



Appeal Decision

Inquiry held on 15, 16 and 17
September and 15 October 2009

Site visits made on 17 September and
14 October 2009

by **M T O'Rourke** BA (Hons) DipTP MRTPI

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

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Decision date:
25 November 2009

Appeal Ref: APP/U1050/A/09/2100184

Former Langton Colliery Spoil Heap and industrial land off Beaufit Lane, near Pinxton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by ATH Regeneration Ltd against the decision of Derbyshire County Council.
- The application Ref CM5/1007/125, dated 28 September 2007, was refused by notice dated 17 February 2009.
- The development proposed is for a processing plant as part of a scheme for coal recovery from the former Langton Colliery Spoil Heap in Nottinghamshire and reclamation including woodland, scrub, dry grassland and wetland restoration with enhanced rights of way and reinstatement of employment land.

Decision

1. I allow the appeal, and grant planning permission for a processing plant as part of a scheme for coal recovery from the former Langton Colliery Spoil Heap in Nottinghamshire and reclamation including woodland, scrub, dry grassland and wetland restoration with enhanced rights of way and reinstatement of employment land at the former Langton Colliery Spoil Heap and industrial land off Beaufit Lane, near Pinxton in accordance with the terms of the application, Ref CM5/1007/125, dated 28 September 2007, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The above description of development is agreed by the appellant company (ATH) and Derbyshire County Council (DCC). It was confirmed at the inquiry that DCC had determined the application in so far as it related to that part of the site which lay within its administrative area. I have considered the appeal on that basis.
 3. Nottinghamshire County Council (NCC) has resolved to grant permission for that part of the scheme that lies within its administrative area subject to the grant of permission for the appeal application within Derbyshire and subject also to the completion of a Section 106 Obligation.
 4. The red line area indicated on drawing no. 002 covers 30.1ha of land within the counties of Nottinghamshire and Derbyshire connected by an underpass beneath the M1. Essentially the scheme is in two parts; within
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Nottinghamshire the site of the former Langton Colliery Spoil Heap (24.9ha) is proposed to be worked for the reclamation of the coal. The reclaimed coal would then be taken to be processed at the Beaufit Lane site in Derbyshire and loaded onto Heavy Goods Vehicles (HGVs) with a 44 tonnes (t) gross weight for onward transport by road to the power generation market. The Statement of Common Ground (SOCG) includes full descriptions of the proposals with the Spoil Heap to be progressively worked over a 30 month period, following a 4 month preliminary site set up operation, and restored for agriculture, woodland etc. The Beaufit Lane site lies on the edge of the wider Brookhill and Wharf Road Industrial Estates and is proposed to be reinstated as employment land.

5. Drafts of a tripartite Agreement under Section 106 of the 1990 Act between ATH, DCC and NCC were prepared but on the last day of the inquiry ATH submitted a completed Unilateral Undertaking which was then withdrawn. In accord with an agreed timetable the appellants provided a Unilateral Undertaking (UU) dated 20 October to include revised provisions. The UU provides amongst other things for the restoration of the existing footpaths and creation of a cycle track and new footpath; an aftercare scheme; the imposition of specific conditions on all haulage contracts relating to the routing and timing of HGV movements and their enforcement; the carrying out of various highway works; the removal of mud and dirt from the highway; the establishment of a Liaison Committee and the creation of a Community Fund. I consider its provisions and the weight they should be given in my reasoning below.
6. The appeal site is described in all the documentation as being in Beaufit Lane, Pinxton. Although there is a Station Road street sign at the Wharf Road crossroads, it was clear to me at the inquiry that local people were well aware of the location of the appeal site and I am satisfied that no one would be prejudiced by the use of Beaufit Lane as the address in my decision.
7. I was informed on opening the inquiry that letters of notification to local residents of the date and venue of the inquiry had not been sent out by DCC at the appropriate time. However a flyer had been posted by Mr Wilkins, a local resident, on lamp posts in Town Street giving the inquiry date, time and venue and a number of Pinxton residents attended the first day of the inquiry. Having heard representations from the main parties, I was satisfied that no one would be prejudiced by the inquiry continuing to hear the evidence of the main parties on the 3 days programmed, subject to it then being adjourned to a later date to allow any other local residents the opportunity to be heard. During the adjournment the Council sent out notification letters and on resuming the inquiry on 15 October, I heard further from a number of local residents.
8. Accompanied by representatives of ATH, DCC and local residents I walked from Frederick Gent School in Mansfield Road down Alfreton Road and Town Street to the appeal site on the morning of 17 September. I made an accompanied visit to the appeal site on the afternoon of 14 October and I also observed the departure of children from the secondary school at the end of the school day. During the inquiry I made numerous unaccompanied journeys along Alfreton Road and Town Street at various times of day.
9. In considering the appeal application, I have taken into account the Environmental Statement (ES) submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

and all the other environmental information submitted in connection with the appeal. I am satisfied that sufficient information has been provided to assess the likely significant environmental effects of the development.

Application for costs

10. At the inquiry an application for costs was made on behalf of ATH against DCC. That application is the subject of a separate decision.

Main issues

11. In refusing the application, DCC gave one reason – *‘that the development proposed would cause unacceptable impact due to the traffic that would be associated with it over the HGV route proposed in the application’*. In addition the Council’s Statement of Case referred to disturbance and impact upon residential amenity, highway safety and there being no other realistic possible use of the site. It also questioned the appellants’ proposed Traffic Management System and that it had not been established that the use of rail as an alternative was not feasible. These matters were all addressed in the appellants’ evidence.
12. In the light of the evidence given at the inquiry and the submissions made, I consider that the main issues are:
 - a) Whether there is a feasible alternative to road transport which would be environmentally preferable;
 - b) If road transport were to be used whether the scheme would result in any unacceptable environmental impacts, in particular as a result of the routing of HGVs carrying coal from the site; and
 - c) If there would be unacceptable environmental impacts, whether they would be outweighed by any benefits arising from the scheme.

Reasons

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the East Midlands Regional Plan (RSS8) (2009), the saved policies of the Derby and Derbyshire Minerals Local Plan (MLP) (2002) and the saved policies of the Bolsover District Local Plan (2000) (BDLP). A number of policies have been referred to by the parties as relevant and I address them in more detail when I consider each of the main issues.

Issue 1 – is there an alternative to road transport?

14. National policy for many years, including in Planning Policy Guidance note 13 on Transport (PPG13), has been consistent in supporting the principle of encouraging the transfer of freight transport from road to rail. National objectives for minerals planning set out in Minerals Policy Statement 1 on Planning and Minerals (MPS1) include seeking to promote and enable the bulk movement of minerals by rail *‘to reduce the environmental impact of their transportation’* and to *‘safeguard and promote rail links to quarries where there is potential to move minerals by rail’*.

15. The MLP in the supporting text to policy MP5 refers to the adoption of a transportation strategy which aims to minimise the environmental effects of freight transport. The policy permits proposals involving the transport of minerals by road *'provided 1) there is no feasible alternative to road transport which would be environmentally preferable'*. Other criteria refer to the adequacy of the highway network and that the impact of the traffic generated would not be detrimental to road safety nor have an unacceptable impact on the environment. I return to consider those matters below.
16. Minerals can only be worked where they are found. Thus transport by road is more often found to be the only feasible means to move worked minerals. But in this case, the south eastern boundary of the spoil heap abuts a closed railway branch line, which formerly served the Langton Colliery. On the face of it, the site would seem to be ideally placed for rail transport to be used to take out the recovered coal for the limited period of the reclamation operations and that this should be considered to be both feasible and environmentally preferable. Officers dismissed the rail option at the application stage, but it was accepted at the inquiry that the evidence they had available to them was insufficient and at the inquiry, the appellants produced further detailed evidence on both the feasibility and environmental benefits of using rail.

Whether feasible

17. Although the MPA and local people remained unconvinced, I found the evidence of Mr Baker setting out the technical challenges involved in re-opening the line to be helpful, credible and robust. In engineering terms, he did not say it would not be possible, at a cost, to provide access by rail to the workings. However the condition of the three arch bridge over the River Erewash had in the past limited the maximum axle load of the rolling stock that could use the railway and I accept from what I heard and saw, including the lack of recent routine inspection and maintenance, that at best the branch line would be likely to continue to be restricted to a maximum axle load not exceeding 21.59t (RA7). This would mean wagons would not be working at their efficient payload and use of the line would depend on there being a freight train operating company willing to operate its locomotives over the viaduct.
18. Recent renewal and simplification of the signalling on the Pinxton Branch, including an automatic barrier crossing and removal of the track switches and signalling to the Langton colliery branch, would make reinstatement of the connection to the main line more difficult. Mr Baker outlined a possible new track layout but was doubtful that it would be found acceptable when assessed under the Guidance for Railway Infrastructure Projects (GRIP) structure for works planning at GRIP 3 and 4. However he did concede that there was a right of appeal to the Office of the Rail Regulator against any refusal by Network Rail of a connection. Whilst the Council contended that no evidence from Network Rail had been presented by the appellants to support his opinion, the letter to ATH of 4 July 2008 sets out various concerns of Network Rail about loading freight on running lines, spillage onto track circuits and the anticipated increased use of the Pinxton Branch for freight traffic associated with the Port of Immingham. It is also telling that the Council, having raised the issue, failed to call any substantive evidence of its own on this point.

Whether environmentally preferable

19. It was also argued for the appellants that rail would not be environmentally preferable either. This view, which appears to run directly counter to the thrust of national policies outlined above, was based on an evaluation using the methodology specified by the DfT to assess Freight Facilities Grant applications (FFG), which I assume to be a successor to grants under the Railways Act 1993 which the text to policy MP5 states that the MPA will support. The introduction to the DfT Guide notes that '*taking freight off congested roads and moving it by rail or water can have environmental and wider social benefits*', however it goes on to say that rail and water can sometimes be more expensive than road transportation. The methodology applies a monetary value to the environmental benefit reckoned to be achieved for society by moving freight from road to rail by way of an assessment of Sensitive Lorry Miles, where roads are attributed a monetary value per mile in terms of their sensitivity, with non trunk roads in conurbations attracting the highest rate and un-congested motorways the lowest.
20. The simplified assessment carried out by Mr Baker showed that operating costs for road and rail were broadly similar and over the project life there would be an environmental benefit equivalent to some £670,500. However when the estimated £3,068,700 capital costs of rail were added in, even a grant at the maximum rate would not enable the whole life cost of use of rail to equal that of road. Thus on the basis of the DfT methodology, it was concluded for the appellants that even if society were to pay a sum of money equivalent to the evaluated benefit that would accrue to society as a result of the transfer of this traffic off the roads, the use of rail would remain uneconomic.
21. The Council were very critical of the use of the FFG methodology which is broad brush in its attribution of rates to various categories of road and does not weigh other more local considerations such as avoiding residential frontages, noise and accident rates. However in the absence of any alternative means by which to make an assessment in terms of MLP policy MP5 1), and I found little to assist me in Mr Hollister's simplistic calculation of the scheme's likely turnover, I have to give it some weight. It is intended to be used for private projects and in showing that the infrastructure cost of rail would be significantly greater than the environmental benefit from the savings of road miles shifted to rail; it indicates that rail would not be environmentally preferable here. This is a factor of the limited life of the scheme, the character of the road route to the power stations, the tonnage to be moved and the high cost of connection to the Network Rail main line.
22. It was suggested that ATH had let the rail connection be removed in the first place. But I do not find the evidence on that to be conclusive as it appears Network Rail '*agreed*' the removal of the connection and crossover to Bentinck Colliery in 2003 prior to ATH opening discussions, and this is not something which I find should weigh against the scheme.

Conclusion on the first issue

23. Local residents referred to the rail head at Bentinck and that trains were going to be there in 2 years time but this was not a point that the Council chose to take up and provide any evidence on, and so, on the basis of the very limited

information that I have, I can give it very little weight. I conclude therefore in terms of MLP policy MP5 1) that whilst there is wide policy support for the transfer of freight from road to rail, evaluation using the DfT methodology for grant applications does not indicate that in this case rail would be environmentally preferable. When taken together with the evidence of a railway expert with many years of experience that a rail link may be possible physically but there were considerable operational difficulties, I have to reluctantly conclude that despite it seeming on the face of it to be a very attractive and supportable option, in terms of policy MP5, rail is not a feasible alternative here to road transport.

Issue 2 – the impact of the proposed HGV route

24. Minerals Policy Guidance note 3 (MPG3) sets out Government policy on coal mining and colliery spoil disposal, which is reflected in MLP policy MP27. However only processing of the coal would be carried out within Derbyshire and I consider that MLP policy MP12 which deals with mineral related development is more relevant. It is generally permissive of such proposals '*where there are net environmental benefits in a close link between the industrial and mineral developments*' and provided any adverse effect on the environment is minimised and it will not '*create unacceptable traffic problems*'.
25. MLP policies MP1 and MP4 also deal with the environmental impact of mineral development including '*the transport implications, and in particular the scale and nature of traffic likely to be generated, and the implications for site access, highway capacity, road safety and the environment generally*'. Policy MP5 dealing with the transport of minerals by road similarly requires that the access arrangements are satisfactory, the highway network adequate and that '*the impact of the traffic generated would not be detrimental to road safety nor have an unacceptable impact on the environment*'. There are similar provisions in BDLP policies GEN1 and GEN2.
26. Alternative routes to serve the processing site were investigated by officers of both DCC and NCC with ATH. I can deal briefly with them. None were found to be ideal for HGV movements and none of the alternatives preferable to the route proposed and I heard nothing at the inquiry to indicate that I should take a different view. Other potential alternative routes were referred to by others at the inquiry. But I was given very little information on when or how they might be progressed and the Council did not choose to support them. For those reasons, I give them little weight.
27. The SOCG confirms that the only area of dispute between the main parties relates to the assessment of environmental impact that is due to HGV traffic associated with the proposals travelling over the HGV route proposed and the additional matters raised in Section 2 of the Council's Statement of Case. These are not particularised in the Statement but refer to the traffic giving rise to '*unacceptable levels of disturbance and impact on residential amenity*' and have been taken to mean issues of noise, air quality and vibration.

The nature of the proposed vehicular movements

28. The proposal is to recover an estimated 453,000t of indigenous coal from the spoil heap. After the preliminary site set up operations, the recovered coal would be despatched from the Beaufit Lane site over an estimated 30 month

period. The coal would be transported in HGVs with a 44t gross weight (30t payload capacity) and 2/3 axle tractor and a 3 axle trailer unit. The coal is intended for power generation; most likely at West Burton or Ratcliffe on Soar. As part of the progressive restoration of the spoil heap, 15,000t of soil ameliorants would be imported using smaller vehicles with a maximum payload of 20t and their movements managed in accord with the Traffic Management Strategy (submitted by ATH to the Council in April 2008), to phase such movements through the period of restoration.

29. The appellants' highway witness confirmed there would be a maximum of 54 HGV movements per day associated with the export of coal and import of soil ameliorants. Whilst the recovery operations would be 24 hours, the application proposed that vehicle movements would only take place between 07.00 and 19.00 hours on a weekday and between 07.00-13.00 hours on Saturdays. Evidence at the inquiry was that for operational reasons it was anticipated that no coal would leave the site on Saturdays and that on weekdays HGV movements would finish by 16.00 hours with an expected 2 way hourly flow of 6 HGVs. In addition there would be the staff cars but no particular point was taken as to them having any adverse impact.

Traffic Management Strategy

30. A TMS was prepared as part of the application and covers primarily off-site matters that could not be controlled by planning condition, including the routing of HGVs, signing of the route from the site, the issue of an information sheet to drivers, the size of vehicles used, and measures to avoid vehicles arriving and leaving in convoy and road sweeping. Other than the limitation on the hourly number of HGV movements and a convoy restriction (which I consider below), these matters are provided for in the appellant's UU.

The Environmental Statement (ES)

31. During the course of the inquiry it was made clear that the HGVs to be used to carry the coal away from the site would be operated by independent haulage contractors and would not be parked on site overnight but would be driven there each working morning and so potentially could go through Pinxton before 07.00 hours. The ES was prepared following a scoping exercise by NCC and DCC and is required to assess the likely impacts of the development. It contains traffic and noise survey information but no assessment of the impact of HGVs moving through Pinxton before 07.00 hours and it was argued on the last day of the inquiry by the Council that the ES was defective and unless and until that assessment was provided, planning permission could not be granted.
32. The appellants' response was to suggest two things. First that any hours of operation condition could require that the export of coal and the import of ameliorants would not take place before 07.10 hours, which would mean that any HGVs would not enter Pinxton until after 07.00 hours. Secondly that the UU could be amended to provide for a condition to be included in all haulage contracts to require, in addition to the approved route only being used, that no HGV travelled through the village of Pinxton before 07.00 hours on any day. Subsequently the UU was amended to include that provision.
33. On the basis of these amendments to the proposal, I am satisfied that the environmental information provided adequately identifies and describes the

likely main effects and also adequately addresses the measures that need to be taken to mitigate the various impacts. I consider therefore that the total environmental information submitted is satisfactory and meets the requirements of the relevant Regulations.

The HGV route

34. The HGV Route between the appeal site and the motorway network is described in the SOCG and UU. The coal carrying HGVs would travel northward along Beaufit Lane, Town Street, Alfreton Road and Pinxton Lane to Mansfield Road (B6019) and onto Junction 28 of the M1. The 2.4km route is the DCC advised route for all vehicles (including HGVs) to and from the adjoining Brookhill and Wharf Road Industrial Estates and the M1 and is signed as such.
35. The appeal application was accompanied by a Transport Assessment, the scope of which was agreed with officers of DCC and NCC and prepared in accordance with the DfT/DCLG guidance. Traffic surveys carried out on the B6019 indicate that peak hour traffic flows vary between 644vph (vehicles per hour) and 989vph with HGV percentages of between 5-9% (43 and 56 vehicles) being of typical proportions and what might be expected given the existing industrial units in the area. The appellants' evidence was that the road would continue to operate within capacity and an additional 54 HGV movements would increase total flows by less than 1%. The Council's highway witness accepted that from a capacity point of view the impact of the coal carrying HGVs would be unlikely to have any material impact and required no further assessment. No point was taken regarding access to the site which would be improved to comply with DCC design standards. Thus I find no conflict with policies MP1, MP4 and MP5 2) in terms of highway capacity or access arrangements.

Road safety

36. The HGV route is primarily residential in nature, fronted by more than 200 residential properties many of which take direct access from the road and some of which have small front gardens whilst a few properties are at the back edge of the pavement. Through Pinxton the route is subject to a 30mph speed and was confirmed at the application stage by DCC officers to be in a satisfactory condition. The carriageway varies between 6.0m and 7.3m in width with footways on both sides that generally vary between 0.85m and 2m. On street parking occurs at various places, both by visitors to the shops in Town Street and by residents. A large number of children from Pinxton attend the Frederick Gent Secondary School in Mansfield Road and I observed a very noticeable increase in cyclists and pedestrian movements, particularly along the Alfreton Road section of the route, around the school's start and finish times, with a tendency for the children to walk along the south western side of the road, often in groups and sometimes, at those particular parts where the footway is narrow, to step into the road.
37. The appellants only undertook peak period surveys, broken down into light vehicles and heavy vehicles, despite the Guidelines for the Environmental Assessment of Road Traffic cautioning that the greatest impacts may fall outside the peak hours. For the inquiry the Council commissioned a 12 hour survey (07.00 to 19.00 hours) to include a breakdown by size of HGV and which showed only 24 HGVs with 6 axles or more on Town Street between

07.00 and 19.00 hours. Thus it contended that there would be a 125% increase in this type of vehicle over the day as a result of the appeal development and a 600% increase in the inter-peak period, which would be a noticeable and unacceptable increase to the users of the route and those who lived along it.

38. The composition of the traffic is a relevant consideration when examining the potential for impacts on the environment and considering road safety issues and it is self-evident that vehicles of the size proposed would be more noticeable to those on the route. However the Council's survey was only for one day and it is also reasonable to have regard to the variations there can be in day to day volumes of traffic on the road (which the Institute of Environmental Assessment note can vary + or - 10%) and the appellants' identification of a daily variation of 8 HGVs per hour along the route. Moreover the B6019 is already used by vehicles of similar and larger dimensions to those proposed to be used by ATH which are travelling to and from the industrial estates, the showmen guild's winter quarters and the crane hire site, and 54 vehicles is not a disproportionate increase in absolute terms in traffic using a route which is identified as suitable for HGVs.
39. The TMS recommended a vehicle arrival/departure schedule to avoid convoys through Pinxton. Although this is not provided for in the UU, as it would take around 10 to 15 minutes to load each vehicle, departures are likely to be spread out. I was told that vehicle arrival and departure times would be recorded and along with weighbridge information, the MPA would be capable of monitoring the 54 daily movements and payload weights. However given the distances to the power stations, drivers' breaks and potential traffic hold ups, I accept that a limit on vehicles in Pinxton to 6 per hour would not be feasible.

Accident records

40. MLP policies MP1, MP4, MP5 and MP12 all refer (albeit with slightly different wording) to the need to ensure that the impact of the traffic generated by mineral development is not detrimental to road safety. Safety (or the lack of it) is judged by the frequency of accidents and it is the accident rate rather than the pure numbers of accidents which indicates whether use of a particular road would give rise to a greater than normal level of danger. Accident records were provided for the last 7 years and whilst each is desperately unfortunate for those involved, it was not suggested by the Council that there was any particular accident black spot or any location which gave rise to a hazard on the highway.
41. The Council's analysis sought to show there were issues along the route, in particular accidents around the school start and finish times, accidents involving cyclists, accidents involving pedestrians, accidents involving parked cars and accidents involving larger vehicles, all of which it was argued have the potential to be exacerbated by the addition of 44t six axle lorries. However I do not accept that that conclusion can necessarily be drawn from the records which indicate a wide variety of reasons for the accidents, which took place in various weather conditions and at various times of the day. Highway officers considering the application did not identify a road safety issue and application of the longstanding and accepted methodology in COBA (DMRB Vol 13 'Economic Assessment of Road Schemes' Cost Benefit Analysis), comparing the

observed number of accidents on Town Street with that predicted by COBA, does not indicate an inherent problem. Comparison of the accident rate per million vehicle/km to national statistics for this type of road indicates that it is a typical highway and its accident record unexceptional.

Risk and the perception of risk

42. The COBA analysis looks at the existing situation. The Council's and local people's concerns relate to the change in risk that would be brought about by the change in the composition and nature of the traffic along the HGV route because of the development and the consequences of that for the safety of highway users. These concerns cover both the actual effects and the perceived risks in relation to the HGV traffic, both of which are capable of being material considerations.
43. The consideration of safety issues is accepted by the Council to be a matter of judgement. There are pinchpoints along the HGV route; parked cars where vehicles have to pull out to pass and sections where the footway on one side is below modern standards. These are existing hazards. It was accepted by the appellants' highway witness that if more heavy and wide vehicles used the route this would increase the potential for accidents (however the same could be said for an increase in any type of vehicle) and if an accident were to occur, for example a schoolchild to step out into the path of one such vehicle, the consequences would be likely to be greater than if in front of a car.
44. However in coming to a judgment on risk, it is also necessary to consider the probability of that consequence occurring and the significance of the risk. In this case the route, with its hazards, is already used by HGVs, many of which are of similar width and dimensions to those proposed to be used by ATH, and where the accident record is unexceptional. Forward visibility along Alfreton Road and Town Street is generally good and where the footway is narrow, pedestrians have the choice on the opposite side of the road of a footway that is noticeably wider and which for much of its length has a grass verge between it and the carriageway. The proposal would introduce 54 additional 44t vehicles per day which would be within the normal daily variance of HGVs on the route, for a limited period of two and a half years plus the final restoration period. Taking these factors into account, it is my judgement, based on what I saw and heard, that the probability of accidents occurring as a result of the development would not be such as to give rise to an unacceptable material increase in risk to road safety.
45. The coal lorries would be noticeable passing through the village and I understand that this could engender fear and worries about intimidation in pedestrians and residents. However the weight these fears and worries should be given as a material consideration has to be assessed in the context of the current use of the route by buses, low loaders, cranes, container lorries and other HGVs (all of which I saw when I walked the route at school start and finish times), as well as the anticipated number of extra movements per day, the limited life of the scheme and the availability of an alternative and convenient route for pedestrians on the opposite side of the road. There was limited evidence to support the suggestions that because of the additional HGV movements parents would choose to drive their children to school rather than allow them to walk or cycle and that people would be discouraged from

crossing the proposed route to access community facilities. Whilst these fears are material to the planning balance, for the reasons given I accord them only limited weight.

Potential traffic generated by the existing uses

46. Whilst it was suggested for the Council that no weight should be given to the permitted uses as a 'fallback' as there was no evidence of any realistic prospect of the site being used in that way, the site includes some substantial buildings and open areas that are likely to be suitable for a variety of industrial uses. Beaufit Lane is an established employment area and I consider it reasonable to look at what flows such uses might generate to inform the Transport Assessment.
47. TRICS data indicates that a typical B2 industrial use could generate some 38 goods vehicle movements a day which the Council's witness had to concede would be an acceptable flow on the B6019. Whilst his analysis was that only some 6 per day might have 6 axles or more, no evidence from any published study, guidance or risk assessment was produced to support the Council's assertion that the use of 6 axle HGVs represented an increased safety risk compared to other vehicles of similar width that might use the road. In that regard I found the Council's argument unhelpful and rather contradictory. Given its size, past uses and location, the potential for the site to be used in the future for other traffic generating uses, including HGV traffic, cannot be dismissed and this is a further factor that needs to be weighed in the balance.

Conclusion on road safety

48. Pulling all these threads together, I conclude that in terms of MLP policies MP1 8), MP4 6), MP5 2) and 3) and MP12 2) and the particular provisions of BDLP policies GEN1 and GEN2, that I am satisfied, having regard to the proposed route, the intended coal export operation and its limited duration, and subject to the provisions of the UU and the use of appropriate planning conditions, that the scale and nature of the traffic that would be generated by the appeal proposal would not in itself give rise to unacceptable road traffic problems with regard to either highway capacity or road safety.
49. The Council's Statement of Case refers to '*unacceptable levels of disturbance and impact upon residential amenity given the local context*'. In addition to evidence on highway capacity and road safety, evidence was brought to the inquiry on noise, vibration and air quality.

Noise

50. Guidance on controlling and mitigating the environmental effects of minerals extraction is given in MPS2. MLP policy MP1 1) requires regard to be had to the effect on local communities by reason of noise, dust, vibration or other pollution or disturbance. In terms of noise from HGV traffic, this is a new point. It was not raised in the scoping of the ES nor was additional information on traffic noise requested by Bolsover District's Environmental Health Officer (EHO) whose concern was directed towards the mitigation of noise levels from the plant at the nearest residential properties in Guildhall Drive. Subject to the extension eastward of the proposed noise attenuation barrier between the processing plant and those properties, no objection has been made by the

Council to any adverse impact on nearby residents through the noise generated by the 24 hour working of the plant and I am satisfied that this can be adequately addressed by the imposition of a condition.

51. Local residents however raised further objections to the proposals because of traffic noise and further assessment work was carried out for the inquiry. The dominant noise source in Pinxton is the M1 and local roads and the new motorway noise barriers are expected to have little effect on noise levels along the HGV route. The appellant's technical assessment indicates that the additional vehicle movements would have no significant effect on average noise levels with the maximum increase amounting to 0.3dB. Given the high ambient noise levels and the existing HGV movements, I am satisfied that the noise generated would be typical and part of the background or in the likely range of variations in day to day volumes of traffic and, in terms of the environmental effects significance criteria, would have a negligible effect for the limited duration of the development.
52. As explained above, there would be no HGV movements associated with the development between 19.00 hours and 07.00 hours and I am satisfied that this could be controlled by condition backed by the provisions of the UU. Thus the potential for sleep disturbance and breach of the World Health Organisation guidelines are not invoked. Additional noise monitoring carried out by the District Council's EHO in Town Street on 12-13 October 2009 confirmed the high daytime and night time background noise levels. Although he placed Town Street in Noise Exposure Category D, where PPG24 indicates that planning permission should normally be refused for new residential development, the NEC procedure is not applicable where new noise sources are to be introduced into an existing residential area.
53. As to the point the Council sought to make about peak or instantaneous noise associated with a lorry passing interrupting normal conversation within a house, L_{Amax} is not the appropriate measure to use. Nor am I persuaded by the generalised concerns about 'body slap' and comparisons between sound pressure levels for a 44t vehicle and a Transit, that the environmental impact as a result of traffic noise would be unacceptable.

Vibration

54. Similarly the Council did not present any of its own evidence on vibration although local residents whose homes were close to the road explained their own concerns at the impact of additional heavy traffic. The appellants' appraisal measured the vibration impact of HGV activity at various locations along the route and identified traffic movements, particularly buses and HGVs, as the dominant existing source of vibration. But when estimates were made of the additional HGV movements associated with the proposed development, the results indicated that '*adverse comment*' would arise in both the 'with' and 'without' scenarios. It was contended for the Council that further HGV activity in a situation where vibration is already unacceptable fails the relevant policy tests. However having regard to MLP policy MP3, I consider that the proposed limitations on the number of vehicle movements and the limited duration of the proposed operations would mitigate any adverse effects to an acceptable degree.

Air Quality

55. Again the only objective evidence was presented by the appellants. Air quality was assessed in the ES and found to be acceptable. In response to third party representations, additional monitoring was undertaken. Having measured existing background levels and predicted the increase in PM₁₀ levels at each of the receptor locations, it was found that the resultant levels would still be well below the UK Air Quality Objective and there would be no adverse impact on residential amenity.
56. The effects of the additional HGVs on dust were also modelled and showed the change in annual average dust levels would be imperceptible. The proposed development would be regulated under the Pollution Prevention and Control Act 1999 and it was anticipated that suitable conditions would be included within the environmental permit (a separate regulatory regime) to ensure that HGVs leaving the site were adequately sheeted, inspected and if necessary cleaned.
57. Assessment of the annual additional carbon emissions from the proposed HGV movements through Pinxton indicates a total of 8 tonnes of carbon a year, equivalent to the annual average from a small house. I find none of these matters relating to air quality to weigh against the proposal.

Conclusion on the second issue

58. I conclude that the effects, in terms of capacity, access, road safety, noise, vibration and air quality arising as a result of the proposed traffic movements associated with the development, whether considered individually or collectively, could be kept to an environmentally acceptable level throughout the short timescale of the reclamation and restoration operation and there would be no unacceptable harm to residential amenity. As such I find no conflict with the objectives and provisions of MLP policies MP1, MP4 and MP5.

Issue 3 – whether there would be any benefits

59. There would be benefits arising from the scheme. It would provide the means by which the spoil heap could be reworked and restored. There is general support in regional and local policy for improvement to landscape character and visual appearance. It was agreed that the ATH's proposal would result in a clear improvement in landscape and visual quality. Whilst that benefit would be within Nottinghamshire, it is a material consideration that I believe should be given considerable weight. The scheme presents an opportunity to bring modern standards of restoration to an area of despoiled countryside and which are unlikely to be brought about in any other way. The restoration scheme would also offer biodiversity enhancement and improved public access for which there is national, regional and local policy support.
60. Along with environmental gains, there are environmental problems that the reclamation of the spoil heap would address including the elimination of combustion risk, removal of water polluting materials and their harmful visual impacts. The scheme would improve flood retention capacity in the area. These are all beneficial consequences that weigh in favour of the scheme. There would also be the reclamation of around half a million tonnes of coal. Although only a very small percentage of the country's energy minerals requirements, its recovery from a former colliery spoil heap rather than

primary sources is consistent with national objectives in relation to minerals planning and the importance of a diverse and secure supply of energy fuels.

61. Around 35 jobs would be provided during the temporary working and restoration operations. Although not all would be available to local people, the opportunity to create or retain jobs is a material consideration to weigh in the balance, particularly in difficult economic times. Following completion of the proposals, the site used for the processing plant would be available for employment use with an improved operational layout following the realignment of the Maghole Brook.
62. In line with the advice in MPG3 paragraph 66, the UU provides for the establishment of a Liaison Committee. One of its duties would be to distribute sums from a Community Fund to which the appellants would contribute 10 pence per tonne of coal processed and sold. Although MPG3 refers to planning obligations being used to secure relevant and legitimate local benefits where there is harm, they must meet the tests of Circular 05/2005. In this case, I am not satisfied that the Fund is necessary to make the development acceptable in planning terms and I do not give it weight as a material consideration.

Conclusions on the third issue

63. The benefits of the scheme are long term whereas the impacts are short term for the duration of the reclamation and restoration operations. I consider that the benefits are local and desirable and add some weight in support of the appeal scheme.

The Unilateral Undertaking

64. The UU provides for a number of matters including the restoration and creation of footpaths and cycle ways, the submission of an aftercare scheme, the carrying out of highway works and establishment of a Liaison Committee and Community Fund. There was objection at the inquiry to the composition of the Liaison Committee, with proposed equal representation from Nottinghamshire and Derbyshire, because of concerns that the Community Fund should be distributed for the main benefit of Pinxton as they would be suffering the most. As a UU, the membership of the Committee is a matter for the appellant who is still awaiting a decision on the Nottinghamshire application. In any event, I have already concluded that I do not consider the Community Fund to meet the policy tests.
65. I have already described many of the traffic provisions of the UU. All movements of HGVs in connection with the carrying of coal or soil ameliorants would be undertaken under a haulage contract that would require the approved route only to be used with no HGV to travel through Pinxton before 07.00 hours on any day. In the event of a failure by drivers to comply, further provisions set out the action to be taken by ATH to terminate haulage operations under the contract. A further clause covers the removal of mud and dirt from the highway. I am satisfied from what I heard at the inquiry that these provisions would be effective and capable of monitoring and enforcement by the Council.

66. Other than the Community Fund, for the reason I give above, I consider that the provisions of the UU meet the policy tests of Circular 05/2005 and are material considerations that should be given considerable weight.

Conditions

67. Draft conditions agreed by DCC and ATH were discussed at the inquiry. I am satisfied that, in order to secure a satisfactory development and protect the amenities of local residents, conditions would be required to ensure that the development is carried out as approved, to link the processing operations to the coal reclamation scheme, to limit the duration of development, to restrict the period of the haulage operations, to provide for safe access and parking and waiting areas on site and that mud and dirt are not carried onto the road. It is also reasonable to prevent coal being sold from the site in small loads as this could result in more traffic movements to those assessed.
68. Conditions would be required to monitor and control noise, dust, site lighting, waste, any potential contamination or pollution of controlled waters and to minimise flooding and flood risk. It would be necessary to ensure that only the M1 underpass is used once Footpath 27 is diverted. I would also impose conditions to limit stockpile heights, in the interests of visual amenity, to ensure that soils are appropriately worked and stored, additional planting provided, existing vegetation protected and a landscaping scheme submitted. As there is evidence of water voles on the site, conditions would be needed to ensure that they and their habitat are protected and similarly if reptiles were to be found on site during development.
69. It would also be reasonable to limit the number of HGV movements to that indicated in the application and ES and I am satisfied that such a restriction would be capable of enforcement as accurate weighbridge records would have to be kept. Whilst processing of coal would be a 24 hour operation on weekdays and to 13.00 hours on Saturdays, as the route for the haul lorries passes through Pinxton it would be necessary and reasonable to restrict the times when coal can be exported from the site and soil ameliorants bought in. For the reasons set out above, this should take place no earlier than 07.10 hours Mondays to Saturdays and no later than 19.00 hours on Mondays to Fridays and 13.00 hours on Saturdays.
70. The case made for the appellant has been predicated on the short term nature of the operations and securing the early reclamation of the site. I consider that if should be for the MPA alone to determine if there were to be a premature cessation of operations to avoid it being left for any significant period of time in a neglected, unattractive and partially worked state. In the event that those with a legal interest in the land were to disagree that operations had ceased, there would be legal remedies available to them to pursue their case.
71. I am satisfied that the imposition of all these conditions would be necessary, reasonable, relevant to the development and to planning and that they are precise and enforceable and therefore meet the tests of Circular 11/95.

Overall conclusion

72. The proposal relates to a former colliery spoil heap in Nottinghamshire which is unattractive, has limited ecological value and suffers from areas of bare ground

and polluted run-off. The appeal site, to be used for the processing plant, is primarily an industrial site with existing buildings and hardstanding. The appeal scheme is for short term operations with beneficial restoration and afteruse. Whilst there was rail access to the Langton Colliery, for the reasons set out above, I have concluded that it would not provide a feasible alternative to road transport which would be environmentally preferable.

73. Policies in the MLP consider a broad range of environmental matters and in the most part are couched in terms to permit development where it is '*acceptable*' (policy MP1) or where adverse effects can be '*eliminated or reduced to an acceptable level*' (policy MP3). The main difference between the parties, and the concern of local people, is their assessment of the environmental impact of the road traffic over the proposed HGV route.
74. Subject to the imposition of appropriate planning conditions and the provisions of the UU to ensure adequate control and mitigation, I have concluded that the impacts of the proposed development would be kept within acceptable limits and therefore would comply with the objectives and policies of the development plan. I am satisfied that there is no justification for a refusal of permission in respect of MLP policies MP1, MP3, MP4, MP5 or MP12 and the benefits that would accrue from the proposals add further weight in support of the grant of permission.
75. I have taken into account all other matters raised but I have found none to be of such weight to override my conclusions, for the reasons given above, that the appeal should be allowed.

Mary O'Rourke

Inspector

APP/U1050/A/09/2100184

Schedule of Conditions:

General

Commencement and Duration

1a) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission. The Mineral Planning Authority shall be given at least 14 days prior written notice of the date the development is begun. The date the development is begun shall be confirmed in writing to the Mineral Planning Authority not later than 7 days after the event.

1b) No development shall commence until planning permission has been granted by Nottinghamshire County Council pursuant to planning application 4/2007/0904.

2) (i) With the exception provided at (ii) below, the development shall be completed not later than 3 years and 1 month after the date it is begun, unless otherwise agreed in writing beforehand with the Mineral Planning Authority. On or before the completion of the development date, all processing operations shall have ceased and all plant, machinery, structures, buildings, access and haul roads associated with the development (other than those which are to be retained under the approved restoration scheme) shall have been removed, and the whole site (as defined under the terms of condition 6), including those areas occupied by plant, machinery, structures, buildings, access and haul roads, shall have been restored in accordance with the further conditions of this permission.

2) (ii) The exception referred to at 2) (i) above is that should the timing of final soil replacement operations fall outside the normal soil handling season (1 April to 30 September) and soil replacement be prevented by the provisions on condition 39 below, the replacement of soils shall be completed in the next available soil handling season and any remaining tree or shrub planting shall take place not later than the end of the next planting season thereafter.

2a) The despatch of coal by heavy goods vehicle from the approved site access on to Beaufit Lane shall be completed no later than 2 years and 6 months from the date of commencement of such heavy goods vehicular movements and the Mineral Planning Authority shall be provided with no less than 7 days advance notice in writing of the date of commencement of such heavy goods vehicular movements.

2b) The import of soil ameliorant by heavy goods vehicle on to the site through the approved site access off Beaufit Lane shall commence no earlier than month 12 following the commencement of the development and shall be completed no later than the date on which the development is completed in accordance with conditions 1 and 2 and the Mineral Planning Authority shall be provided with no less than 7 days advance notice in writing of the date of commencement of such heavy goods vehicular movements.

Approved Plans

3) The development shall be undertaken in accordance with the application documents and accompanying Environmental Statement (ES) from White Young Green dated 28 September 2007, as amended by the letter and accompanying supplementary information to the ES dated 1 April 2008 and the letters dated 4 July and 26 September 2008, unless otherwise required by the conditions of this permission.

The supplementary information referred to in this condition includes the Water Vole Mitigation Strategy; the application to the Environment Agency for the diversion of the Maghole Brook; the Geo-Environmental Site Investigation Factual and Interpretative Report; the Traffic Management Strategy; the revised Noise chapter; the addendum to the noise chapter; the revised dust and air quality chapter for the ES; and the addendum to the Flood Risk Assessment for the ES.

Revised Operational Plans

4) The development shall not be begun before a revised site plan for the processing area has been submitted to and approved in writing by the Mineral

Planning Authority. The plan so approved shall then supersede Drawing Number 002 received by the Mineral Planning Authority on 3 October 2007. The plan submitted shall include details of the extended noise attenuation barriers; location of the press house and wash plant; offices and associated staff welfare facilities; and the type, colour and location of fencing to be used at the perimeter of the site. The development shall then be implemented as approved.

Availability of Approved Documents

5) From the date the development is begun until its completion, a copy of the permission, including all documents referred to in it, shall be kept available at the site office during working hours. Any further submissions to the Mineral Planning Authority under these conditions, and which have been approved in writing, shall also be kept available at the site office with the approval. Any person(s) given responsibility for the management and control of operations shall be made aware of the terms and conditions of the permission and subsequent submissions approved by the Mineral Planning Authority.

The Site

6) For the purpose of this decision notice, the site shall be the land edged in red that falls within the administrative boundary of Derbyshire as identified on drawing 002 as received by the Mineral Planning Authority on 3 October 2007.

Buildings, Fixed Plant and Machinery

7) Notwithstanding the provisions of Parts 19 and 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended, no buildings, fixed plant or machinery or structure in the nature of plant or machinery shall be erected or placed on the site except as authorised or required by the terms of this permission or otherwise have received the prior approval in writing of the Mineral Planning Authority.

Mineral Processing

8) No mineral or other material shall be processed at this site other than that extracted from the Langton Colliery spoil heap under the terms of planning permission 4/2007/0904 as approved by Nottinghamshire County Council.

9) Stockpile heights shall not exceed 5m for coal and 9m for discard material.

Importation of Materials

10) No materials shall be imported to the site other than that extracted under planning permission 4/2007/0904 approved by Nottinghamshire County Council, sundry materials to be used in the processing of coal and soil ameliorants for use in the restoration of the site.

Sales of Minerals

11) Coal shall only be dispatched in bulk vehicles under the control of the operator.

Access, Traffic and Protection of Public Highway

12) There shall be no access to the site from the public highway by heavy goods vehicles associated with this development, including coal and soil ameliorant haulage heavy goods vehicles, except via Beaufit Lane as indicated on the Site Plan as approved under condition 4 above.

13) There shall be no vehicular access to the site, offices and staff parking facilities for any vehicles, excluding those referred to in condition 12, except via Greensquare Road.

14) There shall be no operations at the site before the site access off Beaufit Lane has been laid out to a width of 7.3 metres, with 12 metres radius bellmouth kerb lines, surfaced in bound materials for the first 20 metres from the edge of the highway and provided with 4.5 metres x 70 metres visibility splays in both directions.

15) Gates installed at the Beaufit Lane site access shall be set back not less than 10 metres from the edge of the highway and shall open inwards only. The proposed gates to be installed at the Greensquare Road access shall be constructed in accordance with a scheme to be submitted to and approved in writing by the Mineral Planning Authority.

16) The surface of the access road shall be maintained in a solid bound material and kept clean and free at all times from mud and other debris until completion of site restoration.

17) The development shall not be begun before a scheme detailing access and car parking arrangements at the site has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details relating to:

- Signs to be erected at the Beaufit Lane site access exit to detail right turn only and the proposed heavy goods vehicle route to the M1;
- wheel washing facilities;
- provisions for on site sweeping equipment;
- staff and visitor car parking, including manoeuvring space (to allow vehicles to enter and leave in forward gear); and
- an HGV waiting area within the site.

The development shall be carried out in accordance with the scheme so approved.

18a) No mud or other dirt shall be carried from the site onto the public highway.

18b) No vehicle loaded with processed coal or other materials shall leave the site unsheeted.

19) The total number of heavy goods vehicle movements (where one heavy goods vehicle entering and then leaving would generate two movements) using the site access off Beaufit Lane shall not exceed 54 during any full working day or 28 on Saturday. Daily records shall be kept at the site office of the number of HGV movements. Such records shall be made available to the Mineral Planning Authority during normal operating hours.

Internal Access between the Langton Colliery Spoil Heap and the Processing Area

20) There shall be no access to and from the approved processing area by vehicles transporting excavated and discarded material to and from the Langton Colliery spoil heap:

- i) except via the underpass beneath the M1 Motorway; and
- ii) until a legal diversion of Footpath 27 Pinxton is in operation.

Hours of Operation

21) The hours of working at the site shall be:-

For processing of excavated material

Mondays to Fridays – 00.00 hours to 24.00 hours.
 Saturdays – 00.00 hours to 13.00 hours.

For transport of materials to and from the spoil heap

Mondays to Fridays – 07.00 hours to 19.00 hours.
 Saturdays – 07.00 hours to 13.00 hours.

For the export of coal from the site and import of soil ameliorants

Mondays to Fridays – 07.10 hours to 19.00 hours.
 Saturdays – 07.10 hours to 13.00 hours.

For servicing, maintenance and testing of plant

Mondays to Fridays – 07.00 hours to 19.00 hours.
 Saturdays – 07.00 hours to 13.00 hours.

Except in cases of emergency when life, limb or property are in danger, no operations shall take place except during the hours specified. There shall be no operations at any time on Sundays, Bank or other Public Holidays.

Noise

22) Except as allowed by Condition 23 below, noise from the site and received at the specified noise receptors in the table below expressed as an LAeq 1 hour freefield, shall not exceed the respective background noise levels (LA90) set out in the table by more than 10dB(A) during the daytime and 5dB(A) during the night time:

Noise Receptor	Daytime	Night time
8 Guildhall Drive	55	47
4 Guildhall Drive	54	45
126 Station Road	58	47
248 Wharf Road	56	50
274 Wharf Road	57	52

Where daytime means the hours from 0700 to 1900 on any day and night-time means the hours from 1900 to 0700 on any day.

23) During noisy short-term activities at the site, the noise limits in Condition 22 may be exceeded during the daytime for periods not exceeding a total of 8 weeks in any period of 12 months throughout the duration of the development, as measured at any of the identified noise monitoring locations. During these periods the noise levels shall not exceed 70dB (A) LAeq 1 hour freefield. For the purposes of this condition, noisy, short-term activities are such activities as are referred to in MPS2: Annex 2 Noise, at para 2.20.

24) Efficient silencers shall be fitted, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the site. Save for the purposes of maintenance, no machinery shall be operated with covers open/removed.

25) Reversing warning devices on all vehicles used on the site shall be either non-audible, ambient-related or low-tone devices.

Noise Monitoring Scheme

26) The noise levels from the site shall be monitored in accordance with a scheme that has received the written approval of the Mineral Planning Authority. The scheme, which shall be submitted no later than two months from the date of the planning permission, shall include details of the following:-

- (i) noise monitoring locations;
- (ii) details of the monitoring equipment to be used, including provision for a noise monitor capable of sound measurements including $L_{Aeq(5\text{minutes})}$, $L_{Amax(5\text{minutes})}$, $L_{A90(5\text{minutes})}$ and frequency analysis 1/3 octaves to be installed at a position to be agreed with the Mineral Planning Authority. The monitor should record real time noise continuously and store monitored results to hard drive;
- (iii) monitoring periods, including provision for the noise monitoring in (ii) to be operational for a minimum period of six months to determine seasonal variations;
- (iv) frequency of monitoring;
- (v) the recording of the monitoring results, including provision for the results to be made available to the Mineral Planning Authority on request;
- (vi) provision for implementing, reviewing and updating the scheme; and
- (vii) provision of an emergency number for local residents to contact in the event that noise problems arise.

The scheme shall then be implemented as approved.

Dust

27) At all times, all operations at the site shall be carried out in a manner to minimise the generation of airborne dust.

28) Dust from the site shall be monitored in accordance with a scheme that has received the written approval of the Mineral Planning Authority. The scheme, which

shall be submitted no later than two months from the date of the planning permission, and which shall be implemented as approved by the Mineral Planning Authority, shall include the following details:-

- (i) monitoring objectives;
- (ii) location, number and type of dust gauge monitors;
- (iii) duration and frequency of monitoring;
- (iv) proposed analysis of contents;
- (v) provision for results to be made available to the Mineral Planning Authority.
- (vi) trigger levels and an action plan in the event that those levels are exceeded;
- (vii) mitigation measures if required; and
- (viii) proposals for implementing, reviewing and updating the scheme.

Lighting

29) No external lighting shall be installed at the site except in accordance with a scheme that has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be submitted within two months of the date of the permission and be based on the following requirements:

- i) that lighting be restricted to those areas where it is absolutely necessary for health and safety and security;
- ii) the use of low pressure sodium lamps rather than high pressure sodium or mercury lamps. (If mercury lamps are used they shall be fitted with UV filters and the brightness shall be as low as legally possible);
- iii) that lights shall be fitted with hoods/shields as necessary to direct the light below the horizontal plane at an angle of less than 70 degrees;
- iv) that upward lighting shall be kept to a minimum and avoided completely in the underpass beneath the motorway; and
- v) that lighting shall be timed to provide some dark periods.

The scheme shall then be implemented as approved prior to the commencement of processing operations.

Rubbish, Scrap and Other Wastes

30) All rubbish, scrap and waste material (other than that generated by the mineral processing plant) either found or generated on the site shall be stored in clearly marked areas or containers until such time as it can be removed to a facility which holds an appropriate Environmental Permit.

Environmental Protection

31) The development shall not be begun before a scheme to identify and control any contamination or pollution of controlled waters has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:

- i) a remediation method statement detailing the remediation requirements for the site. If, during the development, any further contamination is

identified that has not been considered in the Statement, then additional remediation for this material shall be undertaken in accordance with proposals that have been submitted to and approved in writing by the Mineral Planning Authority; and

- ii) a validation report: the report shall provide verification that the remediation works have been carried out in accordance with the approved Method Statements. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the remediation has been fully met.

The development shall be carried out in accordance with the approved scheme.

Protection of the Water Environment

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

33) Following the cessation of operations, the bund running adjacent to Maghole Brook shall be removed for use in restoration.

34) The storage of material shall be limited to the areas marked on the drawing 'Plant Layout' 002 received from White Young Green on 3 October 2007 or any subsequently revised Site Plan that has been approved by the MPA under condition 4 above.

35) Any fencing within or around the processing site shall be of open construction, permeable to floodwater, such as palisade fencing, and not closed panel.

36) Finished ground floor levels within the offices shall be 600mm above existing ground levels.

37) There shall be no development within 8 metres of the top of the banks of the River Erewash.

Soil Stripping, Handling and Storage

38) The Mineral Planning Authority shall be given at least five days prior notice in writing of the date of commencement of any soil stripping operations.

39) No topsoil and subsoil shall be stripped unless it is in a dry and friable condition. No soils shall be moved when the soil to be moved or trafficked upon has a moisture content that is equal to, or greater than that at which the soils become

plastic. (Tested in accordance with the 'worm test' as set out in BS 1377:1975 "British Standard Methods Test for Soils for Civil Engineering Purposes").

40) All topsoil and subsoil shall be retained on site.

41) Vegetation removal and soil stripping should be undertaken outside of the bird breeding season ie, September to February. Where this is not possible a bird's nest check must be undertaken immediately prior to the works by a suitably qualified ecologist. If any nests are found they must be protected from disturbance until all young have fledged.

42) No plant or vehicles shall cross any area of unstripped topsoil or subsoil except where such trafficking is essential and unavoidable for purposes of undertaking permitted operations. Essential trafficking routes shall be marked in such a manner as to give effect to this condition. No part of the site shall be excavated or traversed or used for a road, or storage of topsoil, subsoil or overburden or water, until all available topsoil or subsoil to a minimum depth of 1,000mm has been stripped from that part.

43) The development shall not be begun before a scheme for the seeding and maintenance of the soil mound has been submitted to and approved in writing by the Mineral Planning Authority. The soil mound shall be seeded and managed in accordance with the scheme and shall be seeded within three weeks of its construction.

Ecology and Protected Species

44) Unless otherwise approved in writing by the Mineral Planning Authority, water voles and their habitat shall be protected and mitigated in accordance with the Water Vole Mitigation Strategy received from White Young Green dated 1 April 2008.

45) The development shall not be begun before a scheme for the enhancement of water vole habitats has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of design, establishment, planting and management. The scheme shall then be implemented as approved.

46) In the event that any reptiles are discovered during the course of the development, the Mineral Planning Authority shall be notified immediately and details shall be submitted for the approval of the Mineral Planning Authority of the measures to be taken to ensure their protection, and shall be implemented as approved.

Protection of Existing Vegetation

47) No trees or shrubs shall be cut down, uprooted, damaged, destroyed or removed during the works without the prior written approval of the Mineral Planning Authority. Retained trees and shrubs shall be protected from disturbance, damage or destruction from the approved development where necessary by the provision of adequate stand-offs, machinery and materials storage areas, fencing, marker posts and buntings or other suitable method. There shall be careful site supervision at all times to ensure that no damage occurs to the protected

vegetation. All trees and shrubs protected under this condition shall be incorporated into an approved scheme of post restoration landscaping of the site, except where the removal of vegetation is otherwise provided for in the approved scheme.

Landscaping

48) Development shall not be begun before a landscaping scheme has been submitted to the Mineral Planning Authority. The scheme shall relate to the general principles shown in Drawing 006 'Final Restoration Plan'. The scheme shall be implemented as approved by the Mineral Planning Authority, and shall include details of the following:

- i) ground preparation prior to planting (ripping, seeding);
- ii) location, species, size and spacing of trees and shrubs including a percentage of the stock to be of local provenance;
- iii) protection of newly planted stock and provision for removal of tree guards when no longer required;
- iv) maintenance and aftercare provisions; and
- v) a programme of implementation.

Maintenance of Tree and Shrub Planting

49) For the first five years following the implementation of the development, planting shall be maintained in accordance with the principles of good forestry and husbandry, and any shrubs and trees which die or become seriously damaged, diseased or are missing, shall be replaced with plants of the same species or such alternative species as have been approved by the Mineral Planning Authority (for the avoidance of doubt 100% replacement is required).

Restoration

50) The site shall be restored in accordance with a revised restoration scheme which shall be submitted to, and approved in writing by the Mineral Planning Authority. A plan for this purpose shall be submitted no later than six months from the date the development is begun. The approved plan shall supersede Drawing 006: Final Restoration Plan received from White Young Green on 3 October 2007.

51) The Mineral Planning Authority shall be notified in writing of the completion of restoration at the site.

Premature Cessation

52) If the Mineral Planning Authority consider that operations have ceased before the site restoration in accordance with Condition 50 has been achieved, the site shall be reclaimed in accordance with a scheme that has the written approval of the Mineral Planning Authority. The scheme shall be based on the principles of the conditions of this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Reuben Taylor	Of Counsel, instructed by Stephen Brent, Senior Solicitor to Derbyshire County Council
He called	
David Roberts I.ENG FIHIE FIHT	Director, Singleton Clamp and Partners Ltd
John Hollister BA(Hons) MA MRTPI CEnv MCIWM	Head of Planning (Minerals and Waste), Scott Wilson Ltd

FOR THE APPELLANT:

Richard Kimblin	Of Counsel, instructed by Derek Hayes of Narbarro, 1 South Quay, Victoria Quays, Sheffield S2 5SY
He called	
Colin Shields BA MSc CEng CEnv MICE	WYG Transport Planning
Dorian Baker MSc MCIT MCIQB	Servant Transport Consultants
Nigel Mann BSc MSc MIOA AMIBMA	WYG Environment
John Dickinson BSc (Hons) DipTP MA MRTPI	WYG Planning and Design
B Tinnion	ATH Resources (attendance at the site visit)

INTERESTED PERSONS:

Tracey King	Local resident
Daniel King	Local resident
Reverend Leslie Harris	St Helen's Church
John Meredith	Parish Councillor
Richard Wilkins	Local resident
Mrs Carol Phelan	Local resident
Barry Shipley	Local resident
Mr Kelly	Parish Councillor
Cherry Drake-Brockman	Local resident
Maureen Ranson	Local resident
John Turvill	Local resident
Joseph Wilkinson	Local resident
Roy Lander	Local resident
Mary Dooley	Local resident

INQUIRY DOCUMENTS

- 1 Lists of those attending the inquiry
- 2 Letter of notification of the adjourned inquiry and those notified.
- 3 List of core documents
- 4 Draft Section 106 agreement 9.9.09 (CD8)
- 5 Draft Section 106 agreement with DCC amendments 11.9.09
- 6 Statement made by Mrs King and attachments

- 7 Mr Wilkins' plan showing the line of a proposed link road to the A38 and rail head terminal in the emerging Ashfield Plan
- 8 Information provided by Mr Wilkins on traffic counts in Woodfield Road-Kirby Lane 27.8.09 and 10.9.09, noise levels, truck braking systems and stopping distances
- 9 Letter dated 14.10.09 to Mr Wilkins from the Pollution Control Officer, Bolsover District Council with attached schedule and graph of noise monitoring undertaken on 12 and 13 October.
- 10 Map and text from A Complete History of Pinxton by Frank Smith

APPELLANTS' DOCUMENTS

- ATH1 1 Proof of evidence of Colin Shields (traffic)
 - 1S Summary of proof
 - 1A Appendices to proof (including Lodge House S106 Agreement added to Appendix C and pages 45 and 115 of Road Casualties GB 2007 as new Appendix E)
 - 1R Rebuttal evidence
- ATH2 2 Proof of evidence of Nigel Mann (noise, vibration, air quality)
 - 2S Summary of proof
 - 2A Appendices to proof
- ATH3 3 Proof of evidence of John Dickinson (planning)
 - 3S Summary of proof
 - 3A Appendices to proof
 - 3R Rebuttal evidence
- ATH4 4 Proof of evidence of Dorian Baker (sustainable transport)
 - 4S Summary of proof
 - 4R Supplementary note October 2009
- ATH5 Opening statement on behalf of the appellants
- ATH6 Note re notification of the inquiry
- ATH7 DCC proposed conditions with ATH proposed amendments 7.8.09
- ATH8 Extract from the General Development Procedure Order 1995
- ATH9 Further set of draft conditions as agreed by ATH and DCC 12.10.09
- ATH10 Unilateral Undertaking signed and dated 15 October 2009 (later withdrawn)
- ATH11 Nottinghamshire CC letter to Nabarro LLP of 14 October 2009
- ATH12 Email exchange between Nottinghamshire CC and Nabarro setting out the CC's views on the content of the Undertaking and particularly the composition of the proposed Liaison Committee
- ATH13 Note provided on the 07.00 time limit condition
- ATH14 Extract from the Planning Encyclopaedia P79.33 on page 2-3354/2 on the 'burden of proof'
- ATH15 Page 17 of Circular 03/2009 on Costs Awards
- ATH16 SOS decision and Inspector's report on the appeal by UK Coal Mining Ltd relating to land west of Telford (APP/C3240/A/08/2090405)

- ATH17 Aerial photo from Google of the Langton Tip Spoil Heap provided by Mr Tinnion
- ATH18 Unilateral Undertaking signed and dated 20 October 2009
- ATH19 Closing submissions for the appellant
- ATH20 Application for an award of costs

COUNCIL'S DOCUMENTS

- DCC1 1 Proof of evidence of John Hollister (planning)
 - 1A Appendices to the proof
- DCC2 1 Proof of evidence of David Roberts (traffic and transport)
 - 2A Appendices to the proof
 - 2B Exchange of letters between DCC and Mr Roberts relating to his appointment
- DCC3 Draft conditions discussed ATH – DCC 15.09.09
- DCC4 Bundle of papers provided by Mr Taylor including extracts from the Environmental Impact Assessment Regulations 1999 (1999/923) and Mr Justice Sullivan's judgement in the case of R v Rochdale MBC [2000] Env. L.R. 1.
- DCC5 Chapters 3 and 4 of Guidelines for Community Noise (1999) World Health Organisation
- DCC6 Closing submissions for the Council

PLANS

- A PROJECT NO. A036263/5101
 - 001 existing features plan
 - 002 site plan
 - 003 phasing plan – 6 months
 - 004 phasing plan – 18 months
 - 005 phasing plan – 30 months
 - 006 final restoration plan
 - 010 extended noise attenuation barrier towards M1 underpass
- B Additional plans prefix A036263/5101
 - Plan 1 – red line and auger boring and soil pit location
 - Plan 2 – agricultural land classification
 - A036263-16 – site access details
- C Additional copies of figures from the ES
 - Figure 12 iii modelled locations V2
 - Figure 12iv just barrel wash (noise contours)
 - Figure 12v just press house (noise contours)
 - Figure 12vi night difference with barrier
 - Figures 12.5A receptor and modelling locations
 - Figure 12.7A excess noise over background phase1
 - Figure 12.8A excess noise over background phase II day
 - Figure 12.9A excess noise over background phase II night
 - Figure 13i proposed dust emitting locations
 - Figure 13.1A site receptor locations
 - Figure 13.2A PM10 background concentration 2007 pg/m^3
 - Figure 13.3A PM10 concentration with site operations 2007 ug/m^3
 - Figure 13.4A metrological data for East Midlands airport 2006 E012141
 - Figure 14.3 Water Vole Survey