mounds T1 and T2. The sub soil from S4a and S4b would be stored in an extended subsoil mound S3, which would be increased in height to 7m. In addition, a 4m high acoustic barrier made of straw bales would be built along, and 3m higher than, the eastern side of the haul road through New Works Wood.

¹⁰ CD18 paras 2.1 – 2.5

¹¹ UKC 3/2 Fig A1

¹² CDs21 - 23

¹³ CD18 paras 5.1 – 5.3

¹⁴ CD2 paras 2.3.1 – 2.3.6

¹⁵ UKC 10/1 Section 4

¹⁶ UKC 10/1 paras 4.3.12 – 4.3.13

A further acoustic barrier, a 3m high fence, would be erected along the eastern and southern sides of the Area B excavation area. The restoration plan C2 is also a revision from that which appeared in the ES. The Council did not take issue with these minor amendments and the inquiry proceeded on the basis of considering the scheme as so altered.

20. In addition, later in the inquiry, a plan was submitted by the appellant showing the heights of topsoil, subsoil and overburden mounds¹⁷. This plan also indicated a slight amendment, which divided sub soil mound 5 into two, with sub soil mound 5b being located on the eastern side of the haul road. This further minor amendment was accepted by the Council and the plans and drawings within the ES and the evidence have been considered in this report, taking account of the amendment. The plans on which the scheme should be determined have been given an "a" suffix.

The proposal

21. The proposed scheme would involve the working of about 900,000 tonnes (t) of coal and up to 250,000t of fireclay from two separate excavation areas, A and B, at an extraction rate of about 340,000tpa of coal. The site area would be about 93ha, of which about 46.1ha would be the extraction area in Area A and 23.9ha the extraction area in Area B. Area A to the south and Area B to the north would be linked by a haul road through New Works Wood. Mineral production would last for 32 months, with site establishment and restoration works taking about 3 months and 6 months respectively to complete. The average coal output from the site would be about 7,250t per week¹⁸.
22. Hours of operation for coal extraction, backfilling and coal preparation would be between 0700 – 1900 Monday to Friday; and 0700 – 1300 hours on Saturday; coal processing would take place between 0700 – 1900 Monday to Friday; coal would be despatched between 0700 – 1900 Monday to Friday; and, blasting would take place between 1000 – 1200 and 1400 – 1600 Monday to Friday (since modified in the inquiry to 1000 – 1200 only). Soil stripping in close proximity to residential properties would be limited to 0800 – 1800 Monday to Friday and 0800 – 1300 Saturdays. No operations would take place on Sundays or bank holidays.
23. Site operations would follow a phased sequence¹⁹.

Phase 1 (3 months) – Preliminary works²⁰

Phase 2 (32 months) – soil stripping, overburden removal, coal and fireclay extraction, backfilling. The phase would be broken down into subphases:

2A – 7 months (The first half of mineral production in Area A (southern area))²¹

2B – 7 months (The second half of mineral production in Area A)²²

2C – 7 months (The first part of mineral working in Area B (northern area))²³

¹⁷ UKC 10/5

¹⁸ CD18

¹⁹ UKC 10/2 Figs C1a- C9a, which amend Figs C1 – C9 by the addition of sub soil mound S5.

²⁰ UKC 10/2 Fig C2a

²¹ UKC 10/2 Fig C3a

²² UKC 10/2 Fig C4a

- 2D – 3 months (Void progresses to narrow part of Area B) ²⁴
- 2E – 8 months (Final phase of mineral extraction in Area B – maximum area of void) ²⁵
- Phase 3 – 6 months (Site restoration works) ²⁶
- Phase 4 – 5 years (Aftercare) ²⁷
24. The sequence of mining operations is illustrated by a numbered series of “cuts” within each of the two excavation areas (cuts A1 – A24 in Area A and cuts B1 – B35 in Area B) ²⁸.
25. The haul route, built between Areas A and B, would be used to transport coal and fireclay from Area B in the north to Area A, where the coal processing plant and site access would be located. In addition, overburden would be taken along the haul road between the opening void in Area B and the final void in Area A, and to transport similar material from Overburden Mound South to the final void at the northern end of Area B during Phase 3 ²⁹.
26. The proposed development would operate a process of progressive restoration to minimise effects and return the land to its restored state as soon as possible. Restoration contours would be designed to recreate a character that is similar to what currently exists across the site in order to be in keeping with the character of the wider landscape ³⁰.
27. The restoration scheme would feature species rich grassland, woodland and wood pasture. An area of woodland would be planted in the northern part of Area A where the site abuts New Works Wood.
28. About 5.8km of new species rich hedgerow would be planted across the site. These would replace about 2.5km of hedgerows that would be lost and also the post and wire fence boundaries, which currently exist across Area A and the remainder of the southern part of the site. The field pattern proposed has sought to replicate that illustrated on the OS map of 1889 before the extensive surface mining operations of the 1940s and 1950s. Water Treatment Area 2 (WTA2) would be partially infilled to create an organic shape with gentle and stepped profiles to maximise the habitat for associated water margin planting and damp grassland habitat.
29. The existing PRoWs diverted during Phases 1 and 2 would be reinstated on their original alignment with improved surfaces, where appropriate, and signage. A new footpath link would be created along the western edge of the northern part of the site to connect footpath No.38 with footpath No.34. A further right of way is proposed through the open glade within New Works Wood to link the northern half of the site with footpath No.51 in the south. This route would follow the

²³ UKC 10/2 Fig C5a

²⁴ UKC 10/2 Fig C6a

²⁵ UKC 10/2 Fig C7a

²⁶ UKC 10/2 Fig C8a

²⁷ UKC 10/2 Fig C9a

²⁸ UKC 10/2 Fig C1a

²⁹ Further details of haul road: UKC10/1 paras 4.5.7 – 4.5.17 & CD33 (Plan CD 33a)

³⁰ UKC 11/2 C2

alignment of the haul road and would cross and allow greater access to New Works Wood Scheduled Ancient Monument (SAM).

Planning Policies

30. The Development Plan consists of the following documents:

The West Midlands Regional Spatial Strategy (RSS)³¹;

The Shropshire and Telford and Wrekin Joint Structure Plan (JSP) 1996 – 2011, adopted in 2002, ("saved" policies)³²;

The Shropshire, Telford and Wrekin Minerals Local Plan (MLP) 1996 – 2006, adopted in 2000, ("saved" policies)³³;

The Wrekin Local Plan (WLP) 1995 – 2006 adopted in 2000, ("saved" policies)³⁴; and,

The Telford and Wrekin Local Development Framework: Core Strategy (LDF(CS)), adopted 2007³⁵.

31. Policies in the RSS aim to seek environmental improvement, including conserving environmental assets, AONB, specific wildlife habitats and historic landscape features (QE1); the restoration and remediation of contaminated sites (QE2); the identification, protection, conservation and enhancement of the Region's diverse historic environment, including Scheduled Ancient Monuments (SAMs) and their settings (QE5); the conservation, enhancement and restoration of the Region's landscape, which includes the reference to tranquillity and the minimisation of noise (QE6); the protection, management and enhancement of the Region's Biodiversity and Nature Conservation Resources (QE7); the conservation and protection of woodlands, especially those which are ancient and semi-natural (QE8); the safeguarding of water quality and resources and the protection and enhancement of wetland species and habitats (QE9); and, the encouragement of the use of rail for freight transfer (T10).

32. Other RSS Policy aims include requiring the adoption of a sustainability approach (CC1); the encouragement of regeneration in Telford (UR2); the identification of Telford as a sub regional focus for development (CF2); the identification of the high housing target for Telford (CF3); the encouragement of development served by rail, and respecting the natural environment and historic heritage (PA1); the identification of the Wolverhampton to Telford corridor (PA3); the needs of High Technology Corridors (PA7); and the encouragement of the improvement of existing provision and identification of the scope for sustainable tourism (PA10).

33. RSS Policy M4 (Energy Minerals) states that, amongst other things, development plans should recognise that energy minerals are of national and regional importance, recognise the contribution that the exploitation and utilisation of energy minerals can make to meeting the Region's future energy needs in the medium to long term, recognise the development and role of technologies in releasing sources of energy from worked and unworked coal resources in the

³¹ CD46

³² CD47

³³ CD49

³⁴ CD48

³⁵ CD50

Region for local use, and take account of existing national guidance in relation to coal mining, and new technologies and revisions to national energy policy.

34. The JSP aims to preserve the character, quality and tranquillity of the landscape of Shropshire, but recognises that one of the exceptions for development outside settlements (P5) is the winning and working of minerals. The JSP also requires the consideration of the effects of proposals on air quality (P16); the minimisation of the effects of HGVs on communities and the environment, the encouragement of the transfer of freight to rail, the protection, maintenance and improvement of public rights of way (P39); a sustainable approach to minerals development (P58); the requirement to avoid unacceptably adverse effects on interests of acknowledged importance (P59); and, supporting opportunities to minimise road vehicle movements, and considering other forms of transport than road haulage (P68). Finally, when considering minerals development, Policy P69 seeks reclamation or restoration schemes capable of leading to a beneficial after-use. Schemes which improve landscape character will be favoured.
35. Policy 1 of The MLP requires a sustainable approach to mineral extraction and refers to the objectives for sustainable minerals development. Policy 2 requires applicants to demonstrate a need for a mineral where a proposal would give rise to material planning objections. Policies M3 and M4 set out development control criteria and operational considerations. Policy M6 aims to protect archaeological remains. Policy M7 states that consideration will be given to any benefits of the proposal upon the countryside and the local economy.
36. Policy M21 concerns coal and fireclay extraction³⁶. The policy provides for environmental protection, the recognition of cumulative impact of proposals, the requirement to provide information on material planning benefits, mitigation measures and the need for proposed development where there are environmental objections or where an Environmental Statement is necessary. The policy adds that coal or fireclay working, affecting the South Western Telford area, will only be granted planning permission if one or more exceptional circumstances apply: where the need for the mineral outweighs the material planning objections, where working would prevent the sterilization of the resource or where significant benefits would be obtained as a result of the exchange or surrender of existing permissions. The appeal site is within the South Western Telford area.
37. Policy M27 describes details of reclamation and after care requirements. Policy M29 provides for mineral consultation areas. Policy M30 aims for the comprehensive working of mineral resources. Appendix 4 of the MLP describes development control guidelines which supplement the policies of the Plan. They do not have the same status as policies and they will be applied flexibly according to the circumstances of each case.
38. Policy 6 of the WLP is a general policy which deals with Rural Development and aims to protect the visual and functional quality of the area. Policy EH14 concerns land stability where development is proposed on land where former mining has caused instability.
39. Policy OL2 indicates that the Council will not permit development which is likely to adversely affect, directly or indirectly, areas of national importance including

³⁶ CD49 & UK 3/1 para 3.2.36

the Shropshire Hills AONB, unless the development is of an overriding interest and there are no alternative sites. The policy also indicates that development, which is likely to adversely affect, either directly or indirectly, Areas of Special Landscape Character, Local Nature Reserves, Wildlife Sites, or Ancient Woodland Sites will not be permitted unless the applicant can demonstrate that the benefits of the proposal significantly outweigh the importance of the area. The loss of any habitat must be fully compensated for by the creation or enhancement of other habitats of equal or greater value in the local area.

40. Policy OL6 seeks to protect locally important open land within or adjacent to the built up area, where the land contributes to the character and amenity of the area, has value as recreational space, or importance as a natural habitat. Policy OL11 aims to retain and enhance the contribution that trees and woodland, especially areas of ancient woodland, make to the landscape character of the District. Policy OL12 indicates that the Council will seek various contributions from new development in order to protect and enhance various elements of open land and landscape; eg, footpath and bridleway links, wildlife habitats, archaeological sites and protected species.
41. Under Policy OL13, the Council will seek a legal agreement to ensure that provision is made for the long term maintenance of open space or landscaping. Policy LR4 seeks to safeguard recreational open space. Policy T22 aims for necessary improvements, to meet transport needs of the development, to be provided and funded by the development. Policy HE25 seeks to protect the setting of buildings of local interest. Appendix C sets out detailed noise criteria to be applied in cases of development control, derived from Policy EH4, which deals with noise in relation to proposals for industrial, commercial and transport developments.
42. The LDF(CS) identifies strategic housing sites in south west Telford. Policy CS7 states that development within the rural area will be limited to that necessary to meet the needs of the area and strictly controls development in the open countryside. Policy CS8 supports regeneration, including within rural areas. Policy CS12 seeks to protect the natural environment of areas, including the AONB, SSSIs, Local Nature Reserves, Wildlife Sites and Ancient Woodlands. Policy CS13 indicates that the environmental resources of the Council's area will be used with prudence and within environmental limits. Policy CS14 seeks to protect and enhance the existing, unique built and cultural assets within the Council's area.

Other Agreed Facts

43. The SoCG describes the areas of agreement between the appellant and the Council, which cover the relevant Minerals Planning Guidance and Planning Policy Guidance and issues concerning air quality, cultural heritage, noise, highways landscape, hydrology and hydrogeology, biodiversity and employment³⁷.

Air Quality

44. Government guidance in MPS2 Annex 1 is directly applicable to the proposed development. A Dust Action Plan would form the basis for a scheme for the efficient control of dust and fine particulates emanating from site operations.

³⁷ CD18

Cultural Heritage

45. The parties acknowledge and accept that, in principle, English Heritage did not object to the proposed development but required the submission of further detailed information. Scheduled Monument consent will be required for construction of the haul road within New Works Wood Scheduled Monument. Beyond New Works Wood Scheduled Monument, effects on archaeological interests within the site boundary can be mitigated by a programme of archaeological recording to be secured by a planning condition.

Noise

46. The parties agree that government guidance in MPS2 Annex 2 is directly applicable to the proposed development. In addition, the background monitoring locations as detailed in the ES are appropriate.

Highways

47. Provided that the use of particular routes by all HGV and plant traffic to and from the site is secured under a legal agreement, traffic generated by the development would not have an unacceptable adverse impact on the operation of the road network. The proposed ingress and egress arrangements would be designed to the appropriate standard to ensure that HGV movements into and out of the site would be carried out safely.

48. The following highway improvements, which would be secured via a s.106/278 agreement, have been agreed:

- A contribution of £40,600 for carriageway resurfacing and strengthening works;
- A routing agreement to ensure all traffic associated with the operation accesses the site via the A5223/Coalmoor Road junction, Coalmoor Road, Dog in the Lane and Huntington Lane; and
- A maintenance agreement for the section of road between Candles Landfill site and the proposed site access.

Landscape and Visual

49. The guidance contained in the Guidelines for Landscape and Visual Impact Assessment³⁸ and the Landscape Character Assessment Guidance for England and Scotland³⁹ provides an appropriate basis for the identification of visual and landscape impacts arising from the proposed development. The site predominantly lies in the Wooded Estatelands area of the Shropshire Landscape Typology with a small part of the eastern edge lying in the Coalfields Typology. The site is situated within the "Little Wenlock" (MP/02) LDU. The viewpoints chosen in the ES to assess visual impact were agreed by Council officers.

Hydrology and Hydrogeology

50. The parties accept the Environment Agency's (EA) consultation response, which states that it has *"...no objection in principle to the proposed development"*. The

³⁸ Published by the Landscape Institute and the Institute of Environmental Management (2002).

³⁹ Published by the Countryside Agency and Scottish National Heritage (2002).

development could proceed without significant effects on ground/surface water resources or flood risk, provided the mitigation measures, identified in the ES, were implemented. This should be secured by suitable planning conditions relating to the monitoring and control of surface and ground water, and pollution prevention measures.

51. The appellant proposes to treat and discharge all surface and groundwater, abstracted at the site, as part of the mining operations. A discharge consent would, therefore, be needed from the EA in accordance with the Water Resources Act 1991, as amended by the Environment Act 1995.

Biodiversity

52. The Guidelines on Ecological Impact Assessment⁴⁰, and guidance referenced therein, provide a relevant assessment basis for the identification of ecological receptors and the effects of the proposal upon them.

The Case for UK Coal Mining Ltd

53. The appellant's case will take its lead from the central provision of national guidance concerning surface mining, namely paragraph 8 of MPG3. This provides, so far as material, as follows:

"in applying the principles of sustainable development to coal extraction ... the Government believes that there should normally be a presumption against development unless the proposal would meet the following tests: (i) is the proposal environmentally acceptable, or can it be made so by planning conditions or obligations? (ii) if not, does it provide local or community benefits which clearly outweigh the local impact to justify the grant of planning permission ...?"

The Government recognises that the costs and benefits of an opencast proposal can best be assessed by the communities and local authorities who know the area best and are most directly affected. Accordingly the Government takes the view that subject always to ... normal rights of appeal and the provisions of this guidance, an MPA's assessment of the environmental acceptability or otherwise of individual proposals should normally prevail."

54. The only way in which the proviso as to "normal rights of appeal" can take effect is for this inquiry to take a "fresh look" at the decision putatively made by the Council. This is consistent with the Secretary of State's powers under section 79 of the Town & Country Planning Act 1990 and such an approach has been adopted and accepted by the Secretary of State previously⁴¹. Furthermore, the need for the Inspector and Secretary of State to take a "fresh look" was accepted by the Council at the inquiry.

The policy background

55. There is no "presumption" against opencast mining. Para 8 of MPG3 is clear that there is only a presumption if a proposal does not meet the tests of environmental acceptability or, failing that, local or community benefits which

⁴⁰ Published by the Institute of Ecology and Environmental Management (2006)

⁴¹ UKC 3/1 para 3.3.3 (The Long Moor decision)

- clearly outweigh the harm. As accepted by the Council in cross examination, there is nothing in MPG3, except in respect of development in an AONB, to suggest that planning permission for surface mining can only be given in exceptional circumstances.
56. Instead, it must be asked whether the tests set out in para 8 have been met. If they have not, then a presumption indeed arises. If they have been met, however, no such presumption arises. The consideration of the tests cannot, therefore, begin on the basis that there is a presumption against development; the existence of such a presumption can only be determined once the tests themselves have been considered.
57. Even were a presumption to arise on the application of the tests in para 8, it would be able to be rebutted by other material considerations. One example is national need, which clearly exists. A national, as opposed to local, need, is not a "local or community benefit" within the meaning of para 8(ii) of MPG3. However, it can and should be taken into account as a highly material consideration, amply capable of rebutting any presumption that might be found to arise as a result of the application of para 8(i) and (ii). In addition, the proposals will fulfil a local, as well as national, need.
58. The lack of any presumption against surface mining is also evident in RSS and JSP policy. The most recently adopted policy document which refers to minerals (the minerals sections of the LDF(CS) having been withdrawn because they were about to be found unsound) is the RSS. Policy M4 contains no policy to suggest that planning permission for surface mining should only be given in exceptional circumstances. Indeed, para 8.76 of the explanatory memorandum indicates the importance that is attached to the region's indigenous coal resources. It is to be noted that the Regional Assembly has confirmed that these proposals are in general conformity with the RSS.⁴²
59. Likewise, there is nothing in JSP policy to suggest that planning permission should only be granted in exceptional circumstances. Policies P58 and P59, which deal with minerals, contain no such suggestion, and Policy P5 indicates that the winning and working of minerals is a suitable land use outside settlements.
60. The only policy which requires the demonstration of exceptional circumstances is MLP Policy M21(D), which applies to the South-West Telford area. However, the weight to be afforded to this policy is influenced by its history. As was accepted by the Council at the inquiry, this policy was based upon the now superseded 1993 SP Policy 2/92. As explained in paragraph 6.129 of the MLP, the concern of Policy 2/92 was to ensure that the possible cumulative impact of future workings in the south-west Telford area was duly considered. However, Policy 2/92 was replaced by Policies P58 and P59 of the current JSP which do not make any special provision for the South-West Telford area.
61. Furthermore, Policy M21 itself was contained within a plan adopted in 2000 and which was intended to be reviewed every five years or so (see paragraph 1.9 of the MLP). No such review has taken place. The minerals policies in the LDF(CS) were withdrawn because the Inspector at the Examination-in-Public required them to be withdrawn as a condition of declaring sound the remainder of the LDF(CS). There has been no progress towards a new minerals policy or a review

⁴² CD12 p19