

Agenda Item No.3.2

**DERBYSHIRE COUNTY COUNCIL  
REGULATORY - PLANNING COMMITTEE**

**6 August 2018**

Report of the Strategic Director – Economy, Transport and Environment

**2 PROPOSED RESTORATION OF FORMER COLLIERY LAGOONS  
AND SETTLEMENT PONDS TO AGRICULTURE AND NATURE  
CONSERVATION THROUGH THE IMPORT OF INERT WASTE AT  
CRESWELL COLLIERY LAGOONS, FRITHWOOD LANE,  
CRESWELL  
APPLICANT: THE WELBECK ESTATES COMPANY LIMITED  
CODE NO: CW5/0218/89**

**5.5373.2**

**Introductory Summary** The application seeks planning permission for the importation of 231,000 tonnes of inert waste plus soil forming materials over three years to restore the site for agricultural and nature conservation use. The site was a former tip associated with the former Creswell Colliery that has subsequently been used for mine water treatment through the use of several lagoons. The site ceased being used for mine water treatment prior to 2012. The proposal aims to restore the site to a beneficial after-use and remove health and safety concerns (arising from unauthorised public access) from leaving the site in its current derelict condition.

Access to the site would be along Frithwood Lane, an historic single-width road which is used as a bridleway.

The current proposal seeks to restore the Creswell Colliery tip(s) and lagoons area by the importation of waste materials, utilising the Frithwood Lane route as the means of access egress for vehicles between the area and the nearest main road.

Restoration of the site to agriculture and nature conservation addresses the mining legacy in the area, and the current health and safety risk from unauthorised access into the site.

The application cannot be considered to be fully “waste recovery” rather than “waste disposal” because more than the minimum amount of waste necessary to restore the site is to be brought onto the site. As such, the application does not conform with the waste hierarchy.

However, the proposal is an enabler of restoration of this site from its current condition to a beneficial use. This is considered to be a planning consideration to which significant weight should be attached. The applicant has provided some information to officers in support of its position that the tonnage of imported waste stated under this application is required to provide a cost neutral restoration, along with the restoration profiles that would arise from this. These profiles are not considered inappropriate, having regard to the final restored profiles of the Creswell colliery tip sites which adjoin the site.

Since the importation of more than the minimum amount of waste necessary for a restoration is proposed on the basis that this amount is required to be economically cost neutral to the applicant, there is also an economic viability issue in this case. The development would allow the mining legacy left by the remaining unrestored lagoons to be removed and leave the site restored for an agricultural and nature conservation after-use.

The proposed development would create a source of dis-benefit to users of Frithwood Lane and adjoining footpaths and potentially source of delay to the full implementation of the Archaeological Way Greenway route to Creswell Craggs. This is considered in the planning balance to be acceptable, provided that certain types of measure are required by condition which would protect accessibility over Frithwood Lane (and that of adjoining public footpaths along it).

It is considered that the temporary three year development would thereby be brought into accordance with policies W2, W4, W5, W6, W7, W8, W9 of the Derby and Derbyshire Waste Local Plan and Policy MP10 of the Derby and Derbyshire Mineral Local Plan.

The application is therefore recommended for approval, subject to planning conditions.

(1) **Purpose of Report** To enable the Committee to determine the planning application.

(2) **Information and Analysis**

### **Application Site**

The site of the proposed development is 16.03 hectares situated between Frithwood Lane to the west and the A616 Mansfield Road to the east. It is located to the south of Creswell village and represents the smallest colliery spoil tip site associated with the former Creswell Colliery and the only one which remains unrestored. It is roughly rectangular in shape and slopes generally from north to south in a two-tier fashion of broadly 5 metres (m) falls. The highest point is stated as 100m Above Ordnance Datum (AOD) and falls to 90m AOD at the lowest point on the southern boundary. The northern edge

of the tip slopes down towards the Model Village area of Creswell and presents a well vegetated view from this area.

During the 1990s, nine water storage lagoons were created on the site and then used for the storage of mine water. Six of these have since been infilled by pushing the surrounding embankments into the voids. This has created a northern plateau on an open area, featuring scattered vegetation and concrete structures which show the location of the former lagoons. The other three storage ponds remain in place on the lower plateau but, since pumping associated with the colliery mine(s) in the area has ceased, these are now predominantly dry basins.

Areas to the immediate south, south-east and east of the site contain other former tips now restored to pastoral fields with new hedgerows. A length of Frithwood Lane, which is included in the site as the means of access and egress, extends to the east, over a railway bridge crossing the Robin Hood line, and further east beside areas of restored tip land containing solar panel development on either side of the lane, and a sewage treatment works. Frithwood Lane was historically a highway maintainable at public expense throughout its length, but this section was extinguished as a highway by legal order, to enable mineral development at other parts of the former colliery. A Section 106 agreement of 1996 in relation to development of other former colliery tips includes an obligation, which remains undischarged following their restoration, for completion of an agreement with the Council as Highway Authority under Section 25 of the Highways Act 1980, for formal re-dedication of this length of the lane as a bridleway. It now appears that such an agreement should include Network Rail because this section of lane traverses the Robin Hood over a bridge in its ownership. However, works for the reinstatement of the lane as a bridleway were carried out in the early 2000s and it has since then been used freely by members of the public for walking, cycling and riding. Therefore, it is considered to have become re-established as a bridleway, without having been adopted as maintainable highway.

Bordering the site to the west is a former railway line which is now used as a cycle route. To the west and south west lies agricultural land and the closest residential properties at Frithwood Farm. To the north is an area of reclaimed colliery land on which it is proposed to construct some 180 new dwellings, green space and employment land.

The Creswell Village and Model Village Conservation Area boundary is located approximately 250m to the north of the site boundary.

The closest part of the Creswell Craggs Conservation Area is located approximately 750m to the north-east. The Creswell Craggs Site of Special Scientific Interest (SSSI) is located approximately 1.2 kilometres (km) to the north-east. Creswell Craggs is also a Scheduled Ancient Monument of interest

for its Palaeolithic and later prehistoric remnants. Hollinhill and Markland Grips SSSIs are located approximately 1.7km to the north-west; the application site is located within the SSSI Impact Risk Zone (IRZ). The site is also fringed by two potential Local Wildlife Sites (LWS), 'Creswell Railway Line' to the west and 'Frithwood Farm Grassland Verge' to the south of the site.

### **Background Information**

Creswell Colliery was established prior to 1898. Spoil from the colliery was deposited on five tip areas, initially to the south of the colliery and, by 1955, spoil was being deposited to the east of the railway line. The application site was formerly part of tip areas 4 and 5. Creswell Colliery closed in 1991 and following its closure, a mine water pumping system was constructed on the site of tips 4 and 5, which involved the construction of 6 new water treatment lagoons and the re-use of 3 existing ones, to protect other collieries then still operating in Nottinghamshire from rising mine water. At the time, the mine water pumping system was developed as permitted development under the provisions of Schedule 2, Part 20, Class E of the Town and Country Planning (General Permitted development) Order 1988, subject to the approval of the Mineral Planning Authority.

It is understood that mine water pumping ceased prior to 2012. In 2015, the pumping equipment was removed, the remaining surface buildings were demolished and regrading works to infill the six northerly lagoons were undertaken for health and safety reasons (also as permitted development). The land has reverted to Welbeck Estates Company Limited, together with any ongoing liability for the site. The original application proposal (CW5/1116/71) for the restoration by infilling of the site was an item on the agenda of the Regulatory - Planning Committee meeting on 5 June 2017. The published report for this, which recommended a refusal, stated following:

*“The proposed method of reclaiming the site involves the import and disposal of a substantial amount of waste materials: the cited health and safety considerations in support of the infilling of the remaining voids are not accepted as justifying the significant waste element. The case made by the applicant that there is an identified shortage of space for the disposal of inert waste in the area is also not accepted.*

*The site could be satisfactorily restored for an agricultural and nature conservation after-use, and achieve the health and safety aims without the need to import waste material or with significantly less material to what has been proposed.”*

Following the publication of the report, the applicant requested that the application be removed from the agenda in order that it could address the areas of concern at the time.

The Committee at that time agreed that its consideration of the item could be deferred.

In the course of liaison between the applicant and the Council, it was discovered that at the time of the original submission, some of the owners and occupiers of the land affected had not been served with notices under Article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). In light of this, it was considered to not be determinable by the Council.

The applicant has submitted this new application and served the relevant notices on the owners and occupiers of land affected, as required by the DMPO.

### **Proposed Development**

The application indicates that the purpose of the proposal is to restore the site to a state, which would enable beneficial uses of the land and, in so doing, address concerns regarding the health and safety implications of leaving the site in its current condition. The importation of 231,000 tonnes of inert waste plus soil forming material over three years would enable the site to be re-profiled by the infilling of the lagoons and creating a twin plateaux profile with a perimeter drainage ditch. The proposed works would remove the water features from the site. Most of the site, apart from a few patches, would be covered in soils enabling the development of a grass sward.

Access for the development would be along Frithwood Lane (approximately 1km in length); the unadopted single-width access road, which runs west and south-west from the A616 Mansfield Road to the south-east corner of the main site.

The application states that operations would involve:

- Demolition, crushing and burying of the remaining lagoon outfall structures.
- Creation of internal haul roads.
- Perimeter drainage.
- Infilling from the south-west corner to the south-east corner before turning northwards up the site.
- Materials to be tipped in layers of less than 1m and then compacted.
- Areas of scrub and immature trees along the northern boundary to be removed.
- Compensation planting
- Placing of sub and top soil on final levels to create a suitable medium for grass growth.
- Installation of offices and welfare facilities in the north-east corner of the site.

- Storage of soils in the north-east corner and possible screening of incoming inert waste if required.
- Restoration of the land to beneficial uses.

The application states that waste would arrive, on a campaign basis, at the junction of the A616 and Frithwood Lane from both directions and would then continue along Frithwood Lane, crossing over the railway bridge, to the storage area of the site. The anticipated number of deliveries is stated as being a maximum of 40 per day, involving the use of a range of delivery vehicles from dump trucks to articulated lorries. The access road would be provided with 6 passing bays to avoid conflict with passing vehicles, horse riders and walkers. The applicant has requested the following hours of working:

- 0800 hours to 1800 hours Monday to Friday.
- 0800 hours to 1300 hours Saturdays.
- No working on Sundays or public or bank holidays.

The application is accompanied by an Environmental Statement (ES) which considers the issues of ecology, transport, hydrology and drainage, landscape, visual impact, noise, air quality, interaction of impacts and cumulative impacts. The main assessment and conclusions of the ES are addressed in the 'Planning Considerations' Section below but, in summary, it states that there are no environmental barriers to the proposal with no significant short, medium or long term harm and with potential for long-term benefits in terms of landscape, visual impact, drainage and biodiversity.

The original application (Code No CW5/1116/71) was not determined by the County Council as, in the course of preparation of a second report taking account of additional material including further environmental information provided by the applicant up to November 2017, it was discovered that at the time of submission an owner of some of the land affected had not been served with a notice under Article 11 of the DMPO. In light of this, the application was considered by the Council not to have been duly made, and the applicant withdrew it.

The applicant subsequently submitted this application, having served the relevant notices on the owners and occupiers of land affected as required by the DMPO.

A comparison between the current application (Option C) and that previously submitted proposal (Option A) is briefly summarised in the table below:

		<b>Option</b>	
	<b>Comparison value</b>	<b>A</b>	<b>C</b>
1	Total tonnage (assuming 1.5t/m <sup>3</sup> )	150,000	231,000
2	Duration of development (years)	3	3
3	Annual Quantity (tonnes)	50,000	77,000 up to max of 112,000 per annum
4	Max daily vehicles	40	40
5	Max weekly vehicles (5.5 days/week)	Not specified.	220
6	Landform	Single plateau.	Twin plateaux north and south – higher than Option A in north due to retention of lagoon wall and lower than Option A in south.
7	Cost	High negative residual cost.	Neutral.
8	Changes to ecological situation	<p>Annual beard grass accommodated in swales.</p> <p>Small areas left for ground nesting birds.</p> <p>Other ecological benefits.</p>	<p>A greater percentage of the existing vegetation is to be retained in situ, including the retention of the east-west bund in the middle of the site.</p> <p>No change.</p> <p>Single larger area is more likely to be colonised/used.</p> <p>No change.</p>
9	Noise		Reduced level in southern area of site has potential for reduction in noise impact on local residents due to shielding by perimeter vegetation. Shorter duration of works in southern area.
10	Air Quality		Reduced level in southern area of site has potential for reduction in dust impact on local residents due to

			shielding by perimeter vegetation. Proposed shorter duration of works in southern area.
11	Rights of way and recreational access	Provision of passing places along access road.	Same provision of passing place but in addition, the creation of a permissive footpath at the eastern side of the site to allow connectivity with the new development to the north of the application site.
12	Reduction in anti-social behaviour	Yes.	No change.
13	Removal of derelict, unsafe site and return to beneficial use	Yes.	No change.

### Consultation Responses

This application has been subject to consultation and publicity. Where consultation responses and public representations have not been received in response to this consultation, but were received in response to the consultation on the original application, the previous responses are referred to.

### Local Member Comments

Councillor McGregor agrees with the comments of the Parish Council in the general points that it raised. Councillor McGregor raises concerns about highway safety and access, and considers that the entrance to Frithwood Lane should be widened; traffic measures should be looked at, signage should be installed to the entrance to Frithwood Lane from Wood Lane to prevent lorries entering the site from that direction. He also raised concerns about the routing of vehicles through Creswell village from the A616.

Councillor McGregor would only support the application if the following conditions/requests were accepted. "Work on the site should be restricted to Monday to Friday 0900 hours to 1700 hours and no bank holiday working to reduce noise disturbance; the installation of a wheel wash;" and the installation of fencing to protect the amenity of the residents closest to the site. Councillor McGregor commented that there would be noise from lorries and machinery at the site and dust, which are a cause of concern for the residents as this is a very quiet environment at the moment. The nature of the waste to be deposited at the site is also of concern and requires clarification as to what would be allowed, how it would be monitored and recorded for the public to see and feel secure that there is no hazard to health. Councillor McGregor also commented that the railway bridge over which lorries would have to



travel, is on the Robin Hood Line and this would require approval from Network Rail.

Councillor McGregor has also requested that, in the event planning permission is granted, consideration is given to the establishment of a Liaison Committee.

### **Bolsover District Council**

No planning objection to the proposal.

The Environmental Health Officer (EHO) expressed concern about the air quality assessment but accepted that the proposal could be adequately controlled by the prior approval, and implementation, of a Dust Management Plan. The applicant's preference for dust management requirements to be provided within a Construction and Environmental Management Plan (CEMP) is acceptable to the EHO.

Concerns were also expressed about the assessment of potential contaminants that may be present in the site but the EHO concluded that, as the intention is to infill the lagoons and restore the site to agricultural and ecological based uses, the main concern is the condition of the site after the deposit of inert waste and how it is restored. In order to ensure the development could be undertaken in an appropriate and environmentally acceptable manner, the EHO recommended the imposition of conditions relating to the provision of a full risk assessment, a comprehensive remediation strategy and contingency arrangements in the event that unexpected contamination is encountered during the development.

The EHO commented *"We have spoken to the consultant concerned regarding our comments and they have agreed that it would be more appropriate to use a limit of 55dB for this development. I note that the consultant acknowledges that this may be challenging for the applicant to achieve when including the noise from the neighbouring development. It would be in the interests of the applicant to consider the two sites in parallel and consider mitigation measures wherever possible,..."*

Even with the revised noise limit, the EHO considered that there will still be a significant impact on the local community and encouraged consideration of all forms of mitigation to reduce noise as much as practicable. The EHO made recommendations for conditions including the hours of operation at the site and recommends that no deliveries or unloading noisy activities should take place before 0800 hours.

### **Elmton with Creswell Parish Council**

Expressed concerns about the adequacy of dust and noise controls, vehicle wheel washing facilities, traffic through Creswell village and weight of vehicles

using Craggs Road, the need for improvements to the site access and the lack of clarity about the nature of the materials to be used for infilling.

**Environment Agency**

No objection.

**Natural England**

No objection but provided advisory information.

**Network Rail**

Network Rail initially provided a Holding Objection pending further information regarding the structural integrity of the existing rail bridge.

Network Rail did not object in principle, but it expressed concerns regarding the integrity of railway infrastructure based on the information provided. There is a need to establish whether the bridge has sufficient load capacity for the vehicles proposed, review vehicle containment measures on the bridge/ approaches and improve the surfacing to facilitate the volume of vehicles. Until a full inspection of the bridge has been made, then it is unable to confirm if the bridge is able to take the volume of lorries and loads proposed.

Planning Conditions were suggested in order to protect the integrity of the rail installations in the vicinity, thus ensuring the safety of the railway. These include provision of a drainage strategy and Method Statement, including impacts upon the railway, for submission prior to commencement on site and to be approved by the Mineral and Waste Planning Authority in conjunction with Network Rail.

Following further meetings with the applicant, Network Rail withdrew its objection in May 2018, subject to appropriately worded planning conditions and informatives.

**Bolsover Countryside Partnership**

The Partnership considers that the Archaeological Way project would be significantly impacted on by the proposed development. The aim of the Archaeological Way project is to create a largely off-road, multi-user trail between Pleasley Pit Country Park and Creswell Craggs as part of the Derbyshire-Nottinghamshire Strategic Trails Network. The Partnership indicates that the preferred route for the trail runs along Frithwood Lane.

The Partnership notes that Frithwood Lane was restored in the early 2000s and has since then been used by horse riders, cyclists and walkers. It anticipates conflict between the enjoyment of these users and deliveries by lorry of material along Frithwood Lane for infilling, and these deliveries is being a further source of damage to the condition of the lane.

**Derbyshire Wildlife Trust**

Regarding the information submitted with the previous application, the Derbyshire Wildlife Trust (DWT) noted the intended after-uses but indicated that it was not possible to provide comprehensive comments as the submitted application did not include a final restoration layout showing the location and extent of habitat types that will be required to mitigate and compensate for the adverse ecological impacts of the proposal. The DWT indicated that the ecological surveys undertaken for the proposal were inadequate and that the ES had underestimated the ecological value of the site. The DWT substantiated these comments with the benefit of information it held or had access to, providing examples to support its views by indicating the species known to be present on the site and their importance in ecological terms.

The DWT commented on the adverse impacts relating to the loss of certain species, the loss of open water features and native hedgerows, although it was acknowledged that the proposal made provision for new hedgerow planting. It recommended the inclusion of specified conditions in the event that planning permission were to be granted to ensure adequate mitigation measures were applied and to deliver a long term management plan which was considered essential for the benefit of biodiversity interests.

In response to supplementary information, DWT welcomed the provision of a Landscape and Ecology Management Plan (LEMP). The DWT considered that a 25 year based plan would be more appropriate than a 10 year one but the provision for 5 year reviews is welcomed and considered acceptable.

The DWT considers that the LEMP does not maximise the biodiversity potential of the reclamation scheme but considers it to be an appropriate base model for further consideration and that the outstanding issues could be resolved by the inclusion of an appropriate condition.

DWT has considered the revised information and noted the amended plans relating to Option C, which offers potential for greater ecological benefits.

DWT considers that while the decision not to reintroduce a permanent water body into the restored landform is disappointing, the creation of small seasonally wet hollows within the proposed bare ground area within the centre of Core Area C is welcome along with ditches and swales as part of the attenuation system at the southern end of the site.

It is also of the view that the creation of a single large area of bare ground in the centre of Core Area C offers greater potential for ground nesting birds than the earlier scheme under Option A which included the creation of 10 areas of bare ground randomly located within the central area.

Overall, DWT consider the amended plans provided as Option C to be acceptable and concur that the option allows for a greater percentage of the existing vegetation to be retained.

### **Severn Trent Water**

No objection subject to the inclusion of an Informative relating to sewer connections.

### **Highway Authority**

No objection subject to conditions and informatives. Conditions relating to junction improvements, passing bays and a Construction Traffic Management Plan to include a routeing agreement were recommended.

### **Lead Local Flood Authority**

The Flood Risk Assessment (FRA) for this site has demonstrated that soakaways would be a suitable means of disposing of surface water.

It is proposed that surface water is managed across the site in two catchments and attenuated via a series of interception ditches and swales before being discharged into an infiltration basin in the northern catchment and an infiltration trench in the southern catchment. It is proposed that there is no discharge of surface water from the site. The surface water will infiltrate into the ground via the ditches, swales and infiltration ponds.

The Flood Risk Management Team recommends a planning condition relating to sustainable drainage scheme to be agreed prior to installation.

### **Coal Authority**

The Coal Authority confirmed that the proposal does not raise any issues within the terms of its remit.

### **Derbyshire Police - Designing Out Crime Officer**

No objections but recommended that the site boundaries and access points be secured to discourage anti-social behaviour.

### **Publicity**

#### **Planning Application Reference CW5/0218/89**

This application has been advertised by site notices on 20 March 2018, press notice on 23 March 2018 in the Worksop Guardian, as well as neighbour notification to nearby residential properties.

No representations in specific response to the new application other than that from the East Midlands Butterfly Conservation (EMBC) have been received. The original application (planning reference CW5/1116/71) was first advertised by press notice (Worksop Guardian), site notice and neighbour

notification with a request for comments by 13 February 2017, and was further advertised by press notice, site, and neighbour notice following the receipt of subsequent information, with comments requested by 2 June 2017.

In response to that publicity, seven representations were received, five individual representations, a representation on behalf of ten residents and a representation from the EMBC. The main points raised in those representations are summarised below:

- No reason for dumping in the old lagoon site. They are man-made lagoons raised above ground level that could be graded and landscaped without the need for filling.
- No information on the source of the waste.
- Concerns about the type of waste to be deposited at the site and who would be responsible for monitoring.
- Noise disturbance to residents. Concerns about the applicant's noise assessment report and requests for acoustic fencing to be erected.
- Concerns about work starting at 0700 hours.
- Concerns about dust.
- Concerns about lorries accessing Frithwood Lane from Wood Lane and need for signage.
- The stability of the bridge over the Robin Hood Line on Frithwood Lane.

The EMBC has expressed concerns about the impact of the development on butterfly populations. It commented the wider colliery area supports a number of key butterfly species, including Lowland Derbyshire Biodiversity Action Plan (LDBAP)/Natural Environment and Rural Communities (NERC) Act 2006 species of principal importance. EMBC is concerned that the local population at this site has not been formally established through site survey.

## **Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In relation to this application, the relevant policies of the development plan are contained in the Derby and Derbyshire Waste Local Plan 2005 (DDWLP), the Derby and Derbyshire Minerals Local Plan 2000 (DDMLP) and the saved policies of the Bolsover Local Plan (BLP). The National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG), the Waste Management Plan for England (WMPE) and the National Planning Policy for Waste (NPPW) are also material policy considerations.

## **National Planning Policy Framework**

The NPPF provides guidance on material considerations in the context of determining planning applications. It states that the purpose of the planning

system is to help deliver sustainable development and adds that there should be a presumption in favour of sustainable development. The term sustainable development is not defined as such, but is said to have economic, social and environmental aspects. The economic aspect is to provide sufficient land for the right type of development, in the right place at the right time. The social role is to support strong and vibrant communities by providing for the needs of the community whilst fulfilling the environmental role of protecting and enhancing the natural, built and historic environment. The relevance of the NPPF is enhanced where the existing local plan is out of date.

### **National Planning Practice Guidance**

The NPPG does not contain specific waste policies, but it does repeat the message of the NPPF that the main purpose of the planning system is to deliver sustainable development to support the needs of society. It does, however, provide practical guidance on many potential environmental impacts, such as noise and dust impacts, which are of relevance to this proposal.

### **Waste Management Plan for England, December 2013**

The WMPE sets the agenda for working towards a more sustainable and efficient approach to resource use and management. It provides an analysis of the current waste management situation in England and evaluates how it will support the implementation of the objectives and provisions of the Waste Framework Directive.

### **National Planning Policy for Waste, October 2014**

The NPPW sets out detailed waste policies and should be read in conjunction with the NPPF and the WMPE. It is intended to support the main objective of the WMPE as referred to above. It states that local waste plans should ensure that the need for waste management facilities is considered alongside other spatial planning concerns, recognising the positive contribution that waste management can bring to the development of sustainable communities. It reinforces established Government waste policy of driving the management of waste up the waste hierarchy whilst stating that local planning authorities need to ensure there are sufficient opportunities to meet the identified needs of the area.

When assessing the suitability of sites for waste management uses, it advises that account should be taken of the physical and environmental constraints on development, including existing and proposed neighbouring land uses and the cumulative impact of waste facilities, although it does advocate the co-location of facilities where appropriate. When assessing planning applications, it states that waste planning authorities should consider the likely impact on the local environment and amenity using the criteria set out in the document. It further advises that account should be taken of the advice of the appropriate body concerning the potential impact on health and that they should ensure that

facilities are well designed so that they contribute positively to the character and quality of the area in which they are located.

### **Derby and Derbyshire Waste Local Plan**

The most relevant policies of the DDWLP are:

- W2: Transport Principles.
- W5: Identified Interests of Environmental Importance.
- W4 Precautionary Principle
- W6: Pollution and Related Nuisances.
- W7: Landscape and Other Visual Impacts.
- W8: Impact of the Transport of Waste.
- W9: Protection of Other Interests.
- W10: Cumulative Impact.
- W11: The Need for Landfill.

The objective of the Plan is to ensure the delivery of a sustainable waste management system with sufficient capacity and of the right types to meet the waste arisings in the Plan area. These policies seek to ensure that this objective is fulfilled with adequate facilities on the right site and in the right locations where the waste management operations would not give rise to unacceptable impacts on the environment, local communities and the economy of the area.

Policies W8, W9, W10 and W11 of the DDWLP are of particular relevance for the assessment of this proposal. Policy W1b states that waste development will be permitted if the development would help to cater for the needs of the local area, as part of an integrated approach to waste management. This policy is now felt to be less relevant to this proposal because its disposal by landfill element is designed to provide the landform proposed for the remediation of the site. Policy W8 deals with the general environmental concerns which proposals for waste development may raise. Policy W9 protects related interests which are more of economic or social, rather than environmental value to the community. Policy W10 protects communities from the harmful, cumulative impacts of development which can sometimes occur. Policy W11 is against permitting development for waste disposal by means of landfill, unless it is essential to satisfy a need to dispose of locally generated waste which will not otherwise be met and unless any material harm would be outweighed as being necessary to restore land for beneficial use, to improve land for agriculture, to achieve farm diversification or to improve ecology.

### **Bolsover Local Plan**

The saved policies of the BLP which are of relevance to this proposal are:

- GEN1: Minimum Requirements for Development.
- GEN2: Impact of Development on the Environment.

GEN11: Development Adjoining the Settlement Framework Boundary.  
ENV3: Development in the Countryside.

With regard to the emerging Bolsover District Local Plan Policy, policy ITCR2 in the consultation draft (p156) is of some relevance so far as weight can be attached to it, since Frithwood Lane is included in its protection as part of the Strategic Green Infrastructure Network.

### **Assessment of the Proposal**

The application was accompanied by an ES and the assessment of the relevant issues below follows the order, as set out in that document. During the processing of the previous application, the applicant submitted further information in support of that application including ecology, landscape matters, additional justification for the need to import the amount of inert fill and an updated non-technical summary. This application considers all the previously submitted information. In order to set the context for the assessment, it is appropriate to identify the main issues pertinent to the determination of this proposal.

The following BLP policies, GEN 1 and GEN 2 list the principles which the local planning authority follows as basic criteria against which all development proposals are assessed. These policies effectively provide the starting point for the consideration of all development proposals. Other relevant policies in this case are GEN 11, which seeks to minimise the visual impact of development on the countryside, and ENV3, which seeks to restrict development in the countryside to that which is necessary, sustainable and without providing any harm to the rural environment.

GEN 1 identifies the minimum requirements for development. These include parking and manoeuvring space, safe access, local highway network, landscaping, and health and safety requirements. GEN 2 sets out 21 criteria based policies relating to the impact of a development on the environment.

The stated aims of the proposal are to remediate an unrestored mineral spoil tip, historic drained coal mining surface lagoons with the provision of a new, beneficial after-use, whilst also removing a health and safety hazard. It is described as a proposal that would remove an unsightly man made feature from the local landscape and, in this regard, it would help to reduce the adverse legacy of the historic coal mining industry of Derbyshire.

The foremost issues for consideration relate to how the reclamation would be achieved and the consequences of carrying out those works on the environment and local communities, as well as the public benefits following restoration.



The Supporting Statement states that the site does not have any beneficial use at present and is subject to trespass by dog walkers and motorcyclists. The applicant, as landowner, is also concerned regarding the health and safety of the public and animals entering the site and becoming adversely affected by the former mining lagoon sediment which is of an unstable nature on the site. It adds that the area has previously been the subject of some reclamation works within the restrictions allowed by “Permitted Development Rights” but that the proposal seeks to move forward that work to deliver appropriate and beneficial new uses.

The alternatives considered included a more limited volume of imported material and ‘do nothing and leaving the site as it is’.

The proposal described in this application (“Option C”) has been arrived at having first considered the potential and possibilities for reclaiming the site by other means, such as a more limited volume of imported material and amending the contours of the site in general by moving around the material already on site, which would be consistent with the works undertaken to date, and on other tips in the area.

The previous application proposed the importation of 150,000 tonnes of inert material. Following closer analysis of the costs of the reclamation the applicant considered that the original proposal of 150,000 tonnes importation of inert material would be a financial burden. The proposal which this application is based is stated by the applicant to be cost neutral, financial viability is a relevant issue in this case. Therefore some weight may be attached to the development being represented as “cost neutral” as part of the balance of considerations. There is a widely recognised need that the site should be appropriately reclaimed to enable beneficial use. The amount of imported material proposed is more than would be physically necessary to achieve a reclamation of the site. A waste depositing operation is generally only regarded as “waste recovery” to the extent that the amount of waste being imported is required for the restoration of the site concerned; additional volumes of waste beyond what was to suitably restore the site could be regarded as waste being disposed of rather than recovered.

The Supporting Statement with the current application describes why reclamation Option C has been chosen by the applicant and explains how under this option 231,000 tonnes of inert waste and an unspecified volume of soil would have to be imported to deliver the proposed restoration landform. The current proposal would provide a two plateaux scheme which would be more beneficial, visually and in minimising noise from the workings, than the single plateau scheme under the original proposal.

The Supporting Statement also claims that there is a local need for inert waste disposal which the proposal would serve due to the lack of available

alternatives within a 10 mile radius. It refers to landfill facilities in the area as being not for inert waste, no longer having an appropriate permit or being historic. It is accepted that the number of small landfill facilities in Derbyshire as a whole has declined in recent years, but this mirrors the national situation and reflects the move away from landfill as a major form of waste management. The northern part of Derbyshire is served by the Erin Landfill Site (located approximately 8km to the west of the application site), which is permitted to accept inert waste and has a large void space. Further to this there is also a new inert waste recycling facility at the Magnet Business Park, Barlborough.

There is no shortage of authorised landfill capacity in the locality. However, the inert waste material, that would be tipped in this case, would in part be waste “recovered” rather than “disposed of”.

As the Supporting Statement recognises, national waste policy refers to treating waste as a resource as part of a sustainable approach to resource management. The proximity principle is also an important element of sustainable waste management.

The Council supports waste recovery and encourages the recovery of waste rather than its disposal. It is acknowledged that remediating and restoring mining legacy features that remain today can provide environmental improvements. The Council is keen to ensure that waste materials are used to replace non-waste materials to achieve a beneficial outcome in an environmentally sound manner.

The previous application detail fell short of providing evidence for justifying how the tipping of waste material proposed under it would be “waste recovery” The normal benchmark figure for testing what waste recovery there may be is the reasonable minimum amount of material (whether waste or otherwise) that is required to meet the relevant objective (which in this case is achieving an appropriate and acceptable final landform).

However, there would be benefit in the reclamation the former colliery lagoons site to achieve a final landform for a beneficial new use for agriculture/ amenity.

The Officer assessment of the original proposal, for the report to Committee on the first application in June 2017, was constrained by the fact that the amount of waste then proposed to be imported was not supported by any reasoned justification. The applicant has more recently provided some reasoned justification in financial terms, in respect of the amount of waste now proposed to be imported.

### Additional information

The applicant has provided further information in the form of cross sections for three separate options, and a further technical report (LEMP). The applicant provides the following amplified comment:

*“In the event that the restoration does not take place the lagoons will gradually fill with water again and present the same hazard that has been removed by pumping. Capping will prevent this effect from recurring.*

*The return of the site to an unrestored state presented a dangerous liability for the applicant and prompt action was taken to pump out the remaining water, remove concrete structures and push in the walls of the lagoons over the sediment in order to reduce the risk of harm to humans and animals. The owners of the site wish it to be returned to a beneficial use which is the state in which it should have been returned. It is considered to be a material consideration that the owners should be able to realise a cost –neutral solution to this problem.*

*The current state of the site acts to encourage repeated, severe anti-social activities such as lighting of fires, the abandonment of stolen vehicles, damage to the fencing and theft of plant which combine to create new hazards on a regular basis. The time and effort of the emergency services is needed to combat some of these events and their time is, therefore, not being used productively.*

*The future receipts and costs cannot be predicted with absolutely certainty but the applicant has used their knowledge of operating similar sites and machinery, as well as aspects such as security and planting costs, to establish that an importation of 154,141 m<sup>3</sup> will deliver a cost neutral result over a period of three years.*

*The creation of both the more pleasant environment and the permissive connecting path will contribute to the attractiveness of the area and the availability of the countryside to local residents. The adjacent development is coming forward and provides an element of urgency to getting this application site restored. In doing so the public liability risk for the applicant is diminished.”*

The cost of any satisfactory restoration on the site is not insignificant. According to the applicant, having reviewed the costs to make the proposal cost neutral and reconsidered what cut and fill is feasible on site, it has been found necessary to increase the proposed importation of inert materials. As part of the further supporting information for the “waste recovery” development, the applicant has submitted further information relating to the condition of the site. It has found that some cutting and filling as it proposed originally on the northern area would not be feasible, because it would disturb gelatinous sediment that accumulated in the six former lagoons there. This is

because sediment has been left in place within the northern area by the immediate remediation work which eliminated those lagoon voids.

The difference between the quantities of material proposed to be imported as opposed to the minimum required (to satisfy the waste recovery test) is uncertain. On the face of it, the proposed quantity it appears to be more than is necessary to achieve an acceptable restoration land form. The applicant claims that carrying out the restoration with less imported waste material would not be cost neutral and may not be progressed other than satisfying the need to fill for the stated health and safety reasons of unauthorised entry onto the site by the public.

The development would provide public benefits by removing a mining legacy safety hazard and by enabling the land to be brought back to an appropriate [agricultural] after-use.

The proposed importation of more waste means that more material would be involved in providing the final restoration land form. Your reporting officer is generally satisfied that the new proposed restoration details are not unacceptable, subject to conditional control allowing final details to be agreed with the Mineral and Waste Planning Authority. It is acknowledged that the landscape restoration would achieve benefits in the longer term.

The proposed scheme would deliver an improved landform with a range of broad habitat types configured into a manageable arrangement that would sit comfortably within the framework of the surrounding landscape character as described in the Landscape and Visual Impact Assessment (LVIA). Two field compartments are suggested which would be managed as a range of grassland habitats, including some bare ground in the less visible parts with the other area managed as scrubby grassland. The boundary between these two compartments would see the rationalisation of the existing woodland blocks enclosed by further hedgerow planting. The southern area, being less visible, would have greater scope for a range of habitat types. These details are capable of being agreed by a suitably worded planning condition should planning permission be granted.

The land between the site and the Creswell village is being developed for housing at present and this site presents a negative backdrop to the development(s) and Creswell area overall.

However, the application is not promoting the facilitation of some future development; the proposed after-use is for agriculture and nature conservation.

Subject to appropriate environmental control the restoration of the site is a benefit visually and will remove the safety hazards that currently exist by the empty lagoons and other remaining mining legacy materials.

## **Ecology**

The site is already of some nature conservation interest having, in part, naturally regenerated over the years.

The Ecology chapter of the ES was originally provided for the original proposal under application reference CW5/1116/71.

The Ecology chapter of the ES identifies that the site supports a number of habitat types including grassland, woodland, scrub and hedgerows, open water and open habitats, and identifies several notable species found on site. Despite this, the ES concludes that the site has little ecological merit overall, based on a number of site surveys carried out over several seasons.

Nevertheless, the surveys recorded sightings of Woodlark, including young chicks on site. Woodlark is a rare bird in Derbyshire and one which has not previously bred within the County. The surveys also revealed the presence of some rare grass species, particularly annual beard grass, on site. The ES suggests that both woodlark and annual beard grass should be considered of county-level importance for ecology. In addition, it was noted that bats may be using the site for foraging but no roosts were recorded. A single grass snake was the only reptile found on site.

Five bird Species of Principal Importance for Conservation were recorded on site, including Barn Owl and Woodlark. The ES states that the Barn Owl was seen coming out of one of the old buildings on site but this has subsequently been demolished following a fire. The surveys noted the presence of designated wildlife sites in the general vicinity. Overall, the grasslands, bird community, and invertebrate populations are considered of local interest and other assets, such as woodland, hedgerows, bats, and reptiles, are considered important at the site level only.

It is acknowledged that the site is a man-made feature in the landscape created from waste materials deposited by the coal mining operation. Such sites, however, introduce different materials to the site surface and, left undisturbed over enough time, can generate conditions for important and valuable fauna and flora. The information provided by DWT confirms this to be the case at this site. This is also referred to by the EMBC.

The proposed development would result in the loss of some important habitats; parts of the site are described as 'Open Mosaic Habitats on Previously Developed Land', which is a Habitat of Principal Importance. The overall acceptability of it in ecological terms is stated as being dependent

upon the implementation of the mitigation and compensation measures set out “in the ES”. It is difficult to fully assess this conclusion since some relevant measures, including an illustrative masterplan, were absent from the ES at the time of the original application.

The submission of a LEMP (for the reasons set out in the Landscape and Visual Impact section) provided additional information, but it was inadequate as a comprehensive site specific ecology document in its own right.

The Council's Ecology Officer and the applicant's ecology advisors have liaised accordingly and it is now accepted that a further revised LEMP would be need to be submitted should permission be granted. In principle, the broad objectives of the LEMP are supported, and it is considered to be an appropriate outline of the overall site management proposals in terms of the ecological mitigation measures to be provided and the habitat enhancements to be delivered. However, in order for this document to fully deliver its objectives and provide the Authority with the assurances required, it would be necessary, if planning permission is granted, to include a condition requiring the submission and approval of a revised LEMP.

I am satisfied that, in principle, the proposed mitigation measures could be satisfactory, subject to further details and appropriate implementation.

The development would deliver some ecological benefits after completion at site level and potentially positive benefits for Woodlark and plant species at County level, but this would be dependent on their relative success and overall, I am of the view the ecological benefits of the scheme are relatively minor.

The site is located in an SSSI IRZ, however, the SSSI is geographically isolated from the site and it is considered unlikely the development would have any significant impact on these features.

Appendix A - Addendum to ES states that with regard to ecological impact the Ecological Impact Assessment (EclA) states that there will be negative impacts during the tipping phase (habitats, some plants, invertebrates and bats) but no negative impacts after the tipping phase, invertebrates and plants will be neutral, bats will be positive.

Following liaison with the applicant's ecology advisors it is now considered that the submission of a revised LEMP and CEMP, if necessary (if not contained in the updated LEMP), can be secured by planning conditions. The conditions should provide for implementation of all mitigation and compensation measures proposed in the ES Ecology chapter. The submission for approval of a revised LEMP would provide an opportunity to optimise habitat management proposals, increase the prominence of site specific

management activities (both in construction/restoration and post restoration phases), include revised habitat plans consolidate woodland and scrub planting, rationalise Open Mosaic Habitat (OMH) and compartmentalise the site further, and clarify management proposals for the OMH areas and grassland areas.

As at January this year, the Conservation and Design (Ecology) officer had residual issues with the original application relating to the LEMP. The LEMP had already been revised (Revision B dated 7 September 2017) to take account of the previous officer concerns and comments.

Dialogue between DCC and BSG Ecology (ecologist on behalf of the applicant) took place, in which BSG (Ecology) sought clarification regarding the LEMP (Revision B), and provided comment on the issues which needed to be addressed to render the LEMP acceptable by DCC.

These revisions had not been incorporated into the LEMP by the time the current application was submitted. In the absence of these revisions, the officers' previous comments, both the joint comments from January 2018 (landscape and ecology) and the comments from December 2017 (ecology), remain valid, in respect of the current application. However the outstanding revisions can be secured by condition if necessary.

With regard to the EMBC response, the latest reply (12 March 2018) essentially repeats and reiterates its comments that were made in respect of the original application (March and May 2017).

These are summarised as:

- Identifying that the 'wider colliery area' supports 'key butterfly species' including dingy skipper and small heath (both 'species of principle importance'/( UK Biodiversity Action Plan (UKBAP) species), common blue and (probably) brown argus.
- Suggesting that without specific butterfly surveys it was not possible determine the value of the site for invertebrates or the significance of impacts.
- Suggesting the LEMP should make specific reference to and provision for those butterfly species.
- Suggesting the restoration should provide OMHs including the food plants for the key butterfly species.
- Proposing planting of disease resistant elm (for white-letter hairstreak) and alder buckthorn for brimstone butterflies.
- Proposing specific butterfly monitoring following restoration and beyond.

The points raised by EMBC have merit but to date, have not been addressed by the applicant. One key issue is the potential need for butterfly surveys. The

application document (in particular the ecology section) acknowledges the presence of those key invertebrate species referred to by EMBC and proposes that sufficient habitat will remain on site and in the surrounding area throughout site working to ensure the persistence of those species. Furthermore, the site restoration, habitat creation and forward management should, subject to appropriate planning conditions, be capable of ensuring suitable butterfly habitats are recreated and retained on site in the longer term, such that the impact on these species is addressed.

DCC and DWT have previously accepted this approach. Consequently, it is considered that the impacts on these species will be fully addressed through site restoration.

Minor modifications of the restoration and LEMP proposals could better meet the needs of these invertebrate species.

The outstanding points raised by EMBC are:

- *That the LEMP should make specific reference to and provision for those butterfly species.* This can be addressed through the LEMP planning condition.
- *Suggesting the restoration should provide open mosaic habitats including the food plants for the key butterfly species.* The restoration proposed in the LEMP does include OMH; Additional requirements to be secured by condition should ensure OMH is consolidated and rationalised, with increased clarity over management and additional specific reference could be made to provision of invertebrate food plants.
- *Proposing planting of disease resistant elm (for white-letter hairstreak) and alder buckthorn for brimstone butterflies.* The inclusion of these species could be secured by condition. However, there are concerns that alder buckthorn is not common in the County, nor typically found in this landscape, whilst a number of the 'disease resistant elm' cultivars have a different form and appearance to native elm species, potentially causing landscape and visual impact. Any use of these species would have to be carefully implemented to avoid such issues and can be controlled through the proposed planning condition.
- *Proposing specific butterfly monitoring following restoration and beyond.*

The LEMP provides for long-term management, including some monitoring for certain species (Barn Owl, Woodlark, annual beard-grass, hybrid alder and willow), as well as ecological survey in year 5 and 10 to inform LEMP revisions. These provisions could be enhanced in relation to butterflies, but the rationale for doing so (yet not in relation to other species and habitats) is unclear.



Accordingly, it is considered that the proposal, given the amplification by the applicant's ecology advisors, does not raise any ecology concerns that would not be resolved through finalised ecology detailed matters being controlled via an appropriate planning condition relating to a revised LEMP and CEMP, that would satisfy national waste planning policy and accord with policy W5 of the DDWLP.

### **Transport**

The ES states that as the source of waste is unknown, the assessment focused on the access junction and access road. The assessment is based on the implementation by the applicant of a left turn only (north) out of the access road, such that all traffic wanting to head south would have to turn right onto the B6042 before heading south on the A60.

The assessment concluded that as the new vehicles would be travelling on 'A' roads with adequate crossing junctions and would not significantly increase the number of Heavy Goods Vehicle (HGV) movements on the roads, it would not contribute to a significant impact on the nearby communities. It was concluded that there would not be any delay to drivers. Whilst there was acknowledgement that there could be some impact on pedestrian delays, there would be no adverse impact on pedestrian amenity, apart from a minor increase in feelings of fear and safety for pedestrians using Frithwood Lane.

The assessment indicates the need for improvements to the sightlines at the junction of Frithwood Lane with the A616 by the removal or reduction in height of sections of hedgerows. The ES also sets out the other controls and mitigation measures that would be employed.

The applicant's agent has confirmed that taking into account the increase in tonnage brought to site by the proposal in the current application (Option C), the number of vehicle movements that would be generated by the proposal is modest and would not have any significant impact on the use and safety of the main highway network in the area. This is confirmed by the Highway Authority which also confirmed that the junction of the site with the A616 would be acceptable, subject to the implementation of the proposed improvements, passing bays and a Construction Traffic Management Plan.

### **Rights of way and recreational access**

Frithwood Lane is enjoyed by the public as a bridleway (on foot, bicycle and for horseriding, mainly recreationally). It is also required for vehicular access to the waste water treatment works and the solar farm.

The section of the lane is within the application site it would be directly affected by the development as the proposed route for access for all the development traffic to and from the A616 and, in particularly by the vehicles that would use it to deliver waste. The importation of waste material under the

proposed development via Frithwood Lane would be predicted to have negative impacts on its enjoyment and suitability for public use, and it could cause deterioration of the surface. The previous representations by the Bolsover Countryside Partnership (letter of 3 February 2017) emphasised the contribution of the Archaeological Way to the visitor economy in the local area and to how the HGV movements would have a significant impact on both existing Frithwood Lane users and its promotion as part of the route of the Archaeological Way.

The development can be anticipated to be a source of dis-benefit or harm to amenity over the duration of the development, through the general disturbance HGV traffic moving on Frithwood Lane would cause by proximity and visual appearance and emissions of noise to recreational walking cycling and riding by the public in the locality of the site. The HGV traffic pattern could also deter some recreational use by others through intimidation, albeit unintentionally. In this respect, the proposal is considered to be potentially in conflict with saved DDWLP Policies W8; the development would include significant waste disposal, and the reliance on Frithwood Lane as final leg of the waste transport route in this case, within the site area, is liable to cause some disturbance to people using or wishing to use it at the same time for recreational bridleway journeys. However the extent of this disturbance would be substantially reduced by imposing conditions to limit the vehicular delivery movements to certain hours in the day on weekdays, and to require appropriate maintenance of the surface of Frithwood Lane and signage and instructions for HGV drivers. It is considered that, with such conditions, bearing in mind the limited timescale of the development, the disturbance to people enjoying its use will be limited to a level that would be less than “significant disturbance”, so it would avoid conflict with the W8 policy, and not otherwise be intolerable.

Frithwood Lane is scheduled for improvement and promotion as an important link in the Archaeological Way” multi-user trail, which will improve public recreational access in the Creswell Crags area and help to strengthen the wider tourism economy of the area.

The development proposed would produce a significant potential dis-benefit in that it would preclude any full implementation of the improvements needed for the Archaeological Way, before Frithwood Lane ceased to be used by the heavy development traffic, due to the impacts from the traffic on its potential recreational users. Multi-user trail suitability requires the route to be well suited to a wide variety of potential types of recreational use e.g. by children on bicycles, disabled riders, and families with pushchairs. The improvement and promotion of the lane as required for the Archaeological Way as a multi user trail would might be delayed since it could not proceed before the development was substantially completed.

One of the key aims of the Archaeological Way project is to improve access to Creswell Crags in support of the proposed World Heritage Site. It is expected to contribute to the local growth of the visitor economy, particularly in supporting the promotion of the visitor economy from the North Derbyshire – North Nottinghamshire Visit. Sleep. Cycle. Repeat. (VSCR) Destination Plan [www.derbyshire.gov.uk/vscr](http://www.derbyshire.gov.uk/vscr) published in February 2018. The likely timeframe for developing the VSCR Project Area as a visitor destination is understood to be three to five years. Therefore to fit with this timeframe, the improvement of Frithwood Lane needs to be progressed at the earliest opportunity, and to be completed by 2023 at the latest.

The route will also form part of the Key Cycle Network in Derbyshire which is identified as one of the final projects within the Archaeological Way Programme, (to create an 18km multi-user trail between Creswell Crags and Pleasley Pit Country Park).

Policy W9 of the DDWLP may be relevant in respect of these multi user route issues, since it would be against development which would affect other land uses *“to the extent that it would materially impede or endanger the social or economic interests of the community”*. Under the 2005 adopted DDWLP, the text in the box guide to the sorts of interests to be protected in relation to W9 referred at 4.28.7 to local transport plans support for *“local initiatives for improved cycle and footpath networks and the restoration of waterways”*, and stated *“Adopted local plans may contain other, similar or related proposals. Applicants for waste development affecting the routes of such projects should prepare schemes which seek to assist, rather than ignore or hinder them”*. Whilst the text to the policies has not been saved, as such, to form part of the current development plan, it is considered that the considerations behind the text are still of relevance. However, if the conditions on a grant of permission in this case include a requirement to commence within 18 months (instead of the usual three years) this should bring enough control over the development timing to ensure that it would not have any material effect that would engage this policy.

The length of Frithwood Lane in the application site would need to be hard surfaced as part of the development for most of the development period, to take the volume of its HGV traffic. As part of the appropriate site restoration its surfacing should to be restored to a softer surfacing over at least part of the width, to an appropriate multi-user greenway -standard. A condition requiring this would avoid the development causing any ongoing prejudice to the promotion of the Archaeological Way as a Greenway after the development has been completed

The draft conditions below are intended to secure an acceptable overall outcome from the development in terms of its impacts on the enjoyment of rights of way and recreational access, by ensuring that:

1. The condition of Frithwood Lane in the site is maintained to an acceptable standard for bridleway users throughout the operation of the proposed development.
2. A scheme is operated to instruct all drivers of lorries travelling over Frithwood Lane for the purpose of the development to drive with particular care and attention towards bridleway users and within speed limits to be specified.
3. The Frithwood Lane in the site at the end of the development period is restored so as to meet or exceed DCC's standard multi-user trail specification (details to be agreed with DCC).

There is also some mitigation in respect of these impacts within the design of the proposal, through its inclusion of passing places along Frithwood Lane.

### **Hydrology and Drainage**

The ES states that the assessment has been informed by a formal FRA and drainage strategy which rely, in turn, on infiltration tests of the underlying geology to determine how quickly water would flow away through the karstic bedrock. The FRA concluded that the site is at low risk from flooding from external sources and that with mitigation measures to reduce surface water run-off, there is no risk of the proposed development causing flooding elsewhere.

It also concludes that the proposal would not impact adversely on the two SSSIs and undesignated wildlife sites in the area, and so no water management strategy is required for either the operational period or thereafter. It further adds that through the implementation of good site working practices and a suitable drainage strategy, the impact of the development, in terms of hydrology and drainage, would be negligible during the operational period and provide a beneficial impact in the longer-term.

It is noted that the Environment Agency has not raised any objections or concerns about the adequacy of the FRA, or the wider impact of the proposal on the water environment in the area. The Lead Flood Authority confirms that the FRA demonstrates the suitability of soakaways as an appropriate method of disposing of surface water associated with this proposal. It also considers that the proposed drainage system, incorporating ditches and swales, is appropriate in principle.

It is considered that it does not raise any issues that would result in significant adverse impacts or unacceptable impacts that could not be controlled and mitigated by appropriate conditions as recommended by consultees.

## **Landscape and Visual Impact**

It is acknowledged that the application is supported by an ES, which includes, inter alia, a LVIA, prepared in accordance with the relevant guidelines, and a LEMP.

The proposal which is addressed in the current application (Option C) would provide two plateaux, north and south, higher than was originally proposed (Option A) in the north (where Option C would retain a lagoon wall), but lower than Option A in the south.

In landscape and visual impact terms the current proposal is to be considered in the context of:

- the extent to which the proposed restoration works can be undertaken without incurring significant landscape and visual impacts; and
- the extent to which the landscape restoration proposal would assist in conserving and enhancing the landscape character of the site and its wider setting.

## **Landscape and Visual Effects**

The reporting officer considers that the LVIA correctly identifies the landscape character context of the site, recognising that it is located within the Southern Magnesian Limestone: Limestone Farmlands Landscape Character Type, as defined in the Derbyshire Landscape Character Assessment. This is a landscape summarised as *“A gently rolling, agricultural landscape, characterised by large scale open farmland, estate woodlands and limestone villages”*.

The LVIA describes the site as one of four spoil tips associated with the former Creswell Colliery and the only one yet to be re-profiled and restored. The LVIA acknowledges that the three other former tips (mounds A and C) have been restored back to pastoral fields, enclosed by characteristic hedged boundaries and now managed through grazing. The site is broadly rectangular in shape and effectively comprises an upper plateau to the north and a lower plateau to the south. The northern plateau is relatively open in character with some scattered scrub and dispersed concrete structures associated with the former lagoons. The southern plateau comprises a series of deep settlement ponds, although these are now mainly dry, since the pumping of mine water has ceased. Vegetation is a little more established in this area with scattered scrub and even more evident on the steep slope separating the two plateaux.

Development of the site will include some landscape impacts through the loss of scrub and establishing woodland within the site and through the removal of short sections of hedgerow to accommodate an improved visibility splay at the access with the A616 and passing bays along Frithwood Lane. The LVIA assesses these impacts on landscape character as negligible and potentially

beneficial in the longer term. They are not considered by the reporting Officer to be significant, overall. The landscape features affected by the proposal do contribute to the character of a hedged landscape with woodland blocks. The reporting officer is not convinced that the final landscape effects would be beneficial, or negative, given that the overall restoration of the site appears at face value to create something very similar to existing to satisfy ecological mitigation with the long-term effect assessed as to be neutral.

A Zone of Theoretical Visibility (ZTV) has been produced for the site to help identify those locations where there is potentially a view of the site. Overall, the LVIA concludes that the visual effects (from a range of visual receptors) will be slight to negligible adverse and therefore not considered significant. There will be views (open and glimpsed) from footpaths in the locality, particularly from elevated vantage points and from the southern edge of Creswell near the Model Village. The reporting Officer concurs with the judgement in the LVIA that these effects are not significant. Conversely, however, the site is visually well contained so the current unrestored site has very little visual impact on the current wider landscape character with existing self-set vegetation beginning to read as part of the wooded landscape in that locality. As a consequence, the 'do nothing' scenario is not necessarily problematic with respect to the character of the wider landscape or the visual amenity of local residents. A landscape restoration of the site would however have the advantage of helping to bring the site back into an appropriate and manageable land use.

Where adverse visual effects have been identified in the LVIA, some mitigation methods are proposed, including the strengthening of existing boundary vegetation and an area of willow planting, which should assist in reinforcing the screening potential of these areas. It is questionable whether there is even a need for this willow planting, given the overall timeframe, which in some ways compromises a sensible design for the site. This is referred to below.

The direct visual impacts associated with the carrying out of the development are limited as a result of the screening afforded to the site by existing vegetation and landform. The final landscape restoration proposals are informed by the character of the surrounding landscape character type as described in the baseline assessment in the LVIA. The aim of compartmentalising the landform of the site in the same way that the adjacent tips have been restored is supported but this has not been fully realised in the landscape plan submitted with the LEMP. The landscape restoration proposal is, correctly, affected by ecological requirements. However, the habitats (retained, translocated or proposed) are arranged in a way that could be challenging for successful simultaneous ongoing management of an organised agricultural landscape. It is unclear why Zone D has been shown as excluded from the main enclosed area. Zone D could benefit being included

in a simpler management regime so that a sharp rural-urban interface could be established which would imitate how this occurs in the wider landscape.

The County Landscape Officer has therefore suggested an alternative arrangement for the design of the tip, taking account of the broad habitat types identified in the LEMP, but reconfiguring them into a more manageable arrangement that would sit more comfortably within the framework of the surrounding landscape character as described in the LVIA. This is matter of alteration that can be required by an appropriately worded planning condition relating to a final restoration and aftercare scheme, submitted as part of a revised LEMP.

Overall the reporting officer supports a strong ecological led restoration of the site, involving the proposed two plateaux restoration profile and restoration treatment. This can be secured, and the proposal overall is considered to be in accordance with Policy W7 of the DDWLP (Landscape and Other Visual Impacts).

### **Noise**

The ES states that the noise assessment addresses that arising from the delivery of waste to the site and from the plant and machinery employed on site to undertake the works. It adds that it takes account of the worst case scenario of likely noise generation, as experienced at the nearest noise sensitive location. It concludes that traffic movements would not increase existing background noise levels. The noise experienced at sensitive locations to the south-west of the site would increase but the increase would be negligible and not significant.

The importation of materials by road vehicles, and the engineering of the site by plant and machinery, have the potential to generate additional noise in the area. However, the ES concludes that the location of the site relative to sensitive receptors in the area and the duration of the proposal are such that the impact could be mitigated and controlled, and should not give rise to any significant nuisance issues.

Overall, under the current proposal compared to the original proposal, there would be a shorter duration of works in the southern area as well as a reduced level in southern area of the site, which has the potential for reduction in noise impact on local residents due to shielding by perimeter vegetation.

The location of the site relative to sensitive receptors and the nature of the proposed works, together with the short duration of the project, are such that it is acknowledged that it should not give rise to significant noise impacts provided that the noise levels that are generated are controlled by appropriate conditions. The EHO has not suggested there are any significant concerns about this aspect of the proposal but acknowledges that unmitigated, there

would be an impact on local communities. In the event that planning permission is granted for the development, conditions as recommended would protect the local community from noise generated by the development.

It is considered that, subject to appropriately worded noise related planning condition(s), the proposed development, including the revised two plateaux landform, would in respect of noise be in accordance with Policy W6 of DDWLP (Pollution and Related Nuisances).

### **Air Quality**

The ES identifies the main potential impacts as dust from on-site operations, and nitrogen dioxide and particulate matter from plant and road vehicles. It concludes that, due to the location of the site, relative to sensitive receptors, the topography and nature and duration of the works, there would not be any unacceptable emissions of dust from the site. However, it recommends that standard 'low risk' mitigation and dust suppression be employed, with routine monitoring being required during windy conditions to ensure there are no such impacts. It acknowledges that individual dust events could occur but they would be rare, such that the overall impact would be minor adverse during the operations. Road vehicles visiting the site are not considered to have any noticeable impact on local air quality.

The number of HGV movements that would be generated by the development are considered to be insignificant set against the existing volume of traffic on the surrounding highway network and would, therefore, not noticeably deteriorate the air quality in these areas. The main potential for adverse impacts arises from the engineering type works to be undertaken on materials that could have a relatively high dust content typical of the waste materials found on colliery disposal tips.

Overall, under Option C there would be a shorter duration of works in the southern area, as well as a reduced level in southern area of the site, and shielding by perimeter vegetation has the potential for reduction in dust impact on local residents. .

The EHO considers that the ES slightly underestimates the impact of dust emissions on the area but, overall, accepts that the proposal is capable of being mitigated and controlled to ensure that they remain within acceptable limits. Appropriate conditions are recommended.

It is considered that subject to appropriately worded dust related planning condition(s), the proposed development, including the revised two plateaux landform (Option C), would in respect of air quality be in accordance with Policy W6: Pollution and Related Nuisances of the DDWLP.



### **Interaction of Impacts**

The section of the ES regarding interaction of impacts concludes that the drainage strategy would generate a seasonally wet area that would make an ideal location for the translocation of rare grass species.

### **Historic Environment and Archaeology**

The Creswell Village and Model Village Conservation Area is located to the north of the site. Although a substantial amount of earth is being moved around in close proximity to the Conservation Area, I do not consider that it is likely to have any long term negative impacts on this heritage asset.

The site comprises of tipped material from former colliery workings and there are no known archaeological features on the site.

Overall, the proposed development is considered to be in accordance with Policy W5: Identified Interests of Environmental Importance of the DDWLP.

### **Cumulative Impacts**

The ES considers the potential for impacts from the proposed development to combine with other developments that may take place at the same time. Two local housing developments were identified for all impacts issues and the ongoing extraction operations at Whitwell Quarry were identified as an additional issue for landscape and visual impact.

According to the ES there is a degree of self-containment to the proposal, relative to the other possible developments, that should avoid any significant cumulative impacts between them.

The ES takes a narrow approach to the assessment of cumulative impacts. It states, for example, that noise from the development could not conflate with any landscape impacts. This may be accurate as a simple matter of fact. However the focus on the potential for impacts from the development, to combine with those from other projects ignores the concept of simultaneous cumulative impacts aggregating from different types of impacts. It also ignores the important factor of impacts from successive developments over time in the area.

The tip is a former disposal area for Creswell Colliery which operated for a long period. It was one of many coal mines in the area and this legacy has rendered the area more susceptible to additional, cumulative impacts than some other areas. The current proposal represents further engineering and waste activity at the site, and would add to the cumulative impact of successive developments over time. In view of the time that has elapsed since the colliery was active and the limited scale of the proposed works, however, it is considered that the development would not give rise to unacceptable cumulative impacts.

Overall, it is considered that the proposed development is in accordance with Policy W10 of the DDWLP (Cumulative Impacts).

## **Other Considerations**

### **Frithwood Lane Railway Bridge**

Network Rail initially expressed a “holding objection” pending further information regarding the structural integrity of the bridge which carries the section of Frithwood Lane in the application site over the Robin Hood railway. The applicant has provided technical reports to Network Rail for consideration and Network Rail withdrew its original expression of a holding objection, subject to a satisfactory resolution with Network Rail regarding detailed matters controlled by a Grampian style planning condition.

The outcome of Network Rail’s review of Welbeck’s bridge report was that it needs to:

1. Assess that the capacity of the bridge is adequate for the usage it wants, i.e. weight and frequency.
2. Consider a need to upgrade the parapets.
3. Consider a need to upgrade the vehicle incursion protection on the approaches.
4. Consider a need to resurface.
5. Enter in to an agreement with Network Rail Property for a licence.

The applicant is of the opinion that the bridge can be used in any event for tonnages not exceeding 24 tonnes under the Railways Act. This has not been confirmed by Network Rail.

Network Rail has confirmed that it does not object to the bridleway use of the bridge.

The development can be anticipated to be a source of dis-benefit or harm to amenity over the duration of the development, through the general disturbance HGV traffic moving on Frithwood Lane would cause by proximity and visual appearance and emissions of noise to recreational walking cycling and riding by the public in the locality of the site.

- A. The HGV traffic pattern could also deter some recreational use by others through intimidation, albeit unintentionally.

However the extent of this harm would be substantially reduced by imposing a condition to limit the vehicular delivery movements to particular days and times of day.

The length of Frithwood Lane in the application site would need to be hard surfaced for most of the development period to take the volume of its HGV traffic, as part of the development. As part of the appropriate site restoration tarmac surfacing should be restored to a softer surfacing with drainage to an appropriate multi-user greenway multi user greenway-standard. Greenway suitability requires the route to be well suited to a wide variety of potential types of recreational use e.g. by children on bicycles, disabled riders, and families with pushchairs. A condition requiring this would avoid the development causing any ongoing prejudice to the promotion of the Archaeological Way as a Greenway after the development has been completed.

## **Conclusion**

The difference between the quantity of waste material to be imported, and the minimum required (to satisfy the waste recovery test) is uncertain. On the face of it, it appears that more waste than is necessary to achieve an acceptable restoration land form is to be brought onto the site. The applicant claims that the restoration with less imported waste material would not be cost neutral and may not be progressed. This will mean there will still be a need to import waste for the stated health and safety reasons of unauthorised entry onto the site by the public.

The restoration of the Creswell Colliery lagoon site, as a whole, is in the public interest by removing a mining legacy safety hazard by bringing back the land to an appropriate restoration. The site is adjoined by previously worked and restored coal mining tips (reference application CM5/1092/36 and earlier). The lagoon area was not part of this larger site which restored colliery spoil tips to the east and south of this site. These sites are now restored to agricultural after-use, as well as providing solar farm development. To the north of the site remains the remnants of the (capped) colliery site with a residential development being implemented between Creswell Model Village and the former colliery site and lagoon area.

The proposal has raised some conflicting issues. As a proposal to reclaim a former colliery tip containing lagoon voids, it would normally be strongly supported. The reclamation of such an area represents the implementation of one of the objectives of mineral planning in general and of the current DDMLP in particular. Such works help to ameliorate the adverse historic legacy of coal mining and aid the rejuvenation of the former coalfield area. In principle, such works would also accord with the overarching aims of the NPPF, particularly with regard to the potential socio-economic benefit.

In this case, however, the proposed method of reclaiming the site involves the import and use of a substantial amount of waste materials and a further unspecified quantity of soils. The application cites health and safety considerations in support of the infilling of the remaining voids but it is not

accepted that they justify the volume of the waste element which is proposed. The infilling of other voids on the former tips in the area has been accomplished by pushing existing on-site material into the voids. Following concern expressed by officers, the applicant has explained why this approach could not be used fully on this site. The applicant also seeks to justify by the scale of the waste importation proposed by reference to its assessment of cost neutrality. It involves minimising the cut and fill costs on site and supplementing this saving with the income received from the importation of more inert waste material to the site.

Calculations have been provided confidentially to support the volume of waste material that is proposed to be imported and demonstrate cost neutrality. The applicant claims that the development would be most unlikely to go ahead if it was not cost neutral and that this should be considered as a material planning consideration. Normally, cost is not considered to be a material planning consideration that would carry significant weight in the determination of a planning application. However, the proposed two plateaux landform is not considered unacceptable in design and environmental impacts associated with noise, dust, contaminated land, subject to finalising of the planning conditions. The “do nothing” approach is not the preferred option.

The applicant has not made a convincing case that there is a shortage of space for the disposal of inert waste in the area. The Erin Landfill Site at Junction 29A of the M1 motorway has sufficient capacity for well into the period of the emerging new Waste Local Plan. The suggested shortage of such void space in the vicinity of the site is also diminished by the fact that the source of waste is not disclosed. There is no evidence to show that the site would cater for an unmet need for waste arisings in the area.

Accordingly, the proposed import of a substantial amount of waste for disposal may be argued not to fulfil the objectives of the waste hierarchy. The waste imported is not the minimum required to restore but may be the amount required to make a cost neutral effective reclamation development. Reasoned justification has been provided to support the importation of such a quantity of waste material to this site. Although it is not considered that, in this case, the development is to be categorised as waste recovery and not waste disposal, on balance, the restoration of the site tips the planning balance in favour of the quantity of waste required to be imported.

The proposal is, nevertheless in the context of the policies of the DDWLP and the aims of national waste planning policy on balance, considered acceptable.

The reporting officer is of the view that the development can be made acceptable, in the context of development plan policies, and from an environmental perspective, by imposing appropriately worded planning conditions. The site could be satisfactorily restored for the stated after-use of

agriculture and nature conservation, and achieve the desired health and safety objective aims with significantly less material to that proposed and, therefore, causing less disruption and general disturbance to residential and recreational amenity. However, he concludes that the proposal, is nevertheless, also acceptable and is preferable to a “do nothing” option which without a cost neutral scheme may well result. The overriding benefits of the proposal warrant the approval of the application subject to conditions.

The promotion of Frithwood Lane as part of the route of the Archaeological Way Greenway and multi-user trail would potentially be delayed due to the development traffic having to use it as the site access until the end of the development. This is a potential dis-benefit from the proposal. However, this dis-benefit is to be considered against the other relevant considerations, including the removal of a source of danger to health and safety of trespassers and other benefits that would result from the restoration

As such the proposed development will provide wider environmental and public benefits and considered to be in accordance with policies of the DDWLP and the application is therefore recommended for approval to grant permission, subject to appropriate planning conditions as provided for in the officer recommendation.

(3) **Financial Considerations** The correct fee of £36,452 has been received.

(4) **Legal Considerations** This is an application under Part III of the Town and Country Planning Act 1990 which falls to be determined by the County Council as Waste Planning Authority.

I do not consider that there would be any disproportionate impacts on anyone’s human rights under the European Convention on Human Rights as a result of this permission being refused as set out in the Officer’s Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 5.5373.2  
Application and supporting documents from Central (M&W) Planning received as valid on 26 February 2018. Supplementary and additional information and

plans submitted from Central (M&W) Planning. Consultee responses and letters of representation.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission be **granted** subject to conditions substantially in accordance with the following draft conditions:

#### **Commencement**

- 1) The development hereby permitted shall be begun before the expiry of 18 months from the date of this permission. Written notification of the date of commencement of development shall be sent to the Waste Planning Authority within seven days of such commencement.

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

- 2) A copy of this permission shall be kept available for inspection at the site offices during the prescribed working hours for the duration of the development.

**Reason:** To ensure that the site operators are fully aware of the requirements of these conditions throughout the period of development.

#### **Duration of permission**

- 3) Waste operations (including the importation of inert waste) under this permission shall cease no later than the date which is the third anniversary of the date of commencement of development and the site shall be cleared of all plant, machinery, equipment, waste, other stored materials, and other equipment associated with the operations hereby permitted by no later than six months from that cessation of waste operations date.

**Reason:** To minimise the impact on local amenity and in order that the site is restored in the timescales detailed in the application in the interests of local amenity.

#### **Permitted Development Rights**

- 4) Notwithstanding the provisions of Part 7, Class L of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no buildings, plant structures, screening and crushing equipment, shall be brought to site without the prior written approval of the Waste Planning Authority.

**Reason:** To enable the Waste Planning Authority to adequately control, monitor and minimise the impacts on the amenities of the local area.

## Plans and Documents

- 5) The development shall be carried out in accordance with the following plans and documents:

### Documents

- 1 App form and certificate dated 8 February 2018.
- Letters dated 8 February 2018 and November 2017.
- Environmental Statement and appendices dated November 2016, as amended:
  - Revised Non-Technical Summary (NTS) dated November 2017.
  - Appendix A – addendum dated November 2017.
  - Explanatory Statement dated November 2017.
  - South Tip Restoration
  - Proposals (Supplementary Report V4) dated November 2017.
  - Creswell Interpretative Report Final dated October 2016.
  - Creswell Revised boundary DTS dated November 2015.
  - Creswell Supporting Statement dated November 2016.
  - Arboricultural report (BS4142) dated November 2016.

### Plans

- Appendix 1 to Supporting Statement - Location Plan – undated.
- PSS-170-006-007.1 - Existing Site 23-08-2017 - A1 - November 2017.
- PSS-170-006-007.2 - Proposed Landform Option C - A1 - November 2017.
- PSS-170-006-007.3 - Proposed Landform Option C Cross Sections - A1 Nov 2017.
- PSS-170-006-009.1 - Cross Section Location Plan – A1 - November 2017.
- PSS-170-006-009.5 - Cross Sections 1 to 3 through Option C - A1- Nov 2017.
- PSS-170-006-009.6 - Cross Sections 4 to 6 through Option C –A1 Nov 2017.
- PSS-170-006-009.7 - Cross Sections 7 and 8 through Option C - A1 Nov 2017.
- 001\_Passing Bay Locations ALL A01 .pdf from 1A to 1F - January 2016
- Appendix 4 to supporting statement - MAGIC.

Except so far as any contents of the documents and plans listed above are incompatible with the requirements of the conditions specified below.

**Reason:** To ensure that the development is carried out in accordance with the details in the submitted planning application.

### **Railway bridge protection**

- 6) No development shall commence until the applicant has submitted written details to the Waste Planning Authority for approval in writing regarding:
- An assessment of the capacity of the railway bridge for the proposed use (weight and frequency) by vehicles and plant associated with the development.
  - Upgrading the railway bridge parapets.
  - Upgrading the vehicle incursion protection on the approaches to the railway bridge.
  - Assessment and resurfacing of railway bridge deck.
  - Timescale for implementation of approved details and review of impact on railway bridge during the course of development.

The approved details shall be fully implemented prior to commencement of development.

**Reason:** In order that the safety of railway users, development operatives and the public are adequately addressed throughout the course of development.

### **Hours of operation and vehicle entry**

- 7) With the exception of necessary works arising from emergency situations,
- (i) no operations in the site (including movement of waste, recyclable materials, and processed materials, inert waste and equipment and deliveries from vehicles) shall take place other than between the following hours: 0800 hours – 1800 hours Mondays – Fridays and 0800 hours – 13 00 hours on Saturdays and not at any time on Sundays and Bank/public holidays.
  - (ii) No vehicles shall enter or leave the site at any time on Sundays and Bank/public holidays or at any time before 0730 hours on Mondays to Saturdays.
  - (iii) The engine of any vehicles entering the site between 0730 hours and 0800 hours must be turned off immediately following entry to the site and no tipping activities or deliveries from any vehicle shall start before 0800 hours.

**Reason:** To protect the amenity of the area.

### **Land Contamination**



### Site Characterisation

- 8) Within three months of commencement of development, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site. The contents of the scheme are subject to the approval in writing of the Waste Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Waste Planning Authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination;
  - (ii) an assessment of the potential risks to:
    - human health
    - property (existing or proposed), including buildings, crops, livestock, pets, woodland and service lines and pipes
    - adjoining land
    - groundwaters and surface waters
    - ecological systems;
  - (iv) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with the Department for Environment, Food and Rural Affairs (DEFRA) and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users and ecological receptors.

### Submission of Remediation Scheme

- 9) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment must be prepared and submitted for the approval in writing of the Waste Planning Authority within four months of the commencement of development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to an agricultural and amenity use of the land after remediation.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users and ecological receptors.

### **Implementation of Approved Remediation Scheme**

- 10) The approved remediation scheme must be carried out in accordance with its terms and conditions within six months of the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Waste Planning Authority. The Waste Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Waste Planning Authority.

**Reason:** To remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users and ecological receptors.

### **Reporting of Unexpected Contamination**

- 11) In the event that any contamination source that might be a factor in an assessment of any part of the site for potentially qualifying as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to an agricultural and amenity use of the land is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Waste Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 6 and, where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of Condition 7, which is subject to the approval in writing of the Waste Planning Authority.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Waste Planning Authority in accordance with Condition 8.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users and ecological receptors.

### **Importation of soil**

- 12) Prior to the importation of soils onto site in connection with the development, the proposed soil shall be sampled at source and analysed in a laboratory that is accredited under the MCERTS Chemical Testing of Soil Scheme for all parameters requested (where this is available), the results of which shall be submitted to the Waste Planning Authority for consideration. Only the soil approved in writing by the Waste Planning Authority shall be used on site.

**Reason:** In order that appropriate soil material for restoration is brought onto the site.

### **Scope of Development**

- 13) No waste or recyclable materials, other than soils and inert construction and demolition waste, shall be imported to the site. Only those soils that have been approved for use in accordance with condition 12) and defined types of inert waste as referred to in the application form and supporting application documents shall be imported, and they shall only be processed and stored within the site as referred to in those documents. No additional processes for the management of waste shall be carried out on the site.

**Reason:** To define the scope of the development in the interests of safeguarding the amenity of neighbouring occupiers/residents and for monitoring purposes.

- 14) No development shall take place until drawings detailing a site layout for the waste importation processing and disposal stage of the development, including soil and waste storage areas, parking spaces, and operational equipment areas, have been submitted to and approved in writing by the Waste Planning Authority. All use of the site under this permission shall be in accordance with the layout detailed under the drawings approved and the parking and storage areas shall be maintained, as such, for the duration of the development. No soil or waste storage or parking, which is outside the relevant space or area under drawings as approved, shall take place at any time.

**Reason:** In the interests of safeguarding the amenity of occupiers of neighbouring properties.

It is considered that compliance with these requirements would only be effective if the layout is found to be acceptable and approved as such, prior to the commencement of the development.

### **Import Limit**

- 15) The total quantity of waste and soil material imported and handled at the site during each annual period of the development starting and

finishing on the date which corresponds to the day on which the development commences shall not exceed 100,000 tonnes.

**Reason:** In the interests of safeguarding the amenity of neighbouring occupiers/residents, ecology in the area, highway safety and for the avoidance of any unacceptable impacts on the highway network.

- 16) The operator shall keep accurate records of the amount of inert waste and soils arriving at the site, and this record shall be submitted to the Waste Planning Authority every four months and made available for inspection by the Waste Planning Authority upon request.

**Reason:** In order to monitor compliance with the authorised waste input tonnage.

### **Access, Traffic and Highway Protection**

- 17) No vehicles shall enter or exit the site other than via the junction of Frithwood Lane with the A616 (Mansfield Road).

**Reason:** in the interests of the safety of the users of the highway and to protect the amenity of the area.

- 18) No development shall take place, other than the upgrade work referred to in condition 19), until a Construction Traffic Management Plan (CTMP) has been submitted to and been approved in writing by the Waste Planning Authority. The approved plan shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic signing or restrictions.

**Reason:** In the interests of the safety of the users of the highway and to protect the amenity of the area.

It is considered that compliance with these requirements would only be effective if the CTMP is found to be acceptable and approved as such, prior to the commencement of the development.

- 19) Prior to any other operations being commenced, the work for the inter-visibility improvement of the junction between the site entrance /exit and the A616 Mansfield Road at Frithwood Lane with shall be carried out in accordance with Drawing No CIV13711-100 WIE/DCC/00/001, including visibility sightlines of 2.4m x 134m in the southerly direction and 2.4m x 142m to the north, taken from a distance of 2.4m back from the A616

carriageway edge (measured along the centre line of Frithwood Lane) extending to a point 134m to the south and 142m to the north, measured 1m into the carriageway from the A616 nearside carriageway edge. Thereafter for the remainder of the development the area forward of the sightlines shall be kept, clear of any vegetation or other potential obstruction to visibility exceeding 600mm in height relative to the ground level of the nearside carriageway edge.

**Reason:** In the interests of the safety of the users of the highway and to protect the amenity of the area.

- 20) Prior to any other works commencing on site, the 6 passing places on Frithwood Lane shall be provided in accordance with application drawings CIV17311 – CIV/NOTT'M/06 001A, 001B, 001C revA01, 001D, 001E revA01 and 001F, laid out, constructed and maintained throughout the life of the development free of any impediment to their designated use.

**Reason:** In the interests of the safety and amenity of users of Frithwood Lane and to protect the amenity of the area.

- 20A) Throughout the carrying out of the development: the condition of Frithwood Lane shall be maintained so as to provide a surface an acceptable standard for both bridleway users and the traffic associated with the development

**Reason:** In the interests of the safety and amenity of users of Frithwood Lane and to protect the amenity of the area

- 20B) Within one month from the commencement of the development a scheme for instructing all drivers of lorries travelling over Frithwood Lane for the purpose of the development to drive with particular care and attention towards bridleway users and within speed limits to be specified under the scheme shall be submitted to the Waste Planning Authority for its approval.

**Reason:** In the interests of the safety and amenity of users of Frithwood Lane and to protect the amenity of the area

The scheme under this condition as approved by the Waste Planning Authority shall be fully complied with throughout the remainder of the development.

- 20C) Within 12 months from the commencement of development a detailed scheme for the reconstruction of Frithwood Lane during the restoration stage of the development as to meet or exceed DCC's standard multi-

user trail specification shall be submitted to the Waste Planning Authority for its approval.

The scheme under this condition as approved by the Waste Planning Authority shall be fully complied with.

**Reason:** In the interests of the safety and amenity of users of Frithwood Lane and to protect the amenity of the area

### Noise

- 21) Noise levels for the development shall not exceed 55dB (A) LAeq 1hr (free field) measured at or calculated to a position representing the boundary of the nearest noise sensitive dwelling.

**Reason:** In the interest of the aural amenity of nearby dwellings and businesses.

- 22) Prior to the commencement of development, a scheme for noise mitigation shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall provide for detailed measures that will be implemented throughout the lifetime of the development, including measures for attenuation of noise from waste processing, construction of landforms and restoration phases. The scheme shall set out the circumstances for the use of acoustic screens, plant selection, and working times and phasing for activities which may contribute significantly to noise received at sensitive receptor.

**Reason:** To control the noise generated by the development in the interests of the amenity of the area.

- 23) All vehicles, plant and machinery operated on the site shall be maintained in accordance with the manufacturers' specifications at all times and shall be fitted with and use effective silencers.

**Reason:** To control the impact of noise generated by the development in the interests of the amenity of the area.

- 24) All reversing warning systems used on plant and vehicles on the site shall either be non-audible, ambient related or low tone devices.

**Reason:** To control the impact of noise generated by the development in the interests of the amenity of the area.

### Dust

- 25) No development shall commence until a scheme to minimise dust emissions has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include details of all dust

suppression measures and the methods to monitor emissions of dust arising from the development. The scheme shall then be implemented as approved with the approved dust suppression measures being retained and maintained in a fully functional condition for the duration of the development hereby permitted.

**Reason:** To reduce the impacts of dust disturbance from the site on the local environment.

It is considered that compliance with these requirements would only be effective if the dust scheme is found to be acceptable and approved as such, prior to the commencement of the development.

- 26) All laden vehicles entering or leaving the site shall be fully sheeted.

**Reason:** To minimise dust and other debris from falling from the vehicles using the site.

### Lighting

- 27) No external lighting shall be installed except in accordance with a scheme that has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include precise details of the lighting proposals, including lux levels. The scheme shall then be implemented as approved.

**Reason:** To minimise the nuisance and disturbance to neighbours, the surrounding area and the ecology of the area.

It is considered that compliance with these requirements would only be effective if the lighting scheme is found to be acceptable and approved as such, prior to the commencement of the development.

### Waste

- 28) Non-conforming wastes shall be stored in a sealed container or skip and removed from site within seven days.

**Reason:** In the interests of amenity and management of waste not authorised to be received or processed at the site.

- 29) The maximum height of any stockpiles shall not exceed 5m in height.

**Reason:** In the interests of visual amenity.

- 30) There shall be no burning of waste or any other materials on site.

**Reason:** To enable the Waste Planning Authority to control the emission to air from the development in the interests of amenity of the area.

### **Water Protection and Pollution Prevention**

- 31) Within six months of the commencement of the development, a detailed design and associated management and maintenance plan of surface water drainage for the site for the restored landscape, in accordance with DEFRA non-statutory technical standards for sustainable drainage systems (March 2015), has been submitted to and approved in writing by the Waste Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to restoration works commencing.

**Reason:** To ensure mitigation of flood risk.

- 32) Prior to the commencement of the development, a scheme for installation of sustainable drainage of the site with details of the implementation, maintenance and management required should be submitted to and approved by the Waste Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- i) a timetable for its implementation; and
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

**Reason:** To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems over the site (including the part of Frithwood Lane in the site) is provided to the Waste Planning Authority.

- 33) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there are multiple tanks, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of the interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land, or underground strata. Associated pipework should be located above ground and protected from



accidental damage. All filling points and tank overflow pipe outlets should be directed to discharge downwards into the bund.

**Reason:** To prevent pollution of the water environment.

### **Soil Handling and Storage**

- 34) Before any part of the site is excavated or traversed by heavy vehicles or machinery (except for the purpose of stacking topsoil on that part), or is built upon, or used for the storing of subsoil, soil forming material or overburden, or as a machinery plant yard, or for the construction of a road, all available topsoil (and subsoil) shall be stripped from that part and stored in accordance with details to be agreed in writing with the Waste Planning Authority.

**Reason:** To prevent unnecessary trafficking over soil by heavy equipment and vehicles that may damage the soil in the interests of the successful restoration of the site.

- 35) All topsoil, subsoil and soil forming material derived from the site shall be retained on the site for use in its subsequent restoration.

**Reason:** To ensure that remaining soil resources are retained in the interests of the successful restoration of the site.

- 36) Movements of plant and site vehicles shall be confined to clearly defined haul routes, or to the overburden surface, and shall not cross areas of topsoil and subsoil.

**Reason:** To prevent unnecessary trafficking over soil by heavy equipment and vehicles that may damage the soil in the interests of the successful restoration of the site.

### **Restoration and Aftercare Landscape and Ecology**

- 37) Within three months of the date of commencement, a revised Landscape and Ecology Management Plan (LEMP) based on the LEMP dated September 2017 and including the phased and final landscape restoration proposals, planting, seeding and habitat creation details, habitat creation and establishment actions, and details of aftercare and management proposals, shall be submitted to the Waste Planning Authority for its written approval.

The revised LEMP submission must include:

- Revised site restoration plans which include reconfiguration of the restoration habitats to rationalise open mosaic habitat provision,

- consolidate woodland and scrub planting, and appropriately compartmentalise the site, including with hedgerows as appropriate.
- Removal from Section 3 of all management prescriptions which do not apply to this site.
  - Appropriate management measures for existing and new hedges.
  - Precise management objectives and prescriptions for grasslands and open mosaic habitat areas.
    - Amendments to planting, seeding and site management proposals for the benefit of invertebrates, especially Lepidoptera. In particular, proposals should be establishment / re-establishment of a small number of alder buckthorn (*Frangula alnus*), in appropriate locations, for the benefit of brimstone butterfly.
    - a small number of Dutch Elm disease resistant elm cultivars, in appropriate locations, for the benefit of white-letter hairstreak. Cultivar selection should consider both the suitability of the cultivar for white-letter hairstreak, and the form and appearance of the variety.
    - The establishment / re-establishment of a proportion of bird's-foot trefoil and other plant species as appropriate, as a complement to existing seeding proposals.
    - Site aftercare management proposals to benefit Lepidoptera.
    - Appropriate monitoring for Lepidoptera, to be included in Section 5 (Long term Management Schedule) of the LEMP

The plan shall be approved by the Waste Planning Authority subject to any modifications it may reasonably consider to be appropriate.

With effect from its approval the revised LEMP as approved shall comprise an “aftercare scheme” as referred to in Paragraph 2 of Part 1 of Schedule 5 of the Town and Country Planning Act 1990, for requiring such steps to be taken as may be considered by the Waste Planning Authority to be necessary to bring the site to the required standard for use for agriculture and amenity. Accordingly each of the steps to be specified by the revised LEMP shall be fully implemented in accordance with whatever specific provisions as to timing may be contained therein provided that all of the steps shall be completed by the end of the aftercare period of **ten years** from completion of compliance with the condition 39) below [this being a “restoration condition” as referred to in the said paragraph 2)]

**Reason:** To ensure the re-establishment of landscape features and habitats within the site, in the interests of nature conservation, landscape character and visual amenity, and as required to bring the site up to the appropriate standard for use for agriculture and amenity.

- 38) In the event that importation of waste under the development ceases without the approved full tonnage of waste under this permission having been imported, a written scheme for the revised reclamation and restoration and aftercare of the site according to the actual imported tonnage shall be submitted to the Waste Planning Authority for its approval within six months of the cessation of the importation.

**Reason:** In the interest of the amenity of the area and of the environment.

- 39) Immediately after the depositing of waste under this permission has ceased the site shall be restored within 6 months by the use of topsoil and sub-soil or soil-making material in accordance with a detailed restoration scheme in conformity with the relevant drawings referred to in condition 1) which shall be approved by the Waste Planning Authority and a draft of which shall be submitted for its approval no less than 2 years after the date of this permission.

#### **Liaison committee**

- 40) Within 1 month from the commencement of development, a scheme providing for the establishment and subsequent operation of a site Liaison Committee for communicating with representatives of the local community with regard to the development shall be submitted in writing for the written approval of the Waste Planning Authority. The approved scheme shall include amongst other matters:
- a) the exact functions and terms of reference of the Liaison Committee;
  - b) a process for appointment of members;
  - c) the operation of the Liaison Committee including frequency of meetings and the administration of the meetings and venue; and
  - d) a mechanism for review.

The approved scheme shall be fully implemented throughout the duration of the approved development.

**Reason:** To ensure that there is a forum for engaging with the local community, to ensure that it is fully informed with regard to activities associated with the approved development, to encourage positive relations between the community and the operator in the interests of local amenity.

#### **Informatives**

- a. Pursuant to sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the

public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

- b Pursuant to the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council, as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain an Agreement.
- c. The applicant is advised to contact the Traffic and Safety Team in the Economy, Transport and Environment Department at County Hall, Matlock for advice regarding any temporary traffic management measures required at any time during the period of construction.
- d The application site is affected by a number of Public Rights of Way. The routes must remain unobstructed and on their legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock.
  - The granting of planning permission is not consent to divert or obstruct a Public Rights of Way.
  - If it is necessary to temporarily obstruct a right of way to undertake development works, then a temporary closure is obtainable from DCC. Please contact 01629 533190 for further information and an application form.
  - Any development, insofar as it will permanently affect a Public Rights of Way must not commence until a Diversion Order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the Public Rights of Way to facilitate public safety during the works may then be granted by the County Council.
- e The applicant is advised of the need to enter in to an appropriate agreement with Network Rail property for a licence regarding its bridge affected by the development.

**Statement of Compliance with Article 35 of the Town and Country (Development Management Procedure) (England) Order 2015 in respect of this application**

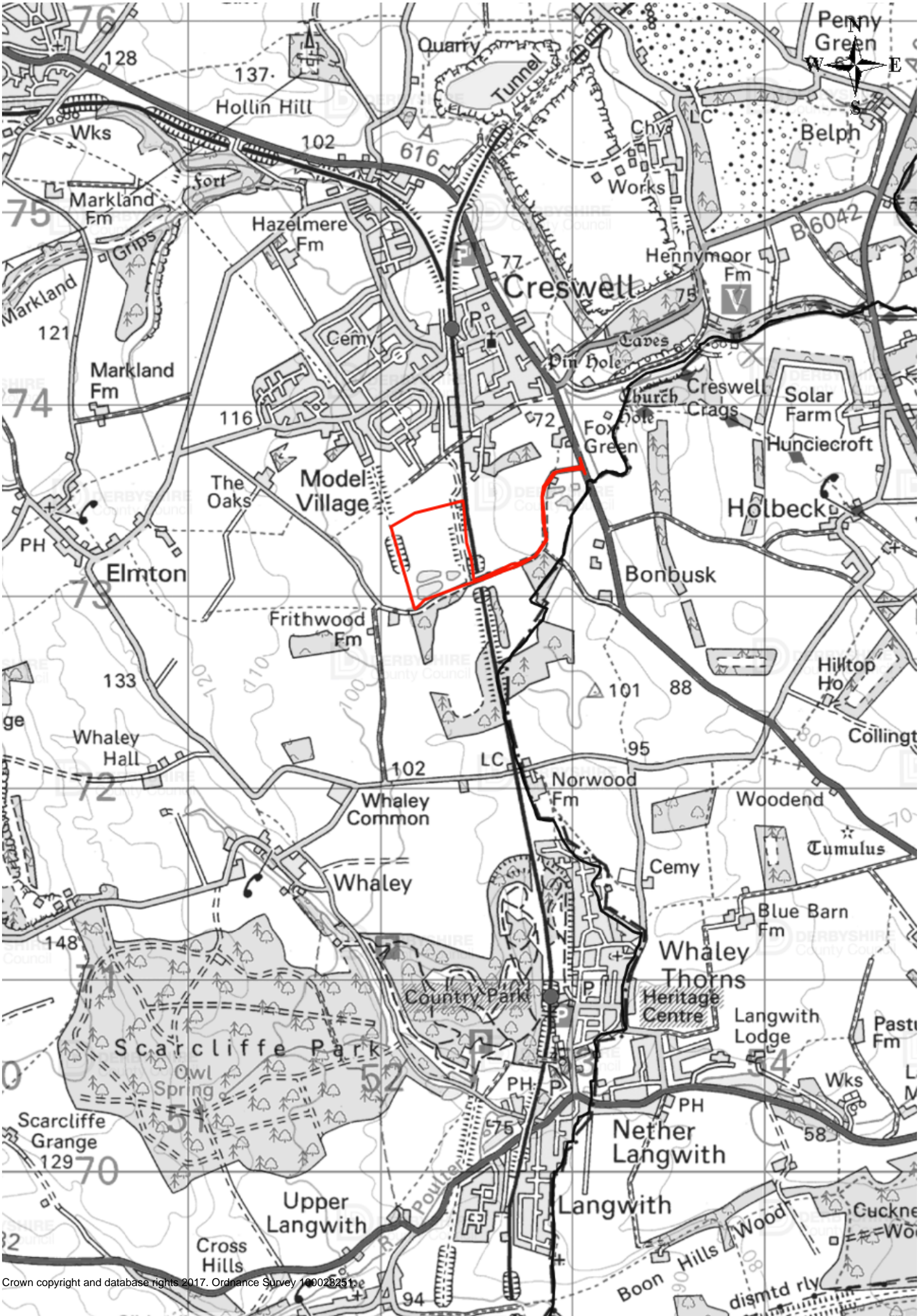
The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning

applications. The applicant had engaged in pre-application discussions with the Authority prior to the submission of its initial submission for the development of the site. The applicant was given clear advice as to what information would be required.

In addition, the applicant was given further advice concerning the coverage of the documentation submitted with the planning application resulting in revisions and additions to its original proposals which were incorporated into this application.

**Mike Ashworth**  
**Strategic Director - Economy, Transport and Environment**





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17-May-2017