



13 March 2007

Derek Hayes  
Nabarro Nathanson  
1 South Quay  
Victoria Quays  
Sheffield  
S2 5SY

Our Ref: APP/U1050/A/05/1176293  
Your Ref:

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY UK COAL MINING LTD  
LAND NORTH AND SOUTH OF BELL LANE, SMALLEY (KNOWN AS “LODGE  
HOUSE”)  
APPLICATION REF: CM6/0503/23**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew M Phillipson BSc CEng FICE MIHT, who held a public inquiry between 25 April – 31 May 2006 into your client's appeal against Derbyshire County Council's refusal of planning permission for surface mine coal extraction on land north and south of Bell Lane, Smalley (known as “Lodge House”), in accordance with application ref: CM6/0503/23, dated 9 May 2003.
2. On 22 March 2005, the appeal was recovered for determination by the Secretary of State, in pursuance of section 78 of the Town and Country Planning Act 1990.

**Inspector's Recommendation and Summary of Decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation to grant planning permission subject to conditions. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural Matters**

4. The Secretary of State notes in IR1.2 that the appellant's submitted revised plans following Derbyshire County Council's refusal to grant planning

permission and that these were advertised and made available for inspection by the public. The Secretary of State further notes in IR1.3 that there were no objections to the inquiry proceeding on the basis of the revised plans. She has therefore, in common with the Inspector, considered the case on this basis.

5. In considering the appeal, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the further information provided under regulation 19 (IR1.6). The Secretary of State considers that the Environmental Statement and additional information comply with the regulations and contain sufficient information to allow her to assess the environmental impact of the application.

### **Policy Considerations**

6. In deciding this case, the Secretary of State has had regard to section 38 (6) of the Planning and Compulsory Purchases Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan consists of the Regional Spatial Strategy for the East Midlands (RSS8), published in March 2005; the Derby and Derbyshire Joint Structure Plan, adopted in January 2001; the Derby and Derbyshire Minerals Local Plan ("Minerals Local Plan"), adopted in April 2000 and the Amber Valley Borough Local Plan Review, adopted on 12 April 2006.
8. Other material considerations that the Secretary of State has taken into account include: Planning Policy Guidance Note 2: *Green Belts* (PPG2); Planning Policy Guidance Note 16: *Archaeology and Planning* (PPG16); Planning Policy Statement 9: *Biodiversity and Geological Conservation* (PPS9); Planning Policy Statement 23: *Planning and Pollution Control* (PPS23); Minerals Policy Statement 1: *Planning and minerals* (MPS1); Minerals Policy Statement 2: *Controlling and mitigating the environmental effects of mineral extraction in England* (MPS2); Minerals Planning Guidance Note 2: *Applications, permissions and conditions* (MPG2); Minerals Planning Guidance Note 3: *Coal Mining and colliery spoil disposal* (MPG3); Minerals Planning Guidance Note 7: *Reclamation of mineral workings* (MPG7); Circular 11/95: *Use of conditions in planning permission*; and Circular 05/05: *Planning obligations*.

### **Main Issues**

#### **Green Belt Policy – Openness and Inappropriateness**

9. The Secretary of State agrees with the Inspector in IR13.3 that there would be a material loss of openness to the Green Belt for the duration of the extraction period as a result of the proposals. The Secretary of State further agrees with the Inspector in IR13.4 that the loss of openness would be fully made good on restoration of the site but agrees that the temporary nature of the loss of openness is not on its own sufficient to render the proposals as appropriate in Green Belt terms.

10. Nevertheless, the Secretary of State agrees with the Inspector, for the reasons given in IR13.3-13.15, that the proposal would not, by virtue of its impact on openness, constitute inappropriate development in the Green Belt.

### Effects on the Environment

#### *Landscape and Visual Impact*

11. The Secretary of State notes in IR13.26 that no part of the site has been designated as a Special Landscape Area; an Area of Local Landscape Significance or an Opencast Constraint Area.
12. The Secretary of State agrees with the Inspector in IR13.28 that there would be significant disruption to the landscape during opencasting. However, for the reasons given in IR13.25-13.50, the Secretary of State agrees with the Inspector's conclusions in IR 13.48 - 50 that, on balance, the adverse impacts arising from the proposal with regard to effects on the landscape and visual impact are not unacceptable.

#### *Ecology and Biodiversity*

13. The Secretary of State notes in IR13.51 that, although the application area is adjacent to 3 County Wildlife Sites and one candidate site, none of the land within the application area is subject to any designation as a wildlife site.
14. The Secretary of State has carefully considered the evidence about whether or not the proposal would cause harm to the Hobby which is a statutorily protected bird and listed in Schedule 1 to the Wildlife and Countryside Act 1981. She agrees with the Inspector's conclusion in IR 13.60, for the reasons given in IR13.52-13.60, that although there would be some impact on the Hobby the mitigation proposed is appropriate and it would serve to ensure that the proposal would not result in material harm to the species.
15. The Secretary of State acknowledges that 14 aged or veteran trees would be lost if the scheme goes ahead and that PPS9 advises that the loss of such trees should be avoided (IR 13.61). However for the reasons given in IR 13.62 – 13.68 she agrees with the Inspector's conclusions in IR 13.68 that, having regard to the particular circumstances of the trees in question, their loss would not be unacceptable from an ecological viewpoint.
16. The Secretary of State also agrees that there would be some loss of habitat whilst opencasting is in progress. However, the Secretary of State agrees with the Inspector (IR13.69-13.72) that the restoration proposals will ensure that, in the medium and longer term, the ecological and biodiversity value of the site would be significantly enhanced. For these reasons she accepts the Inspector's overall conclusions in IR 13.76 that the impacts of the proposal on ecology and biodiversity are not unacceptable.

### *Shipley Country Park*

17. Apart from the visual impacts, as discussed in paragraphs 11-12 above, there were also concerns put forward at the Inquiry about the wider impacts on Shipley Country Park in terms of a loss of amenity; economic loss; or whether it would prejudice the work of the Green Health Partnership. For the reasons given by the Inspector in IR13.77-13.79, the Secretary of State agrees with his conclusion in IR 13.79 that the park's amenity would not be materially reduced as a result of the proposal, nor would it suffer economic loss. The Secretary of State also agrees with the Inspector in IR13.80 that the work of the Green Health Partnership would not be prejudiced by the proposal.

### *Noise*

18. The Secretary of State agrees with the Inspector's conclusion in IR 13.87, for the reasons given in IR13.81-13.87, that the agreed conditions would be sufficient to ensure that the levels of noise generated by the proposals would not be unacceptable and would be within the limits set by MPS2, Annex 2

### *Dust and Air Quality*

19. The Secretary of State agrees with the Inspector, for the reasons given in IR13.88-13.94, that the agreed planning conditions would be sufficient to ensure that levels of dust would not be such as to materially harm the living conditions of residents living near the Lodge House site. Nor would the health of those living near the site, and people using Bell Lane, be adversely affected.

### *Rights of Way*

20. Whilst there would be some disruption to rights of way, the Secretary of State agrees with the Inspector's conclusions in IR 13.102, for the reasons given in IR13.95-13.102, that the overall benefit of the new paths and bridleways, brought forward as part of the proposal, would be worthwhile in the short term. The Secretary of State further agrees with the Inspector that, in the medium and long term, as the woodlands and ecological areas mature and become features of interest in their own right, the benefits would increase (IR13.102).

### *Archaeology*

21. For the reasons given in IR13.103-13.104, the Secretary of State agrees with the Inspector's conclusion that the agreed conditions are an entirely appropriate response to the level of archaeological interest that the studies and surveys have shown is likely to be present on the site.

### *Hydrology and Hydrogeology*

22. The Secretary of State agrees with the Inspector in IR13.105-13.113 that, having regard to the controls on water quality discharged from the site that would be exercised by the Environment Agency, the proposal would not have an adverse effect on the hydrology of Mapperley Reservoir and would not have other unacceptable impacts on the hydrological or hydrogeological regime of



the site. The Secretary of State notes in IR13.113 that neither the Environment Agency nor the Coal Authority have objected to the proposal in this regard.

#### *Traffic*

23. The Secretary of State notes in IR13.114 that, whilst there were a number of objections on the grounds of the impact the proposal would have on traffic conditions and safety on the A608, the Council, in their capacity as highway authority for the road, took no such issue.
24. For the reasons given in IR13.114-13.118, the Secretary of State agrees with the Inspector's conclusion that the agreed conditions and S106 Agreement will ensure that, with regard to traffic, no unacceptable environmental or other impacts would result from the proposed works.

#### *Land Quality*

25. The Secretary of State agrees with the Inspector, for the reasons given in IR13.119-13.121, that improvements in land quality should be achieved resulting in a positive impact on the soil resource and therefore accordance with national policy. However, the Secretary of State further agrees with the Inspector's conclusion in IR13.121 that improvements would be modest and, given that all land on the site would remain within Subgrade 3b and Grade 4, that the potential improvements should be afforded limited weight.

#### *Cumulative Effects*

26. The Secretary of State notes in IR13.122 that Minerals Local Plan Policy MP4 recognises the potential for the environmental effects of minerals developments to result in a cumulative impact on the environment of an area because of the collective effects of an individual proposal, or because of the effects of a number of mineral developments occurring either concurrently or successively.
27. The Secretary of State agrees with the Inspector, for the reasons given in IR13.123-13.126, that there would not be unacceptable cumulative impacts arising from the proposal, with the exception of the section of Bell Lane running between Manchester Wood and John Wood. This is because its character would be transformed for the duration of the opencasting operations from an essentially tranquil rural byway into a much less attractive route through a major opencast site. Whilst the Secretary of State agrees that the cumulative impact of the proposals on the character of the lane would be significant and adverse, she notes that a significant part of the route between Smalley and Shipley Country Park would not be affected and Bell Lane would remain open throughout the working period. Furthermore, upon restoration there would be no material change in the route. For these reasons the Secretary of State agrees with the Inspector's conclusion in IR 13.139 that, on balance, the impact is acceptable.

### *The Green Belt Test*

28. For the reasons given in IR13.140-13.145, the Secretary of State agrees that the site would be developed, operated and restored to the highest standards and that, so far as possible, the proposal would contribute to the objectives for the use of land in the Green Belts. The Secretary of State therefore agrees with the Inspector that, in PPG2 terms, the proposal would not constitute inappropriate development in the Green Belt. She also agrees that the presumption against opencast coal extraction, set down in policy MP27 of the Minerals Local Plan and MPG3, paragraph 8, would be overcome.

### Community Benefits

29. The Secretary of State notes in IR5.3 that policy MP27 of the Derby and Derbyshire Minerals Local Plan requires:

*"Proposals for coal extraction, and for the disposal of colliery waste,...will not be permitted unless the impact on the environment:-*

- 1. is acceptable, or capable of being made acceptable by planning conditions or obligations, or*
- 2. if not, the impact is clearly outweighed by local or community benefits that the development would provide"*

30. For the reasons given in paragraphs 11-27 above, the Secretary of State considers that the impact of this proposal on the environment is acceptable, or capable of being made acceptable by planning conditions or obligations. The Secretary of State therefore considers the proposal to be in accordance with the first limb of Policy MP27 of the Derby and Derbyshire Minerals Local Plan, as set out in paragraph 28 above. The community benefits of the proposal do not therefore fall to be considered.

31. The Secretary of State notes in IR13.147 that there may have been exaggerated and misleading information circulating in the local area which may have unfairly influenced the views of local people regarding this proposal. The Secretary of State does not, however, consider that the weight given to the views of local people should be reduced, as suggested by the Inspector in IR13.147.

### Other Matters

32. The Secretary of State is satisfied that the section 106 agreement and section 106 Unilateral Obligation meet the policy tests in Circular 05/05: *Planning obligations* and that their provisions are relevant to the development. She considers that they will deliver the mitigation measures promised and, for these reasons, has afforded them significant weight. The Secretary of State considers that the conditions put forward at the Inquiry, as amended by the Inspector, are necessary and reasonable to secure a satisfactory standard of development and are in accordance with Circular 11/95: *Use of conditions in planning permission*.

33. The Secretary of State agrees with the Inspector, for the reasons given in IR13.150-13.152, that the need for the Lodge House Coal is not a material consideration in this case and the acceptability of individual proposals should be evaluated in relation to the principles of the land use planning system.
34. For the reasons given in IR13.153, the Secretary of State agrees with the Inspector that whether or not granting permission would be beneficial in maintaining an effective opencast industry in the UK is not a material consideration in this case.
35. The Secretary of State has considered the written representation alleging that a decision in favour of the proposal would constitute a breach of human rights. However, she agrees with the Inspector's conclusion in IR 13.154 that, given the controls imposed by condition, there is no evidence that anyone's health would be damaged by the proposal or that there would be significant dust nuisance or that properties surrounding the site would be devalued. The Secretary of State also agrees, for the reasons given by the Inspector, that if she had reached a different conclusion, the effect on the individual concerned and his family would then have to be balanced against the rights and freedoms of others.

### **Overall Conclusions**

36. The Secretary of State is satisfied that the development would not constitute inappropriate development in the Green Belt and is therefore in accordance with PPG2 and that it does not conflict with other relevant national guidance
37. The Secretary of State agrees with the Inspector in IR13.156 that Policy MP27 in the Minerals Local Plan is the key policy against which the proposal is to be assessed in determining whether or not it accords with the development plan. The Secretary of State agrees with the Inspector's assessment of the environmental effects of the proposal as summarised in IR 13.157 – IR 13. 158. and his overall conclusion that the impacts are not unacceptable. She agrees, for the reasons given in paragraphs 14 -16 above, that the scheme would not result in material harm to the Hobby and that although regrettable, the loss of the 14 veteran trees would be acceptable having regard to their relative isolation in biodiversity terms (IR 13.159). She also gives weight to the fact that the restoration proposals would significantly enhance the ecological and biodiversity value of the site in the medium and longer term.
38. For the reasons given above, the Secretary of State considers that, having taken into account the mitigation measures, the environmental impacts of this proposal, including the cumulative impacts, are acceptable, or capable of being made acceptable by the planning conditions and obligations secured with this proposal. The Secretary of State agrees with the Inspector that the proposal is in accordance with MP27 and is therefore in accordance with the development plan. (IR 13.161 – 162) She is satisfied that there are no other material considerations of sufficient weight to cause her to conclude otherwise.

39. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

#### **Formal Decision**

40. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows the appeal and grants permission for surface coal mine extraction on land north and south of Bell Lane, Smalley (known as "Lodge House"), in accordance with application ref: CM6/0503/23, dated 9 May 2003, subjected to conditions appended in Annex A of this letter. The plans/drawings that are cited in these conditions have not been appended. Requests for copies should be made in writing to the above address.
41. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
42. This letter does not convey any appeal or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

#### **Right to challenge the decision**

43. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.
44. A copy of this letter has been sent to Derbyshire County Council and interested third parties.

Yours faithfully,

**Andrew Lynch**  
Authorised by the Secretary of State  
to sign in that behalf

## **Annex A – Conditions**

1. No development including the uses, operations and activities associated with the proposals hereby approved shall be carried out other than in accordance with the details set out in the Application for Planning Permission and the Environmental Statement submitted by UK Coal Mining Limited dated 9 May 2003 and its further letter and submissions dated 12 February 2004 subject to the changes and further information set out in the Supplementary Environmental Information submitted to the Planning Inspectorate by UK Coal Mining Limited with a letter dated 29 November 2005 and the further documents cited in the following conditions except:
  - (i) as required by conditions of this permission; or
  - (ii) for such minor amendments thereto as shall have received the approval in writing from the Mineral Planning Authority.
2. From the commencement of the development until its completion, a copy of this permission, including all documents hereby approved or cited in the following conditions and any other document subsequently approved in accordance with any condition of this permission shall be kept available for inspection at the developer's Lodge House site offices during the prescribed working hours.
3. Notwithstanding the provisions of Article 3 and Parts 19 and 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 no plant or machinery, buildings or structures shall be placed or erected on the site except as expressly authorised or required by this permission, or otherwise approved in writing beforehand by the Mineral Planning Authority.
4. No materials for infilling, including minerals, shall be imported to the site and no coal or other mineral shall be imported to the site for blending or re-sale or any purpose not directly related to the surface mining and restoration works hereby permitted.
5. No soils or any other material suitable for the restoration of the site shall be exported from the site.
6. No excavation below soil level shall take place outside the areas bounded by the dashed line showing the limit of excavation on the approved revised Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) or below the base of the Third Waterloo (AQ) Coal Seam within the Duckmanton Stage (Westphalian 'B') of the Upper Carboniferous Coal Measures.

### **Commencement and Duration**

7. The Preparation Works under this development (as defined in Condition number 9) shall be begun not later than two years from the date of this planning permission.

8. All development authorised or required by this permission (with the exception of aftercare requirements) shall cease and the site shall be restored in accordance with the approved details and conditions of this permission not later than 54 months from the date of commencement of the Preparation Works (as defined and notified in accordance with Condition number 9).

#### Preparation Works

9. At least 14 days notice shall be given, in writing, to the Mineral Planning Authority of the commencement of Preparation Works at the site (where Preparation Works are defined as the provision of fencing; a new vehicular access and coal haul road; drainage and water treatment facilities; site offices; plant yard and coal processing area; necessary service diversions and wheelwash facility - all as described and shown in the documents approved under the terms of Condition number 1 above).
10. No development (other than Preparation Works as defined in Condition number 9, soil stripping and excavation and backfilling in Area 1A) shall commence until such time as the Preparation Works have been completed.
11. No hedgerows shall be removed until a scheme for the translocation of the hedgerows and their associated litter and brashings has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall specify:
  - (i) the locations of the existing hedgerows which are to be translocated and the locations to which the hedgerows and litter strip are to be moved (on a plan at a scale of 1:1250);
  - (ii) the method of lifting, site preparation and replacing the hedgerows to include:
    - (a) the lifting of a 1 metre wide strip of soil from either side of the hedgerows to be translocated,
    - (b) the replacement of this strip of soil to the approved locations;
  - (iii) the measures to be taken to protect, maintain and manage the hedgerow and strip; and
  - (iv) a programme of implementation.

The scheme shall be implemented as approved in writing.

#### Noise and Vibration

12. No blasting shall take place except such as will result in a peak particle velocity (p.p.v.) in any plane not exceeding 12mm per second, with 99% of blasts not exceeding 6mm per second in any 6 month period at the nearest occupied property. Where the p.p.v. exceeds 6mm per second, the Mineral Planning Authority shall be informed on the same working day.

Blasting shall be carried out only between 10.00 and 12.00 or between 14.00 and 16.00 on weekdays or at such other specified times as may be agreed in writing by the Mineral Planning Authority. Such blasting shall be carried out only after visual and audible warning signs have been given.

The Mineral Planning Authority shall be notified in writing and a publicity exercise shall be carried out to advise local residents one week prior to the commencement of blasting operations.

The p.p.v. generated by each blast shall be monitored at locations which have been previously agreed in writing by the Mineral Planning Authority and the results of all such monitoring shall be available for inspection by the Mineral Planning Authority at the site office during normal site operating hours.

13. Noise levels generated by the development shall not exceed those specified in the table below when measured at the locations shown on Figure 17A of inquiry document APP6B.

Location	Noise Level due to Normal Operations dBL <sub>Aeq</sub> (1 hour) (free field)	Noise Level due to Temporary Operations dBL <sub>Aeq</sub> (1 hour) (free field)	Noise Level due to site operations between 2300 and 0700 hours dBL <sub>Aeq</sub> (1 hour) (free field)
The Lodge	51	60	5dB above background (L <sub>A90</sub> (1 hour)) levels recorded during the period specified above (as defined and measured in accordance with BS4142)
Radford Road	46	60	As above
Home Farm	48	60	As above
Flatmeadow Farm	51	60	As above
Mapperley Park	46	60	As above
Rose Cottage	50	60	As above
Shipleigh Country Park	51	60	Not applicable
Mapperley Reservoir	51	60	Not applicable

Where:

“temporary operations” comprise soil stripping, the formation and removal of associated soils mounds, and the construction and removal of the outer faces of the overburden mounds;

“background levels” are those to be recorded before development commences (in a survey carried out in accordance with a scheme to be

submitted to and approved in writing by the Mineral Planning Authority) and as confirmed in writing to the Mineral Planning Authority; and

“normal operations” comprise surface mining, coal screening, construction and removal of overburden mounds (save for those elements included as temporary operations), dispatch and all other operations/activities.

The noise level due to normal operations at any specified location in the table shall not:

- (i) be exceeded at any time except when temporary operations are taking place;
- (ii) be exceeded at any such location for more than 8 weeks in any 12 month period; and
- (iii) at any time exceed the noise level for temporary operations at that location set out in the table.

14. No development shall take place until a scheme for the monitoring and recording of noise levels has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall specify:

- (i) the qualifications and experience of the personnel to be engaged in undertaking the monitoring and recording;
- (ii) the measures to be taken to prevent the recording of data in unsuitable weather conditions;
- (iii) the equipment to be used and arrangements for calibration;
- (iv) the frequency of monitoring and reporting to the Mineral Planning Authority; and
- (v) the steps to be taken in the event that complaints due to noise (including complaints unrelated to exceedances of the noise levels specified in Condition number 13 above) are received by the developer.

The results of the monitoring and records of any complaints received by the developer due to noise shall be maintained and made available for inspection by the Mineral Planning Authority between reporting intervals at the site office during normal site operating hours.

The scheme shall be implemented as approved in writing.

15. Efficient silencers shall be fitted to, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the site. Machinery shall not normally be operated with covers open or removed.
16. All pumps used in connection with the development shall be powered by electricity or acoustically insulated diesel powered units.
17. Reversing alarms used on vehicles on the site shall be either non-audible, ambient related, broadband or low-tone devices.



18. Processing of coal shall not take place until noise baffles are constructed around the perimeter of the "Plant Yard and Coal Processing Area" shown on Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) in accordance with details submitted to and approved in writing by the Mineral Planning Authority. The noise baffles shall be retained as approved until coal processing ceases.
19. The dwellings within the site (Two Elms and Prospect Farm) shall not be occupied for the duration of the development as specified in Condition number 8 above.

#### Air Quality

20. No development shall take place until a scheme for the suppression and control of dust (including PM<sub>10</sub> particles) and the monitoring and recording of dust levels has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be based on the Dust Management and Action Plan of February 2006 and shall include:

- (i) the measures to be taken to suppress and control dust;
- (ii) the qualifications and experience of the personnel to be engaged in undertaking the monitoring and recording;
- (iii) the equipment to be used to monitor dust levels and the arrangements for calibration;
- (iv) the number and location of monitoring points;
- (v) the frequency of monitoring and reporting to the Mineral Planning Authority; and
- (vi) the steps to be taken in the event that complaints due to dust are received by the developer including the triggers for action up to and including the temporary suspension of operations.

The results of the monitoring and records of any complaints received by the developer due to dust shall be maintained and made available for inspection by the Mineral Planning Authority between reporting intervals at the site office during normal site operating hours.

The scheme shall be implemented as approved in writing.

21. There shall be no burning of waste on the site.

#### Other Environmental Protection

22. No development or other activities associated with the development (other than pumping operations for the removal of water from the excavations) authorised or required by this permission shall be carried out on the site except between the following times:

0700 - 1900 hours	Mondays to Fridays;
0700 - 1300 hours	Saturdays.

In addition, no soils shall be stripped or replaced and no topsoil or subsoil mounds shall be formed or removed within 200 metres of occupied properties except between the following times:

0800 - 1900 hours      Mondays to Fridays;  
0800 - 1300 hours      Saturdays.

There shall be no development or other activities associated with the development on Sundays, Bank Holidays or national holidays.

23. No servicing, maintenance or testing of plant shall take place on the site except between the following times:

0700 - 1900 hours      Mondays to Fridays;  
0700 - 1300 hours      Saturdays.

24. All rubbish and scrap materials generated on the site shall be collected and stored, in a screened position within the site area until such time as they are removed to a suitably licensed waste management facility.
25. The development shall be carried out in accordance with the phased programme and timetable as specified in Figures 4/A, 5ai, 5aii, 6a, 7a, and 8a in the Supplementary Environmental Information referred to in Condition number 1 above.
26. The overburden mounds M1 and M2 as shown on approved revised Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) shall be formed and grassed in accordance with the relevant particulars contained in sections 2.19 to 2.24 and Figure 9A of the Supplementary Environmental Information referred to in Condition number 1 and at no time shall material be placed to a level greater than 122m AOD or 17 metres above original ground level (as shown on Drawing No. 177/D01), whichever is the lower.
27. No development shall take place until a scheme for the protection of:
- (i) the trees within Whiteley's Plantation, Manchester Wood, John Wood and Abbot's Rough, and
  - (ii) tree number 8 and the other trees and hedges within or adjacent to the boundaries of the site which are to be retained as shown on Figure 1 in inquiry document CD23A

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall specify:

- (a) a 20 metre wide root protection area ('RPA') within those parts of the site which abut the woodlands referred to in (i) above;
- (b) RPAs for each area or trees and sections of hedgerow referred to in (ii) above;
- (c) the fencing to be provided to delineate each RPA; and
- (d) a programme for the provision of fencing and the periods during which the fencing is to be maintained.

using the new vehicular access shall not exceed 118 during any full working day or 60 on a Saturday.

Daily records shall be kept at the site office of the number of HGV movements. Such records shall be made available to the Mineral Planning Authority during normal operating hours.

34. The wheelwash facility shall not be installed as part of the Preparation Works until such time as details of the facility have been submitted to and approved in writing by the Mineral Planning Authority. Following its installation the approved wheelwash facility shall be used and maintained (in conjunction with such other measures as may prove necessary) to prevent the deposition of mud and/or other extraneous material on the public highway throughout the life of the development.

#### Archaeology

35. No development shall take place until a programme of archaeological work in accordance with a scheme of investigation has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

36. The developer shall afford access at all reasonable times to any archaeologist nominated by the Mineral Planning Authority and shall allow that person to observe the soil stripping operations, conduct archaeological investigations and where appropriate excavations, and record and recover items of interest.

#### Ecology

37. No development shall take place until a pre-development ecological survey to establish the presence or otherwise of Great Crested Newts within the site has been carried out in accordance with the search methodology set out in the *Great Crested Newt Mitigation Guidelines (English Nature: August 2001)* and the results have been provided in writing to the Mineral Planning Authority.

38. No development shall take place until a scheme for the safeguarding of existing habitats or provision of alternative habitats for:

- (i) Hobby;
- (ii) Badger;
- (iii) Brown Long Eared Bat;
- (iv) Pipistrelle Bat;
- (v) any other bats species identified as using features on the site for shelter;
- (vi) Barn Owl;
- (vii) Kestrel; and
- (viii) Great Crested Newt (if confirmed as present following the survey required under Condition number 37 above)

Within each RPA there shall be no soil stripping; storage of soils, overburden or other materials; mineral or other excavation; and trafficking of vehicles or plant.

The scheme shall also include a replacement for Site Plan Drawing No. 177/D02A - amended to show the consequential changes (including those to the location of soil storage mounds and the boundary of the extraction area) necessitated by the above requirements.

The scheme shall be implemented as approved in writing.

28. No development shall take place until details of any fixed external lighting or moveable external lighting sets to be erected or used on the site have been submitted to and approved in writing by the Mineral Planning Authority. No external lights other than those approved shall be used on the site (other than lights on mobile plant).

#### Surface and Ground Water Protection

29. No development shall take place until a scheme for the collection, management and treatment of surface and ground water on the site has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

30. Prior to being discharged to any watercourse, surface water sewer or soakaway system, all surface water from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the area being drained.
31. 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 is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses shall be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and overflow pipe outlets shall be detailed to discharge downwards into the bund.

#### Highways and Access

32. No vehicle shall enter or leave the site except via the new vehicular access shown on Drawing number D100758/TP/01B in inquiry document APP16.
33. The total number of heavy goods vehicle ('HGV') movements (where one HGV entering and then leaving the site would generate two movements)

using the new vehicular access shall not exceed 118 during any full working day or 60 on a Saturday.

Daily records shall be kept at the site office of the number of HGV movements. Such records shall be made available to the Mineral Planning Authority during normal operating hours.

34. The wheelwash facility shall not be installed as part of the Preparation Works until such time as details of the facility have been submitted to and approved in writing by the Mineral Planning Authority. Following its installation the approved wheelwash facility shall be used and maintained (in conjunction with such other measures as may prove necessary) to prevent the deposition of mud and/or other extraneous material on the public highway throughout the life of the development.

#### Archaeology

35. No development shall take place until a programme of archaeological work in accordance with a scheme of investigation has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

36. The developer shall afford access at all reasonable times to any archaeologist nominated by the Mineral Planning Authority and shall allow that person to observe the soil stripping operations, conduct archaeological investigations and where appropriate excavations, and record and recover items of interest.

#### Ecology

37. No development shall take place until a pre-development ecological survey to establish the presence or otherwise of Great Crested Newts within the site has been carried out in accordance with the search methodology set out in the *Great Crested Newt Mitigation Guidelines (English Nature: August 2001)* and the results have been provided in writing to the Mineral Planning Authority.

38. No development shall take place until a scheme for the safeguarding of existing habitats or provision of alternative habitats for:

- (i) Hobby;
- (ii) Badger;
- (iii) Brown Long Eared Bat;
- (iv) Pipistrelle Bat;
- (v) any other bats species identified as using features on the site for shelter;
- (vi) Barn Owl;
- (vii) Kestrel; and
- (viii) Great Crested Newt (if confirmed as present following the survey required under Condition number 37 above)

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

39. No trees, hedgerows or shrubs shall be removed during the bird nesting season (i.e. 1<sup>st</sup> March to 31<sup>st</sup> July) unless the trees, hedgerows or shrubs that are to be removed have been surveyed to confirm the absence of active bird nesting and a report setting out the methodology employed and the results of the survey has been submitted to and approved in writing by the Mineral Planning Authority.

#### Rights of Way

40. No works in connection with the construction of the coal haul road shall be commenced until such time as a scheme designed to ensure the safety of users of Public Footpaths 1 and 2 has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- (i) warning signs on the footpaths and the haul road; and
  - (ii) measures to restrict the speed of vehicles.

All measures included in the approved scheme shall be implemented before use of the haul road commences and maintained until the haul road is no longer in use and is finally restored.

41. No works in connection with the construction of the crossing point at Bell Lane shall be commenced until such time as a scheme designed to ensure the safety of users of the bridleway and the minimisation of hedgerow removal has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- (i) warning signs on Bell Lane and the haul road;
  - (ii) measures to restrict the speed of vehicles;
  - (iii) manned supervision;
  - (iv) details of the crossing construction and the sections of hedgerow to be removed; and
  - (v) arrangements to ensure that bridleway users have priority over site traffic.

All measures and details included in the approved scheme shall be implemented before the use of the crossing point at Bell Lane commences and shall be maintained during periods of use by heavy plant.

#### Contaminated Land

42. No excavation shall take place within the previously opencasted areas (shown in Figure 2 in the Environmental Statement) until a scheme for:
- (i) the identification of any contaminated land encountered during site operations; and
  - (ii) the control and mitigation of any associated potential adverse effects on the environment and human health

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

#### Soil Stripping, Storage and Replacement and Replacement of Overburden

43. No development shall take place until a scheme for the stripping, storage and replacement of topsoil, subsoil and soil forming material to be used in the restoration has been submitted to and approved in writing by the Mineral Planning Authority. (The scheme shall be based on the Soil Handling Strategy in Appendix 2 of inquiry document CD23).

The scheme shall be implemented as approved in writing.

#### Restoration

44. No development shall take place until a detailed restoration scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of

- (i) the areas to be restored to pasture/arable, woodland and woodland edge, species rich grassland, conservation headlands, scrubland, marshland and ponds;
- (ii) new fencing, footpaths, bridleways and the deadwood receptor site;
- (iii) final restoration contours; and
- (iv) a detailed programme of implementation.

The scheme shall be implemented as approved in writing.

45. No topsoils or subsoils shall be replaced until:

- (i) a topographic survey plan of the surface of the replaced overburden has been submitted to the Mineral Planning Authority to enable it to verify that the replaced overburden conforms to levels consistent with those set out in the restoration scheme approved in accordance with Condition number 44;
- (ii) a meeting has taken place between the developer and the representatives of the Mineral Planning Authority on site to assess the information provided in the topographic survey plan; and
- (iii) the Mineral Planning Authority has confirmed in writing, to the developer, that it considers the contours shown on the topographic survey plan to be satisfactory.

The sub and topsoils placed on the overburden shall be placed to levels consistent with those set out in the restoration scheme approved pursuant to Condition number 44 or such other levels as the Mineral Planning Authority may approve in writing.

#### Landscaping, Habitat Creation, Maintenance and Aftercare Schemes

46. No coaling other than that within Area 1A shall take place until landscaping, habitat creation, maintenance and aftercare schemes have been submitted to and approved in writing by the Mineral Planning Authority.

The schemes shall include details of:

- (i) ground preparation;
- (ii) plant species, size of plants, means of protection and density of planting;
- (iii) seed mixes and rates of application; and
- (iv) the arrangements for maintenance and aftercare for a period of 5 years following restoration of:
  - (a) the land to be restored to agriculture; and
  - (b) the land to be restored to woodland and woodland edge, species rich grassland, conservation headlands, scrubland, marshland and ponds ('habitat areas').

The schemes shall be implemented as approved in writing.





**Report to the Secretary of State for  
Communities and Local Government  
and the Secretary of State for  
Environment, Food and Rural Affairs**

**by Andrew M Phillipson BSc CEng FICE MIHT**

**an Inspector appointed by the Secretary of State for  
Communities and Local Government and the Secretary of State  
for Environment, Food and Rural Affairs**

The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
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Date 14 September 2006

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**Derbyshire County Council**  
**Application by UK Coal Mining Ltd**  
**for**  
**Surface Mine Coal Extraction**  
**and the related proposal to make an**  
**Order for the Temporary Diversion of Footpath No 6 (Parish of Shipley,**  
**Borough of Amber Valley, County of Derbyshire)**

Inquiry opened on 25 April 2006

Land North and South of Bell Lane, Smalley (known as "Lodge House")

File Refs - APP/U1050/A/05/1176293 and NATROW/U1050/529A/05/29

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**File Ref: APP/U1050/A/05/1176293**

**Land North and South of Bell Lane, Smalley (known as "Lodge House")**

The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

The appeal is made by UK Coal Mining Ltd against the decision of Derbyshire County Council.

The application Ref CM6/0503/23, dated 9 May 2003, was refused by notice dated 15 October 2004.

The development proposed is surface mine coal extraction.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.**

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**File Ref: NATROW/U1050/529A/05/29**

**The Temporary Diversion of Footpath No 6 (Parish of Shipley, Borough of Amber Valley, County of Derbyshire) (No        ) Order 200**

The Order would be made under Sections 247 and 261 of the Town and Country Planning Act 1990.

The notice of intention to make the Order was published on 20 February 2006.

The Order would authorise the temporary diversion of Footpath No 6 from its junction with Footpath No 21 north eastwards to its junction with Bridleway No 5, in the Parish of Shipley, in the Borough of Amber Valley, in the County of Derbyshire for a period of 4 years and 6 months.

The reason for making the Order (which the notice stated would only be made if planning permission is granted for the development described above) would be to enable the development to be carried out.

**Summary of Recommendation: The order be made as drafted.**

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## **1. INTRODUCTION AND PROCEDURAL MATTERS**

- 1.1 The inquiry opened on 25 April 2006 and sat for nineteen days before closing on 31 May. On the afternoon of 24 May I visited the former Club Room Farm and Kirk opencast sites, accompanied by representatives of the Appellant and the Council. On the following day I made an accompanied visit to the appeal site and the surrounding area. I also made several unaccompanied evening visits to Shipley Country Park, Bell Lane, the footpaths to the east of Smalley, and other areas near the site. Before the inquiry opened I made an accompanied visit with representatives of UK Coal Mining Ltd (UK Coal) and the Council to UK Coal's Maiden's Hall site where I was able to see the opencast works in progress.
- 1.2 The application was submitted to the Council in May 2003. It included plans showing the existing site features, the proposed working arrangements and the restoration proposals (Plans A1 to A3). An Environmental Statement (ES) was provided (CD1/1), together with a bundle of technical annexures (CD1/2). Subsequently, following the Council's refusal of planning permission for the proposal, a revised scheme of working and restoration proposals were prepared and submitted to the Planning Inspectorate and the Council in November 2005. This submission included revised working and restoration plans (Plans B1 and B2) and Supplementary Environmental Information (CD1/3). The submission was advertised and made available for inspection by members of the public (INQ/2).
- 1.3 Whilst the revised plans showed proposed changes to the working method and restoration proposals, the boundary of the site was not changed, neither were the limits of the excavation. The quantity of coal which it was proposed to mine also remained unchanged, as did the overall time limits for excavation, coaling and restoration. At the opening of the inquiry I announced the revision and asked if everyone was content that the inquiry should proceed (and the Secretary of State should reach her decision) on the basis of the revised plans. No one objected.
- 1.4 At the inquiry a Section 106 (S106) Agreement was submitted, executed by the Council and UK Coal (INQ/6). In it UK Coal undertake to constrain heavy goods vehicles (HGVs) carrying coal to routes prescribed in the agreement; to enter into an agreement with the highway authority to construct the new vehicular access to the site before other works commence; to fund the cost of upgrading the surfacing on Bell Lane; to set up and attend a local liaison committee; and to provide a £100,000 fund to be used to provide environmental improvements and other benefits to local communities. The agreement further provides for the removal of the new site access on completion of the site restoration works and for the ongoing management of the habitat areas for a period of 20 years following the 5 year aftercare period required by condition.<sup>1</sup>

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<sup>1</sup> See Appendix E, Condition No 46.

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- 1.5 A separate S106 Unilateral Obligation (INQ/7) provides for a £1,800,000 security to be deposited with the Council to be used to restore the site in the event that UK Coal are wound up or otherwise default on the restoration of the site in accordance with the agreed conditions.<sup>1</sup>
- 1.6 As I have noted above, the application was accompanied by an ES (CD1/1 and 1/2). Further environmental information was supplied in November 2005 (CD1/3) and during the course of the inquiry. In reaching my conclusions and recommendations I have taken this environmental information into consideration.
- 1.7 Chapter 2 of this report contains a description of the site and the surrounding area. This is followed by chapters briefly describing the proposals; setting out those matters which are common ground between the Council and UK Coal; and summarising the relevant planning policies. The following chapters set out the gist of the cases made by each of the inquiry participants, case by case. The main points made by those who submitted written representations are also recorded. The final chapters contain my conclusions and recommendations.
- 1.8 A list of those appearing at the inquiry is contained in Appendix A. Documents and plans submitted to the inquiry are listed in Appendices B and C. Appendix D contains a list of abbreviations used in this report.

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<sup>1</sup> Whilst this obligation is a unilateral undertaking, its contents are not in dispute and I was advised at the inquiry that the Council are content both with the wording of the obligation and the sum provided by way of the restoration bond.

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## **2. THE SITE AND SURROUNDINGS**

- 2.1 The site comprises approximately 123 hectares of land situated to the east of Smalley. Heanor lies to the north-east and Mapperley village to the south-east (ES, Figure 1). Shipley Country Park lies immediately to the east of the site (APP14, Figure 2).
- 2.2 The topography of the area is gently rolling with a series of small tributary valleys off the Nutbrook Valley (APP14, Figure 2). The highest land in the vicinity lies to the west of the site, reaching 144m AOD in Smalley. This higher land extends north-eastwards towards Heanor Gate, although most of this settlement is at a lower level.
- 2.3 A second ridgeline extends south from Smalley, through Whitehouse Farm to Smalley Common, where the land rises to 135m AOD. From the ridgelines the land generally descends to the Nutbrook Valley to the east, where the ground in the valley bottom lies at around 50m AOD. Areas of higher land occur within Shipley Country Park at Shipley Hill (124m AOD) and at Cinderhill Coppice (113m AOD).
- 2.4 Within the application site itself, the highest point lies to the west at Smalley where the access road joins the A608. At the north-west corner of the main extraction area the ground level is around 130m AOD, falling to around 85m AOD at the south-east corner (Drg 177/D01).
- 2.5 Fields within the site are medium to large, and mostly regularly shaped. Boundaries are a mixture of fences and hedges, some of which contain hedgerow trees. There are further isolated trees within the fields, most notably in the north-east sector of the site (DCC2/2, Figure 9).
- 2.6 The A608 passes through Smalley to the west of the site, and provides a link to Derby and the M1 motorway via the A52 (BL1). Bell Lane, a private vehicular access and bridleway, crosses from west to east through the middle of the site and is, for the most part, bounded by high hedges with hedgerow trees (APP14, Appendix 2, Figure 3). This would remain. A footpath linking Mapperley Park to Bell Lane (Footpath No 6) crosses the south-east corner of the site and would need to be temporarily diverted to accommodate the works (Drg 177/D01). Two further footpaths (Nos 1 and 2) cross the line of the proposed access road (ibid).
- 2.7 The site lies in the catchment area of the River Erewash, which flows in a southerly direction, some 4.5km to the east of the site, and joins the River Trent some 14km to the south east. Two unnamed watercourses bound the site to the north and south. The northern stream generally flows in a south-easterly direction along the northern and eastern boundaries of the site. The southern watercourse has its origins in Manchester Wood and flows generally eastwards along the southern site boundary before joining the northern watercourse just upstream of the entry to Mapperley Reservoir (Drg 177/D01).
- 2.8 The site lies between three County Wildlife Sites and one candidate site. These comprise Manchester Wood to the west of the site, Abbot's Rough to the south, and

Mapperley reservoir to the south-east. The section of John Wood to the north of Bell Lane (Mundy's Plantation) is a candidate County Wildlife Site (DCC3/2, Figure 7).

- 2.9 Land within the site is primarily agricultural and is classified as Grade 4 or Sub-grade 3b under the Agricultural Land Classification of England and Wales.
- 2.10 Prospect Farm lies within the main body of the site to the north of Bell Lane. Most of the outbuildings that formerly served the farm have been demolished but the house remains and is currently occupied by tenants of UK Coal. It would be demolished if planning permission for opencasting is granted. Two Elms, a bungalow, lies adjacent to Bell Lane slightly further to the west. It would be retained, but not occupied whilst opencasting is in progress. Apart from these, the only other building on the site is a small agricultural building which is located close to the southern boundary of the site near Abbot's Rough (WHEG/SMAG/1, Appendix 4.1).
- 2.11 Trees within the site are shown on the agreed tree plan (CD23A, Figure 1; DCC2/2, Figure 9). Of the 165 trees on site, 26 would be lost to the development, including 14 classified as veterans.
- 2.12 Outside the site the nearest occupied property to the proposed extraction area is Flatmeadow Farm which lies around 190m away from the north-eastern site boundary. The Lodge lies on Bell Lane around 100m to the west of Manchester Wood. The site boundary abuts this property and that of Whitehouse Farm which lies around 100m further south. The fields in the south-western corner of the site are reserved for topsoil and subsoil storage, however, and the nearest proposed mound would be around 100m from these properties. The limit of extraction would be approximately 500m to the east (Drg 177/D02A).

### 3. THE PROPOSALS

Inspector's note. For a fuller description of the proposals see the ES, Section 3, the supplementary ES and Mr Bolton's proof of evidence and appendices (APP3 and 4).

- 3.1 The proposal is to extract approximately 1,000,000 tonnes of coal by surface mining methods ("opencasting") over a 4½ year period, with subsequent restoration of the land to agricultural and other uses including woodland, species rich grassland and ponds.
- 3.2 Whilst the appeal site extends in total to some 123 ha, the area of land from which coal would be extracted totals some 63.5ha. Of the remaining land some 29ha would be stripped of soil and used for topsoil and subsoil storage and for other ancillary purposes, including coal processing, offices and vehicle parking. An access road would also be provided linking the main body of the site to a new priority junction on the A608, a short distance to the north of Smalley (Drg 177/D02A).
- 3.3 Phased working of the site is proposed, with the section to the south of Bell Lane ("Area A") worked prior to the section north of Bell Lane ("Area B"). Topsoil and subsoil would be stored in mounds either side of Bell Lane, along the route of the access road linking the plant yard and coal processing area to the A608, along the eastern boundaries of the site and on fields to the south west of the main extraction area. The height of these mounds would be generally 5m, but with some lower (3m) mounds adjoining the access road and some 8m high subsoil mounds on the southern part of the site. Two overburden mounds, reaching to a maximum height of 17m above ground level would be built on the extraction area to the south of Bell Lane (Drg 177/D02A). All topsoil, subsoil and the outer faces of the overburden mounds would be graded and seeded.
- 3.4 The working sequence in Area A would be from west to east initially (Cuts 1 to 3), following which extraction would commence at the eastern end of the site and work backwards towards Cut 3. To the north of Bell Lane, extraction in Area B would commence at the shallower western end and progress eastwards (Cuts 16 to 31) at which point the workings would turn and progress northwards, finishing in the north-east corner of the site. Backfilling and restoration of the site would be progressive. Water treatment areas would be provided as required around the periphery of the site (ibid).
- 3.5 Coal from the excavation area would be transported to a coal processing area situated immediately to the east of Manchester Wood area where it would be screened and loaded into road going lorries for despatch, probably to Ratcliffe on Soar Power Station. A wheelwash and weighbridge would be provided adjacent to the access road, together with site offices (ibid).
- 3.6 The northern and southern parts of the site would be linked by an at grade crossing over Bell Lane. Initially, whilst extraction is taking place in Area A, this would be used by smaller articulated dump trucks carrying coal to the processing area.



Subsequently when excavation in Area B commences, larger dump trucks would cross the lane transporting overburden from Area B to backfill the final void in Area A and complete the construction of overburden mound M2 to the south of Bell Lane. This operation would continue over a period of about 12 months. Finally, overburden from mounds M1 and M2 would be transported northwards across the lane to backfill the final void in Area B over a period of around 6 months (APP3, para 6.9.3). The crossing would be manned, and UK Coal's plant stopped to give priority to pedestrians, horse riders, cyclists and other users of Bell Lane.

- 3.7 A bar chart, showing the timing of operations together with indicative phasing plans showing the areas being worked at 6 months and at the end of years 1, 2, 3 and 4 is included in the Supplementary Environmental Information at Annexures C and D.
- 3.8 Water treatment facilities, which it is anticipated would comprise a series of lagoons and flow attenuation ponds, would be constructed and commissioned before any substantial areas of soil are stripped. These would be designed to ensure that water discharged from the site achieves the water quality standards set by the Environment Agency. During the course of the works, new facilities would be provided from time to time to replace those which would be removed as opencasting progresses (ibid).
- 3.9 Other preliminary works which would need to be completed before major earthworks commence, include fencing the site; construction of the access road and access point; provision of the site offices, parking areas, plant yard, coal processing area, wheelwash and weighbridge; diversion of footpath No 6; and construction of internal haul roads. A water main and low voltage overhead electricity line serving Flatmeadow Farm would also need to be diverted. However, the 132kv power line, which crosses the site but is outside the excavation area, would remain in place (Drg 177/D02A). Two lengths of existing hedgerow from the site would also be translocated to new locations to the east of Smalley (Drg 177/D03A).
- 3.10 The proposed hours of operation are 07.00 to 19.00 on Mondays to Fridays and 07.00 to 13.00 on Saturdays. Outside these hours only pumping would take place. In the winter the office area, plant yard and coal processing area would be lit. Portable lighting sets would also be provided at the working areas.
- 3.11 Restoration of the site would be undertaken progressively as the excavation and backfilling of the void is completed (Supplementary Environmental Information, Annexure D). The contours of the restored land would generally follow those of the existing landform (Drg 177/D03A), with a covering of soil making materials, subsoil and topsoil placed in accordance with the agreed soil handling strategy (CD23, Appendix 3). UK Coal's proposals for after-use envisage a mixture of agriculture and woodland for the majority of the site, with smaller areas of species rich grassland and acidic grassland. Seasonal ponds and marshland would also be provided close to the ponds on lower lying land close to the eastern and southern margins of the extraction area (ibid). New hedgerows, with hedgerow trees, would divide the fields and woodland compartments.

- 3.12 Within the restored area several new bridleways are proposed, forming new circular routes within the site and linking to Bell Lane and an existing footpath to the north-east of Smalley (ibid).
- 3.13 As part of the restoration works, the plant yard, coal processing area, office compound, security fencing and other site infrastructure would be removed and the land restored. Footpath No 6 would be re-instated along its original alignment.

#### **4. COMMON GROUND**

Inspector's Note. A Statement of Common Ground (CD/23) was agreed by the Council and the Appellant. Below I set down the gist of those matters included in the statement that are not covered elsewhere in this report.

##### **Planning History**

- 4.1 Within the application area, three opencast sites were previously worked between 1944 and 1948 (CD23, Appendix 1).<sup>1</sup>

##### **Bell Lane Crossing**

- 4.2 It is agreed that during the course of the works some 222,000 dump trucks would cross Bell Lane. The frequency of the crossing movements would vary from one every 5 minutes, whilst coaling is in progress in Area A, to one every 0.8 minutes during the backfilling of the final void in Area B (CD23, p6).

##### **Restoration Proposals**

- 4.3 The site area is approximately 123ha, of which approximately 99ha would comprise operational land. UK Coal's proposals provide for 71.9ha of the total site to be restored to agriculture, 23.8ha to mixed deciduous woodland and 20.9ha to species rich grassland. There would also be 1.7ha of acidic grassland and 2.4ha of marshland and open water (CD23, p7).

##### **Dust**

- 4.4 It is agreed between the Council and UK Coal that, provided that an appropriate scheme of dust control is in operation at all relevant times, then it is highly unlikely that the proposed site operations would cause any exceedances of the EU limit values for PM<sub>10</sub> set out in Council directive 1999/30/EC as required to be achieved by 1 January 2005. The Council and UK Coal are further agreed that the Dust Management and Action Plan (CD23, Appendix 2) forms the basis for an appropriate scheme of dust control.

##### **Highways**

- 4.5 The Council and UK Coal agree that, provided that HGVs from the site are routed via the A608 through Smalley to the A38 and A52, then traffic generated by the development would not have an unacceptable impact on the operation of the road network.

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<sup>1</sup> Other opencast sites in the area near the appeal site are shown on DCC2/2, Figure 2.

- 4.6 It is further agreed that the junction between the A608 and the site access road can be designed to the appropriate standard to ensure that HGV movements into and out of the site would be carried out safely.

### **Landscape Issues**

- 4.7 It is agreed that the Guidelines for Landscape and Visual Impact Assessment published by the Landscape Institute and the Institute of Environmental Management (CD21/1) and the Landscape Character Assessment Guidance for England and Scotland, published by the Countryside Agency and Scottish National Heritage 2002, provide an appropriate basis for the identification of visual and landscape impacts arising from the proposed development.

### **Soils**

- 4.8 It is agreed that the Soils Handling Strategy (CD23, Appendix 3) is a suitable strategy for restoration.

### **On site Employment**

- 4.9 Approximately 30 people would be employed on the site<sup>1</sup>. Based on the travel to work patterns of previous Derbyshire surface mine coal sites, 65% of all employees would be resident within 10 miles (16km) of the site, and 84 % within 20 miles (32km). The jobs least likely to be filled by people residing in a 10 mile radius will be either management positions or those requiring highly specialised skills, such as the drivers of the prime earth movers.

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<sup>1</sup> Subsequently in oral evidence to the inquiry, Mr Bolton suggested that the number would be rather higher, at around 40.

## 5. PLANNING POLICY

Inspector's Note. The Statement of Common Ground (CD23) lists those policies in the development plan and other planning guidance which the Appellant and Council agree are relevant to the application.

### The Development Plan

- 5.1 The development plan for the area includes the Regional Spatial Strategy for the East Midlands (RSS8), the Derby and Derbyshire Joint Structure Plan (CD20/3), the Derby and Derbyshire Minerals Local Plan<sup>1</sup> (CD20/4) and the Amber Valley Borough Local Plan Review (CD20/8 and 20/8A).

### The Minerals Local Plan

- 5.2 The Minerals Local Plan was adopted in April 2000, but Chapter 13 of the Plan - Coal was subsequently revised to take account of Government's policies for the extraction of coal and disposal of colliery waste as set out in MPG3 (revised). The first alteration of the plan was adopted in November 2002.
- 5.3 Policy MP27 is the principal policy governing coal extraction. It is in three sections. Section A follows closely the policy set down in MPG3, paragraph 8. It states:

*"Proposals for coal extraction, and for the disposal of colliery waste, including extensions to existing sites either in area or depth, will not be permitted unless the impact on the environment:*

*1) is acceptable, or capable of being made acceptable by planning conditions or obligations, or*

*2) if not, the impact is clearly outweighed by local or community benefits that the development would provide."*

- 5.4 Section B continues:

*"When considering whether a proposal is environmentally acceptable or capable of being made so, the following will be taken into account, where relevant:*

*1) the need to ensure that, where the proposal lies within the Green Belt, it can be developed, operated and restored to the highest standards*

*2) the extent to which the proposal would adversely affect efforts to attract or retain investment in an area...."*<sup>2</sup>

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<sup>1</sup> Incorporating First Alteration: Chapter 13 – Coal – November 2002.

<sup>2</sup> Section B of the policy lists 4 relevant considerations. However, only 1) and 2) are relevant to opencast sites.

## 5.5 Section C then continues:

*“When considering whether the unacceptable adverse environmental impact of a proposal is outweighed by the benefits that the development would provide, importance will be given to those benefits that would be unlikely to be achieved by any other means. In particular, the following will be taken into account, where relevant, either separately or cumulatively:*

*1) the extent to which the environment or communities of the area will benefit from the proposed working and subsequent reclamation, for example; by the restoration of previously despoiled areas; by the stabilisation of unstable ground; by enhancing the landscape, or by contributing to biodiversity. Particular importance will be given to proposals involving the reclamation of despoiled land, especially those that would enable former colliery sites to be released quickly for beneficial new uses ....*

*4) the extent to which the proposal would provide employment opportunities or other economic benefits.”<sup>1</sup>*

5.6 Other policies in the Minerals Local Plan relevant to the proposal include MP1, MP3 and MP4 which deal with the environmental impact of mineral development. The general thrust of these policies is to permit development provided that the impact on the environment is “acceptable” (Policy MP1) and adverse effects can be “eliminated or reduced to an acceptable level” (Policy MP3). Policy MP4 states that proposals will not be permitted where “irreparable or unacceptable damage would result to interests of acknowledged environmental importance”. The interests of acknowledged environmental importance listed include development that would result in the loss of the best and most versatile agricultural land; that which would be materially damaging to the inherent qualities of a special landscape area or which would cause unacceptable damage to an area of local landscape importance; that which would adversely affect the nature conservation interests of international or national importance or cause significant disturbance to other sites of importance for nature conservation including local nature reserves, county wildlife sites and the habitats of locally rare or endangered species; that which would adversely affect the quality and quantity of water resources, or create water pollution problems; that which would cause unacceptable road traffic problems with regard to highway capacity or road safety; and development that would result in an unacceptable cumulative impact on the environment of an area either in relation to the collective environmental effects of an individual proposal, or in relation to the effects of a number of mineral developments occurring either concurrently or successively.

5.7 Policy MP5 deals with proposals for mineral development involving the transport of minerals by road. This will be permitted provided that there is no feasible alternative; the access arrangements would be satisfactory and the network is adequate to

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<sup>1</sup> Section C of the policy lists 4 matters to be taken into account. However, only matters 1 and 4 are relevant to the Lodge House proposals.

accommodate the traffic generated; and the traffic generated would not be detrimental to road safety or have an unacceptable impact on the environment.

- 5.8 Policy MP6 states that where development is permitted that would affect areas of importance for nature conservation, conditions or obligations will be required to minimise the impact, to preserve features in situ as far as practicable and to secure the translocation of habitats or the creation of new habitats prior to or during development. Policy MP7 states that where mineral development is permitted which would affect areas of known or potential archaeological importance, conditions will be imposed to preserve features in situ where this is appropriate and to secure appropriate archaeological investigation and recording prior to, and during, development. Policy MP10 requires satisfactory provision to be made for reclamation and after-use of minerals sites as soon as practicable.
- 5.9 In the Coal chapter, paragraphs 13.51 to 13.55 and Policy MP28 deal with Opencast Constraint Areas. Within each of these areas the policy provides that proposals for opencast coal extraction will not be permitted, unless the proposal would not cause any material damage to the area's conservation interests. The extent of the Opencast Constraint Areas is defined on the Proposals Map. In the vicinity of the appeal site they include Shipley Country Park (Inset 13) and Horsley, to the south and west of Smalley.
- 5.10 Paragraph 13.22 in the plan deals with proposals for coal extraction in the Green Belt. It states:
- "In the case of Green Belts, because minerals can be worked only where they are found and, ... because their extraction is a relatively temporary activity, there is no reason, in principle, for there to be a conflict between mineral extraction and green belt policy, provided that the highest environmental standards are maintained and that the site is well operated and restored to the highest standards. In particular, the development, operation and reclamation of the site should not materially impact on the open character of the green belt nor conflict with the purposes of including land within it, as set out in PPG2."*
- 5.11 Policy MP2 deals generally with the need for mineral development, but the text preceding it at paragraph 3.9 makes it clear that the way in which need considerations are taken into account varies according to the type of mineral concerned. With regard to coal, paragraphs 13.12 and 13.13 of the plan note that the Government's central energy policy is to secure diverse and sustainable supplies of energy at competitive prices. The text further records that *"there is currently no Government target for annual UK coal production"* and that MPG3 states that *"it is for the industry to determine the level of output they wish to aim for in the light of market conditions. The acceptability of individual projects will be determined in accordance with the principles of the land use planning system."*

### *The Structure Plan*

- 5.12 The Derby and Derbyshire Joint Structure Plan was adopted in January 2001. As such it post-dates the Minerals Local Plan, but not the First Alteration thereof (see para 5.2 above).
- 5.13 Within the plan, Minerals Policy 1 echoes the Minerals Local Plan's general requirements for the impact of mineral development on the environment to be "acceptable" and for satisfactory provision to be made for reclamation and after use of minerals sites as soon as practicable. Minerals Policy 2 notes that, where there is an adverse environmental impact, then development will be permitted provided that the need for the development and any relevant local or community benefits outweigh the impact. Minerals Policy 6 deals with proposals for coal extraction and reflects closely policies MP27 and 28 of the Minerals Local Plan.
- 5.14 Of the general policies, General Development Strategy (GDS) Policy 1 and its accompanying text aim to ensure that all new development respects the principles of sustainable development. GDS Policy 6 states that green belt policies will be operated in, amongst other areas, South-east Derbyshire. Paragraph 2.68 of the text preceding the policy notes that the purpose of the South-east Derbyshire Green Belt is to

*Prevent the coalescence of the Derby and Nottingham built-up areas and to maintain the separate identity of Derby, Duffield, Belper, Ripley, the Erewash Valley towns and villages to the north and east of Derby.*

- 5.15 Policy within Green Belts is set down in paragraphs 2.72 to 2.76 of the plan and GDS Policy 7. With respect to minerals it reflects closely the advice in PPG2, stating at paragraph 2.74:

*"As minerals can be worked only where they are found and their extraction is a temporary activity, the Government advises that extraction need not be incompatible with the purpose of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. Where any large-scale development takes place in the Green Belt - including mineral extraction, waste disposal and new transport infrastructure - it should, as far as possible, contribute to the objectives for the use of land in the Green Belt."*

- 5.16 The relevant sections of the policy state:

*"Within Green Belts, development - including the change of use of land or buildings - will not be permitted unless it is clearly needed in connection with agriculture, forestry, essential facilities for outdoor sport and outdoor recreation, cemeteries and other uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it."*

and



*“Development within or conspicuous from Green Belts should not injure the visual amenities of the Green Belt.”*

- 5.17 Leisure and Tourism (L&T) Policy 1 encourages the provision of leisure and tourism facilities close to centres of population and recognizes the potential for their provision in association with land reclamation schemes and minerals workings. L&T Policy 2 states that, in the National Forest and East Derbyshire Woodland Project area, provision will be made for leisure and tourism developments. In the Green Belt their provision will be limited to essential facilities for outdoor sport and recreation which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.
- 5.18 L&T Policy 3 broadly states that provision will be made for, amongst other matters, the maintenance, development and protection of the public rights of way network and the protection and development of public open space and other recreational facilities in accordance with local requirements, particularly within settlements and the coalfield.
- 5.19 Environment Policy 1 seeks to conserve and enhance the character of the County's landscape. Development that would have an unacceptable effect on landscape character and diversity will not be permitted. Where development is permitted opportunities will be taken to conserve, enhance and restore the local distinctiveness, character and diversity of the landscape.
- 5.20 Environment Policy 4 states that measures will be taken to conserve or enhance the environment, with priority given to this objective in, amongst other matters, areas affected by mineral workings, Green Belt on the fringes of major settlements and the East Derbyshire Woodland Project Area.
- 5.21 Environment Policy 14 deals with sites and features of nature conservation importance. Development is required to take account of its likely impact on nature conservation value and, where the need for development overrides the need for protection, the policy states that measures will be taken to minimize the impact and/or seek the provision of compensatory habitats. Development will not be permitted where it would have an adverse impact on an area designated or proposed for designation as being of international or national importance for nature conservation, (unless there are no alternative solutions and there are imperative overriding reasons); on a site which supports a species protected by law or identified as being nationally rare (unless the levels of disturbance can be reduced to an acceptable minimum); or which does not have proper regard to the need to protect from adverse impact a Local Nature Reserve or Site of Importance for nature conservation identified in a local plan or a site supporting locally rare or endangered species (unless the levels of disturbance can be reduced to an acceptable minimum).
- 5.22 Environment Policy 16 aims to protect existing important trees, hedgerows and woodland and to make provision for planting of trees and woodland through conditions on planning permissions.

***The Amber Valley Borough Local Plan Review***

5.23 The Amber Valley Borough Local Plan Review (CD20/8 and 20/8A) was adopted on 12 April 2006 (APP0/8). As from that date the Amber Valley Borough Local Plan (CD20/7) ceased to be a part of the development plan. Environment policies in the Local Plan Review relevant to the appeal proposals include:

1. EN7 which requires the design of development to be appropriate to the landscape character type within which it is proposed, having regard, amongst other matters, to the landform and natural drainage patterns, the pattern and composition of trees, woodlands and field boundaries, and the type and distribution of wildlife habitats.
2. EN8 which states that planning permission will not be granted for development that would damage or destroy significant trees, woodlands, hedgerows or other landscape features unless exceptional circumstances can be demonstrated to justify the proposals.
3. EN9 complements EN8. It states that where development proposals that are otherwise acceptable would result in the loss of or damage to existing landscape features, or would have a significant effect on the landscape, permission will only be granted where the impact can be offset by the provision of alternative replacement or additional features.

5.24 Policies EN13 and EN14 mirror those policies in the Structure Plan designed to afford protection to sites of nature conservation interest. Where protected species would be affected by development, planning conditions or obligations will be used to facilitate the survival of individual members of the species, to reduce disturbance to a minimum, and to provide adequate alternative habitats to sustain the current levels of population. Similarly, where development would result in an adverse impact on, or loss of, an area of nature conservation interest, conditions or obligations will be used to ensure the provision of new areas of nature conservation interest.

5.25 Policy EN2 in the plan deals with development in the Green Belt and closely reflects the guidance in PPG2. It does not deal with proposals for mineral extraction. The Proposals Map shows the site as falling wholly within the Green Belt.

***The Regional Spatial Strategy for the East Midlands (RSS8)***

5.26 RSS8 was published in March 2005. Relevant policies in the strategy are agreed to include (CD3, p8):

1. Policy 1 which sets out ten regional core objectives, designed to guide spatial development in the region.
2. Policy 14 which reaffirms the principle of the Nottingham-Derby Green Belt.

3. Policy 27 which seeks to protect and enhance the region's natural and cultural assets (and their settings). Where damage is unavoidable it must be clearly justified by a need for the development and mitigated as far as possible. Compensation should be provided for damage that cannot be mitigated. Overall there should be no net loss of natural and cultural assets, and opportunities should be sought to achieve a net gain.
4. Policy 28 which sets out the priorities for enhancing the region's biodiversity by, amongst other matters, achievement of the regional habitat management and biodiversity targets set out in Appendix 5 and management of the landscape features which act as corridors for the migration and dispersal of wildlife.
5. Policy 29 which seeks to increase woodland cover in the region.
6. Policy 30 which sets priorities for the management and enhancement of the region's landscape. Development plans and local development frameworks should be informed by landscape character assessments with criteria based policies for the consideration of development proposals in rural or urban fringe areas. Comprehensive assessments of the character of landscapes should be used to assess whether there are any exceptional local circumstances that would require the retention of any local landscape designations and associated policies in local development frameworks.

#### **National Planning Guidance**

- 5.27 It is common ground that MPG3, Coal Mining and Colliery Spoil Disposal, is the guidance note of closest relevance to the appeal. Other minerals planning guidance notes and policy statements, and general planning policy advice which the parties agree are relevant to the appeal are listed in the Statement of Common Ground (CD23, p11).

#### **Other Relevant Documents**

- 5.28 During the course of the inquiry several other documents were brought to my attention, including particularly Space 4 Trees – the Regional Forestry Framework for the East Midlands (CD22/2); the Landscape Character of Derbyshire (CD22/3) and the East Derbyshire Woodland Project Strategy Document (CD22/4).

## **6. THE CASE FOR UK COAL MINING LTD**

### **Introduction and Preliminary Submissions**

- 6.1 UK Coal's case and evidence at the inquiry has been structured to address the issues raised in the Inspector's note of the main issues (INQ/1). There are, however, some general matters which arose during the course of the proceedings, which it is appropriate to address at the outset. These stem from the approach adopted by the County Council and WHEG/SMAG, and the extent to which the engagement of each of them with the process was in accordance with the spirit and intention of the Secretary of State's guidance.
- 6.2 At the inquiry, witnesses for the County Council confirmed that it would be appropriate to proceed on the basis that the County Council had complied with the GDPO requirements with regard to its reasons for refusal and that they accordingly set out the full, precise, clear and specific reasons for refusal with all relevant development plan policies identified.
- 6.3 Likewise, it was confirmed that the statement of case was intended to comply with the Secretary of State's guidance in Circular 05/00, Annex 3, and contain the full particulars of the case. It was further confirmed that the evidence was not intended to represent any enlargement of the case which is set out in the reasons for refusal and statement of case. Notwithstanding this, issues such as lighting were raised in the course of the evidence and points were made about possible changes in policy on the need for coal which are not raised, or even hinted at, in the County Council's evidence.
- 6.4 The Council's planning witness, Mr Hollister, was able to confirm that there were no requests for additional information pursuant to the Environmental Assessment Regulations or the Town & Country Planning Regulations or informally which had not been adequately addressed. It was confirmed that it was not suggested that the application should be rejected because of any lack of information; the County Council having obtained any information which it thought was necessary in order to determine the application.
- 6.5 Mr Hollister acknowledged that it was clearly a part of the Secretary of State's recent and up to date guidance in MPS2, reflecting the earlier guidance in MPG7, that there should be pre and post application discussions between applicants and mineral planning authorities in order to ensure, among other things, that, as far as possible, applicants should be aware of the mineral planning authorities' requirements and have had the opportunity of considering them and reflecting them as far as appropriate in the application proposals. It was agreed that it would be quite inappropriate for a mineral planning authority not to comment on a proposal on the basis that it wanted to "keep its powder dry" for any subsequent appeal and not accordingly reveal what it regarded as any shortcomings in the proposal. That acceptance of the position in relation to the Secretary of State's advice is to be contrasted with the position arising from Mr Ellis's evidence from which it was clear that, notwithstanding a full

opportunity to comment on the revised proposals submitted in November 2005, the County Council had taken the tactical decision that they would not comment in advance of the submission of proofs of evidence in order effectively to avoid, as Mr Ellis put it, "prejudicing their case" - i.e. weakening it, at the appeal.

- 6.6 That sort of tactical manoeuvring was equally evident in the County Council's approach to the ecological evidence where, for example, in relation to the County Wildlife site designation referred to in Mrs Cooper's evidence, it was abundantly clear that the County Council was attempting to achieve a designation against a background of a known inapplicability of the relevant criteria simply in order to be able to say that the site was subject to some designation, in that instance related to veteran trees, and so presumably to be able to supplement the case by reference to the Secretary of State's guidance in MPG3, paragraph 6, with its reference to the protection of designated landscape or nature conservation interests. The same approach is evident with regard to the making of the tree preservation order (TPO). It is clear both from Mr Ellis's evidence and the TPO itself (DCC0/3(a), para 4) that the order was made at the behest of the County Council on a basis which was entirely wrong and which according to the Borough Council is now to be rejected with the order not being confirmed (APP19/E). It is also noteworthy that not making a TPO has been the fullest extent of the Borough Council's involvement in the inquiry.
- 6.7 The County Council's approach is reflected in the approach of WHEG/SMAG. It is plain from the correspondence which is before the inquiry (APP0/4) that UK Coal took every possible step to engage with WHEG/SMAG not only to consider the extent to which they might have any valid objections, but also to consider the extent to which, if there were any valid objections, they might be addressed by amendment to the proposals. The steadfast refusal to meet UK Coal, discuss the issues being raised and reach agreement on them, resulted in WHEG/SMAG producing a substantial quantity of material which is misleading, inaccurate, and potentially alarming. It is not, in UK Coal's view, responsible to on the one hand make complaints about the potential health effects of the proposal on children and older people, to reject the opportunity to discuss the issues being raised, and then, when presented with the evidence from Mr King (APP7), to not have read it and have effectively no significant element of cross-examination to displace Mr King's clear conclusions.
- 6.8 In the circumstances of this case, when the Secretary of State comes to consider the views of local people, she will need to firmly bear in mind that local people have been substantially misinformed as to the likely effects of the proposal across a range of issues, including health effects, hydrology, landscape and restoration proposals. In the case of restoration, the shortcomings of the evidence was clear for all to see with complaints about restoration schemes at other sites which are clearly ill-informed. It is disingenuous for WHEG in closing (WHEG/SMAG/14, para 3.6) to suggest that the references to other sites such as Kirk were to give any other impression than that the same result could be expected on the appeal site when that is precisely what their evidence (WHEG/SMAG/1, Appendix 5) states the images are produced for.

## **Effects on the Environment**

### ***Landscape***

6.9 Criticism of UK Coal's approach to the assessment of landscape impact and the benefits of restoration are to be seen in the context of Mr Ellis's assessment of the proposals when they were advanced at the application stage (CD5/2.4). At that stage Mr Ellis made it clear that:

1. In terms of an overall reaction, the proposals had been acceptably assessed, the methodology was an approved one and he concurred with many of the findings.
2. The assessment of landscape character was accurate, both in terms of the National Character Area and County Landscape Character Type.
3. The landscape restoration plan was acceptable in landscape terms and would certainly strengthen landscape character and local distinctiveness of the area.
4. The visual impact assessment had been undertaken using an approved methodology and had picked up the majority of the key viewpoints.
5. Although the point was made specifically that there were no benefits that could not be arrived at by any other mechanisms, that was confirmed to be "theoretically".

6.10 His conclusions were based on an earlier restoration plan, but that plan nonetheless contained significant woodland planting. It is noteworthy that in these conclusions there was no suggestion of any difficulty or ambiguity with regard to the landscape character assessment and no suggestion (contrary to that which is contained in the proof) that this was a transition area between two different landscape character areas. In this regard, Mr Ellis had a key role in the preparation of the Landscape Character of Derbyshire and was very familiar with it. Indeed, he was one of the points of contact for questions about it (CD22/3, p229). Accordingly, he was in a position to make an informed assessment of the accuracy or otherwise of the proposals and the extent to which they complied with the Landscape Character Assessment methodology and characterisation.

### ***The Development Plan and Other Planning Guidance***

- 6.11 The Structure Plan identifies a role for the County Landscape Character Assessment in connection with the identification of features which contribute to landscape character and with the need to ensure that development integrates with the inherent landscape character of the area and helps to maintain, strengthen and restore those features which contribute to the landscape character of a particular place (CD20/3 para 8.9).
- 6.12 The Structure Plan further identifies the role of Special Landscape Areas (SLAs) and identifies Environmental Priority Areas, within which priority is to be given to the

conservation or enhancement of the environment (ibid, paras 8.19 and 8.28). The Environmental Priority Areas (Environment Policy 4) include the SLAs and areas of local landscape significance defined in local plans, the coalfields and areas affected by minerals working, the Green Belt and the National Forest and East Derbyshire Woodland Project (EDWP) areas.

- 6.13 There is no doubt that the site lies within an identified Environment Priority Area related to the EDWP (CD22/4) and the Green Belt. It is not, however, within a SLA or area of local landscape significance, notwithstanding the fact that there has clearly been an ample opportunity in the past for the area to be so identified if it was felt to meet appropriate criteria.
- 6.14 The Minerals Local Plan (MLP) also addressed SLAs and areas of local landscape importance and identifies them for particular protection (CD20/4, Policy MP4). Of particular significance in the context of the Lodge House proposal is the MLP's approach to restoration at para 5.15. That paragraph makes it plain that proposals which come forward and in the EDWP should be encouraging woodland planting together with increasing biodiversity and additional public access. As Mr Ellis accepted, the Lodge House proposals precisely fit that which the plan seeks to encourage in this regard.
- 6.15 Chapter 13 of the MLP was specifically revised in order to take account of the guidance in the revision to MPG3. Chapter 13 adopts an approach of identifying areas within which opencast proposals would be regarded as unwelcome by way of the identification of open cast constraint areas (OCAs). The OCAs represent the main areas of environmental constraint (ibid, para 13.50), whether for landscape or any other reasons. Paragraph 13.53 of the MLP makes it clear that areas of woodland cover were an important factor in defining constraint areas. It is thus an inescapable conclusion, and accepted by Mr Ellis, that there would have been a significant landscape input into the definition of OCAs making it particularly significant that it was not suggested at any stage that the area within which the appeal site lies should be regarded as being appropriate for designation as part of an OCA.
- 6.16 That position is to be contrasted with the position now advanced by the County Council through Mr Ellis and others, that the area in which the site stands is unusual in landscape and other terms and is worthy of being protected effectively for its own sake. In addition, it is quite clear that the approach to the definition of OCAs was not narrow or constrained – for example, Inset Maps 12 and 13 show areas quite widely defined and not limited to, for example, some distinguished parkland feature.
- 6.17 At the time the application was being considered, the Amber Valley Local Plan (CD20/7) was still a part of the Development Plan. Its relevance now is as a part of the historical record demonstrating that at no stage in the history of its being addressed by the local plans that have covered this area, has any plan identified the site as being of any particular value. Specifically no part of the site was included in a SLA (CD20/7, Policy EN9) or an Area of Local Landscape Significance (ibid, Policy EN16). There is nothing in the recently adopted Amber Valley Local Plan Review (CD/20/8A) which would change this position.

- 6.18 In these circumstances the assertions as to the importance or value of the site in landscape terms contained in Mr Ellis's evidence (DCC2, para 2.4.6) are simply not supportable.

*The Appropriateness of UK Coal's Restoration Proposals*

- 6.19 The County Council's approach to planting and landscape management in the Coalfield Estatelands Landscape Character Area is set out in the "*Planting and Management Guidelines*" (CD22/3, p109). The woodland vision and tree vision described relates well to the Lodge House proposals in as much as the woodland vision is for "*densely scattered small woodlands*" with a typical woodland size identified as being "*0.5 - 15ha; small-medium*". The tree vision is for "*densely scattered hedgerow trees, dense watercourse trees and localised amenity tree groups*." That approach is completely contrary to Mr Ellis's assertions that the woodland proposed in the restoration scheme advanced by UK Coal in the November 2005 proposals is inappropriate. Equally clear from the Landscape Character Assessment work and the management guidelines, are the opportunities to enhance the area by way of proposals such as those put forward by UK Coal. The enhancements envisaged by the management guidelines relating to woodland planting, hedgerow and hedgerow tree planting, connecting woodland and hedgerows and extending ancient woodland sites are all addressed by the current restoration proposals.
- 6.20 The trees which are to be removed as a consequence of this proposal were agreed by Mr Ellis to be hedgerow trees and not any remnant parkland trees. They are, in his terms, boundary trees (DCC2, para 2.4.4). The hedgerows in which they formerly stood have either deteriorated or gone, leaving some of the trees in either an arable or improved pasture landscape, and the poorer for it.
- 6.21 A relevant consideration in assessing the appropriateness of UK Coal's restoration proposals is the EDWP. Notwithstanding the Council's attempt to undermine the significance of this document, the fact is that it has significant weight arising from its identification in a series of development plan and other up to date policy documents. These include the Structure Plan and the Minerals Local Plan (see paras 6.13 to 6.15 above) and Space 4 Trees (CD22/2, p12). Mr Ellis's own evidence also recognises its relevance in the context of planting new woodland on the site (DCC2, para 6.3).
- 6.22 Mr Rech confirmed that he had spoken to the relevant personnel who confirmed the ongoing relevance of the EDWP. There is no doubt that the site is within the project area and it was agreed that that was deliberate, not accidental, and a reflection of the desire to achieve significant planting in this area consistent with the County Landscape Character Assessment. It is plain that mineral extraction, and particularly surface mining, are seen as having the potential to significantly contribute to the objectives of the project (Executive Summary; para 1.6 and Section 9.2). As to the deficiencies in woodland coverage, paragraphs 3.7 and 4.1 make clear the view which is taken as to the project area and the deficiencies which exist.
- 6.23 Mr Ellis agreed that it was important in any area where there are mature trees to take a long view to ensure continuity and look to the means to achieve it. This is reflected in



paragraph 8.76 of the Structure Plan which makes the point that continued replacement of trees is required, not just the conservation of existing trees and woodlands.

- 6.24 As to the contribution of individual trees to the landscape, Mr Ellis agreed that these are not readily apparent in longer views of the site and specifically in the context of his Viewpoint 5 (DCC2/2, Figure 15e). It is, he admitted, the assemblage of the hedgerows and woodlands that makes the difference, not individual trees or features. That was also the view taken in the Supplementary Environmental Statement which notes that the individual trees and hedgerows are relatively minor elements in the landscape (CD/1/3, Annexure G, para 7.3).
- 6.25 To the extent that individual trees are regarded as important, it is relevant to note that there has been significant tree loss in the area. This is apparent from a comparison of Mr Ellis's Figures 4, 7 and 8 which he agreed established that, without opencast operations, there had been significant tree loss. The tree resource has declined and that decline will continue in the absence of positive proposals to plant further trees and woodland. Mr Ellis was unable, despite a specific invitation, to identify where agricultural neglect in the area had contributed to tree loss. Neither was there any analysis by the County Council to demonstrate that the area has suffered significant tree and woodland loss as a result of opencast working.
- 6.26 It was in this context that the inconsistency in Mr Ellis's evidence between, on the one hand, complaining about the impact of opencast proposals on the landscape of the area and, on the other hand, drawing attention to the same 3km area around the site as being well wooded arose. Those two approaches are not consistent. In any event, the Lodge House proposals would not have any impact on any significant woodland or other significant landscape features which Mr Ellis identified as comprising Manchester Wood, Whiteley's Plantation, Bell Lane, its hedgerows and trees, John Wood and Mundy's Plantation, and Abbot's Rough. These would all be retained. The tree loss that would occur (CD23A) should be seen in the context of the lack of impact upon all of these areas.
- 6.27 Whilst Mr Ellis made generalised assertions with regard to the effects of opencast working on tree loss, he produced no evidence to support these assertions and was distinctly reluctant to identify the extent to which tree loss had occurred in areas which had not been subject to opencast proposals. His evidence was not balanced in its approach to the Lodge House proposals. Rather, it sought to (inaccurately) attempt to portray the proposals as essentially negative in the context of a landscape which in his view, but unsupported by any guidance, should be subject simply to a preservation approach.
- 6.28 In the formulation of the restoration proposals, UK Coal have been able to demonstrate, through Mr Rech, that they have had full regard to up to date strategic documents such as Space 4 Trees as well as the more local documents such as the EDWP, the Landscape Character Assessment and the relevant Structure and Local Plan policies. All these documents identify the area as one which is in need of enhancement and which should be subject to significant tree planting proposals. The

extent of the lack of tree coverage in this area compared with other areas, and the continued threats to tree and woodland cover, are set out in Space 4 Trees (CD22/2, p18). Both that document and the EDWP, consistent with the Landscape Character Assessment, look to the future in terms of significant planting in order to ensure an increased woodland cover and a continuing succession of both individual trees in hedgerows and elsewhere and woodlands.

- 6.29 Mr Ellis's approach could, at the end of the day, best be characterised as an attempt to stand the Development Plan and other policies on their head and take an area which had been identified for enhancement as being one which should now be approached on the basis of preservation alone. Mr Ellis accepted that the guidance in Space 4 Trees, the EDWP, the Structure Plan, the Minerals Local Plan and the Derbyshire Landscape Assessment were all consistent with one another in pointing to the appropriateness of woodland planting in this area. He agreed that the woodland range would be within the range identified in the landscape guidelines; that the form of the plantations would meet the form identified of regular plantations; that the proposals would link between existing woodlands and hedgerows and that there would be management and enhancement of hedgerow trees. He agreed that this would be consistent with the management guidelines in the Derbyshire Landscape Character Assessment (CD22/3, p109) which he accepted was up to date. He was invited to identify any conflict that could be said to exist between UK Coal's proposals and the guidance in, for example, EDWP, but was unable to do so in any convincing way whatsoever.
- 6.30 The criticisms of UK Coal's restoration proposals are advanced in the context of effectively wanting to rob the proposals of the benefits which would otherwise flow from them. This was done in the knowledge that those benefits would assist in reaching the conclusions that these were the sort of priority proposals that should come forward in the context of the guidance in paragraph 14 of MPG3.

#### *Landscape and Visual Impacts*

- 6.31 UK Coal accepts that there would be impacts in visual terms during the life of the working. But those impacts would be limited both in terms of their extent and their time and should properly be viewed in the context of the benefits of the proposal. Some of these benefits would be immediately available. Others would take time to mature, although as the landscape restoration of opencast workings elsewhere demonstrates, some benefits would be within the short to medium term.
- 6.32 When judging Mr Ellis's evidence and statements of the kind set out in the Report to Committee (CD7/3, p.15) which suggests the proposal would be particularly intrusive and have an adverse impact on landscape character, it is right to bear in mind the original response given by Mr Ellis (CD5/2.4). This did not identify any particularly intrusive elements and did not identify any adverse impact on landscape character.
- 6.33 In addition, as became obvious during Mr Ellis's cross-examination, a substantial part of the County Council's case with regard to the landscape impact of the proposals involved the proposition that within this area the woodland planting proposed would be visually and, in terms of landscape character, harmful. That is a proposition as

startling as it is wrong, and not capable of being supported by reference to any of the documents which have considered this area and what is appropriate in landscape and visual terms.

- 6.34 For the most part, the evidence on landscape and visual impacts was not contentious. Where it was contentious, that seemed to arise from Mr Ellis's view of the effects of the woodland planting on restoration or, alternatively, from simply a wrong approach to the characterisation of impacts. By way of example, Mr Ellis's consideration of Viewpoint 4 (DCC2, para 5.5.3 et seq) involves the consideration of a view at a distance of between 1.0km and 1.5km away with an overall conclusion that there would be significant adverse impacts (ibid, para 5.5.5). Quite how that conclusion could be reached in the context of the previous paragraph which records that at the operational stage there is a slight impact, at the end of operations a negligible impact and at 15 years a slight impact was not clear as Mr Ellis conceded when cross-examined on the point. In addition, it was obvious that Mr Ellis was not fairly assessing the impact because of his failure to admit that the context to the view is relevant, a context which embraces a very substantial industrial estate at the entrance to the Country Park.
- 6.35 The same approach was evident with regard to Viewpoint 5 and in particular the photo-montage at Mr Ellis's Figure 16. It is obvious, on a careful consideration of Figure 16, that far from representing a photomontage of the viewpoint at Figure 15e, the photograph has been enlarged and the view of the appeal proposals exaggerated by, in effect, a telephoto effect and by the cropping of the photograph so as to remove its relevant context. Mr Ellis admitted that the photomontage had not been prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment (CD21/1, Appendix 9 p.156), that it was not accordingly a real view, and not in accordance with what he said he had done in his proof of evidence. Perhaps more startling was his acceptance that, if it hadn't been pointed out, he would not have identified what had occurred when the photomontage had been prepared.
- 6.36 In addition, and as part of the exaggeration process, the treatment of the overburden mound, which it was agreed would be grassed, was such as to effectively make it stand out in the view. In reality, as a grassed mound, the grass would be the same colour as any other grassland in the landscape. It was specifically designed with outer slopes not untypical of those in the area. Mr Ellis had no evidence available to suggest that the overburden mound could not be successfully seeded by way of hydroseeding and could not challenge the view that that would be achievable in a relatively short space of time.
- 6.37 A similar approach with regard to the removal of context and an exaggeration of impact was apparent from Viewpoint 6 at Mapperley where, in the end, the impact was identified as being the harmful impact arising from a relatively distant view of new woodland which, it was pointed out, would not be immediate but would grow over a period of time.
- 6.38 It is no part of UK Coal's case to suggest that from the Shipley Country Park the workings would be invisible. There clearly would be stages of the operation where

some elements would be visible and attention may be drawn to the operations by moving plant. Notwithstanding this, the working area would be a very small incident in a wide panorama. The redesign of the proposals has been sufficiently skilfully undertaken to ensure that, other than those who wish to stand and look for the workings, no one need regard them as being in any way significant or substantially harmful. In particular, there is no evidence to support the view that they would materially impact on the experience to be gained from visiting the Country Park.

- 6.39 In considering the extent of any visual impact, it is also relevant to bear in mind the extent to which the landscape framework around the site would be undisturbed. Those elements which Mr Ellis admitted were significant in the landscape (see paragraph 6.26 above) would remain throughout the working with the tree loss confined to the agreed numbers in CD23A. On restoration there would not be, as Mr Ellis was wont to assert, any visual uniformity from a substantially new landscape. What there would be is an established landscape framework within which there would be a significant strengthening emerging as the landscape matures, entirely in accordance with all the policies for this area.
- 6.40 Two other matters call for comment in the context of allegations of landscape or visual impact. They are, firstly, the question of lighting and lighting impacts; and secondly, the issues raised with regard to any potential threat to other trees as a result of the works. With regard to lighting, it was accepted that this was not an issue raised in the Reasons for Refusal or Pre-Inquiry Statement, nor addressed in the Report to Committee or any proof of evidence. Nonetheless the County Council raised the issue and without any evidence at all to support the suggestion of impact has, to some extent, explored what impact there might be. In the end there is a vague assertion that there is bound to be some impact, but without any consideration of from where and of what significance and the extent to which it might be mitigated. Such an approach is completely unfair from an applicant's point of view, completely contrary to the Secretary of State's guidance with regard to the preparation of Reasons for Refusal, Pre-Inquiry Statements and proofs of evidence, and thoroughly inappropriate in the context of a proposal which has been so long in its consideration both by the County Council as Mineral Planning Authority and in the appeal system. There is no evidence to support the view that there would be any material lighting impact that could be regarded as in any way harmful.
- 6.41 A similar issue arose in relation to the alleged threat to trees which are not proposed for removal, but which are within the site. Mr Ellis accepted that there had been no request for further information on, or consideration of, tree protection or root protection areas and, notwithstanding ample opportunity to do so, UK Coal were not asked to provide any such details. Ultimately, it was accepted that the situation was capable of being addressed by way of a condition.

#### ***Shipley Country Park***

- 6.42 The effect of the proposals in landscape and visual terms in relation to Shipley Country Park is considered in paragraphs 6.35 to 6.39 above. The County Council sought, however, to suggest through Mr Holmes that the park would suffer other

effects and that, in the context of its importance, those effects should be regarded as significant. UK Coal proceeded on the basis that the park is a valued local amenity, is well used and, accordingly, should be respected in the design of the scheme. That includes not only considering the negative impacts of the proposal, but also the positive effects arising from, for example, the additional rights of way and their connection to the Country Park via Bell Lane. This is something which Mr Holmes accepted he had indicated would be welcomed when he met Mr Ball of UK Coal in September 2003 to consider the restoration proposals.

- 6.43 The number of visitors to the park in any one year is, to some degree, a matter of speculation. The figure is put at 450,000 in some of the evidence, but other figures provided by the Council suggest a figure somewhere between 190,000 and 380,000.<sup>1</sup> The number is nonetheless significant.
- 6.44 With regard to the potential impact on visitor numbers, the data indicates that there was a high point in terms of visitor numbers in 1989/90, with a recent increase to similar levels (DCC4/1, Appendix 2). This is significant because the high point at the end of the 1980s was in the context of the completion of the major Whitehouse opencast site, which was operational until 1982.<sup>2</sup> No evidence was presented of any difficulty in the opening and development of the park relative to that major proposal. Neither was any difficulty identified in relation to the immaturity of any landscape proposals consequent upon it with impacts on visitor numbers.
- 6.45 That experience in relation to proposals of this kind is mirrored in the Conkers scheme which, although different in certain respects to Shipley Country Park, is nonetheless a major leisure/tourism attraction, located proximate to an area of surface mining (APP14, Appendix 3). That scheme won an East Midlands Tourism Gold Award in 2005 and has clearly not had any difficulty in attracting people as a consequence of being near a surface mining proposal.
- 6.46 It is also relevant that Shipley Country Park appears not to have suffered as a consequence of having its main (Coppice Side) car park accessed through the Heanor Industrial Estate. This is clearly a significant commercial area on the doorstep of the park. The car park numbers recorded (DCC4/1, Appendix 3) do not show the Coppice Side car park as having suffered any lower attraction because of that access.
- 6.47 Mr Holmes's evidence made an attempt at suggesting that the park was a significant tourist attraction over a wider area and that it had some significant role in terms of the generation of tourism income. But it is clear from the data in the Country Parks Review that there is no connection between the 842,000 irregular countryside day trippers referred to in the Tourism Economic Impact Assessment (DCC4/1, Appendix

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<sup>1</sup> DCC4/2, Table C shows that between 20 and 40 percent of visitors to the park visited the visitor centre. DCC4/1, Appendix 2 shows the average number of visitors passing through the visitor centre in the last 3 years as 76,000.

<sup>2</sup> For location of Whitehouse site, see DCC2/2, Figure 2.

7, Table 3.3) and the vast number of people who take advantage of Shipley Country Park to walk their dog, take some exercise and otherwise enjoy some recreation. The information which the County Council supplied to the compilers of the Country Parks Review identified that some 80% of visitors came from less than 10 miles away and 90% less than 20 miles away (DCC4/1, Appendix 1 and DCC4/2, Table D). Those facts, coupled with 40% of them being walkers, 10% of them coming by bicycle and 40% by car, support the view that this is essentially a local facility. The concerns about dog fouling (DCC4/2, Table E) also reinforce the view of the way in which for many people the park operates.

- 6.48 The quantum leap in paragraph 3.5 of Mr Holmes's proof that, if the park attracts 500,000 visitors a year, they must include a substantial number of the 842,000 day visitors to Amber Valley (DCC4, para 3.5) is not supported anywhere in the evidence.
- 6.49 The attempt to connect the visitors to Shipley Country Park with any significant expenditure is, likewise, unsupportable. The average spend figure of £16 for countryside day trip spending given in the tourism report, includes people going to places which have substantial entry charges and is clearly not just an Amber Valley spend figure (DCC4/1, Appendix 7, Section 3.2 and the following tables). It also includes costs for fuel and vehicle wear and tear.
- 6.50 The opportunities to spend at the Country Park are limited to two cafes, one of them seasonal, and a gift shop. The spend figures taken from the Country Parks Survey indicate a spend which averaged some 12.5p per visit (DCC4/2, Table N). The total income of the park in 2004/05 was just over £68,000 (DCC4/1, Appendix 8). Visitor centre numbers in the same year were some 77,800 (ibid, Appendix 2) suggesting that average spend for each visitor to the visitor centre is only some 88p per head.
- 6.51 There is a demonstrable economic benefit in the Shipley Country Park in terms of the employment which it offers for County Council staff. That is evident from the budget (DCC4/1, Appendix 8; DCC4/2, Table I) which identifies the significant and unvarying expenditure over the years. That expenditure is, as Mr Holmes accepted, unlikely to be impacted upon by any decline in visitor numbers so that even if, which UK Coal do not accept, there were to be any impact arising from the opencast proposals, there would not be any impact in terms of employment or anything wider as a consequence.
- 6.52 Mr Holmes drew attention to the National Audit Office publication, an extract from which is included within his Appendix 6. Necessarily implicit in his approach is that Shipley Country Park is being treated as urban green space and he confirmed that the park is regarded as having an urban setting. That of course would not change as a consequence of the proposals and, as a means for accessing the countryside and opportunities to enjoy enhanced access to it, the appeal proposals should be regarded as essentially positive. The desire to achieve the CABESpace Green Flag Award (DCC4, paras 3.3 and 3.4) is entirely commendable but the criteria used relate to what goes on inside the park and not outside it. Mr Holmes was unable to identify any way in which the appeal proposals could materially impact on the ability to achieve the Green Flag Award.

- 6.53 With regard to surveys of the way in which people use the park and the footpaths, the information in DCC4/1 Appendix 4 appears not to have been collected on a clear and consistent basis and most certainly does not support a significant usage of Bell Lane, sufficient to displace Mr Bolton's survey material which was collected on Bell Lane (APP4, Appendix DB30). This was not subject to any cross-examination to suggest that it was inaccurate.
- 6.54 To the extent that Mr Holmes's Appendix 4 demonstrates that people use the John Wood footpath, that is undeniable from a consideration of the condition of the path and any visit to the area. That, however, is very far from demonstrating that that experience is going to be materially the poorer because of the Lodge House proposals. There may, during the working life of the proposal, be some change, but even that would be of limited consequence bearing in mind the extensive hedgerow and other vegetation cover which there is in place, and the extent to which, even at its closest approach, the proposals would not have any significant noise impact (APP5). That evidence, along with the evidence given by WHEG/SMAG in the course of Mr Steiner's cross-examination demonstrates that the proposals, when tested against the most demanding standards evident in the World Health Organisation Standards, would not have any material effect. In connection with the Shipley Country Park, it is clear that there are no relevant standards which have been identified which it can be said would be breached.
- 6.55 In terms of the availability of the existing footpaths in the park, they would all remain available as a consequence of UK Coal's decision to maintain Bell Lane (at a significant cost in terms of the coal being lost).

*The Green Health Partnership*

- 6.56 One aspect of the impact of the proposals on the Country Park that must be considered is the work of the Green Health Partnership (GHP) to which Mr Phillips's evidence was directed. In this regard, UK Coal do not suggest that the work is not important and worthy of support. Rather, they are sad that an opportunity to engage with the GHP at an earlier stage was not made available to them, so that opportunities for collaboration both in terms of utilisation of local stock in relation to trees and hedgerows, and the ability to engage with practical restoration proposals, was potentially being missed.
- 6.57 It is right also to observe that although, as Mr Phillips accepted, the proposals were known about, having been widely reported locally, no representations were made on behalf of the GHP at any stage, before the County Council, it seems, invited the representations in support of their case. However enthusiastic therefore Mr Phillips might have seemed to appear at the inquiry, the fact is that when there was the opportunity, free from any invitation from the County Council, to make an objection if there really were a serious issue, no objection was made and no concern expressed in any way at all.
- 6.58 The proposals would not have any physical impact on anything that the GHP is concerned with. There is no evidence to suggest that any noise levels generated by the

proposals would materially impact on any area with which the GHP is concerned. Mr Phillips confirmed that the work of the GHP was not suspended at any stage when, for example, the American Adventure was in full swing, or when any particular activities were being promoted within the Country Park. Accordingly, though certain aspects of the GHP's work might be sensitive, it is clear that they are not so sensitive that they are inconsistent with major attractions coming to the park, or with the activities of American Adventure.

6.59 With regard to the relevance of the Country Park's setting to the treatment of mental health problems, Mr Phillips's Appendix 2, which is effectively a synthesis of other publications, demonstrates that:

1. No conclusion is available to suggest the increased efficiency of mental health programmes delivered in natural settings rather than elsewhere.
2. Even in areas with more natural landscape, the focus is on ameliorating stress associated with rural life, or the delivery of health promotion in a natural setting, not the health promoting benefits of nature.
3. Although the Audit Commission may perhaps have made the link, no agency has otherwise made the essential link between the potential positive impact of nature and psychological well-being.
4. Whilst it is clear that access to green space is important, no evidence is available to say that that needs to be green space in a particular environment.
5. There are positive and clear links between being able to gain employment and mental health which may be particularly important for longer term unemployed people such as those identified by Mr Lucas as being likely to exist in an area such as this.

6.60 In these circumstances, UK Coal submits that it is simply not possible to say that the appeal proposals would have any negative effect on the work of GHP. To the contrary, there would be the potential for a positive engagement with the project's day to day work and the opportunity for those engaged in it to feel that their activities are contributing directly to the enhancement of the landscape of the area by assisting with the restoration of the site. Mr Phillips accepted that the site would offer the opportunity for a direct and meaningful engagement with a real project which would plant thousands of trees, establish new rights of way, and create new nature conservation areas.

### ***Ecological Considerations***

6.61 Ecological issues are raised by the County Council and WHEG/SMAG. With regard to the County Council's interest, it was confirmed by Mrs Cooper in cross-examination that the Council's concerns are limited to the impact of the proposals on the Hobby and the impact on veteran trees. To the extent that the evidence comments



on other species or areas of interest, those are not matters of objection. Rather, they are capable of being dealt with by way of appropriate conditions.

6.62 The context for the consideration of the County Council's evidence with regard to ecological impacts is set by, among other things, the meeting on site between Mrs Cooper and Mr Ball, UK Coal's representative, in October 2002. At that time Mrs Cooper had been sent a draft site plan, a draft hedgerow grades plan and a draft tree survey. The site visit, which was not constrained in any way from Mrs Cooper's point of view, involved a consideration of tree retention which resulted in a modification to the proposals and a specific objective of retaining, among other things, the trees in the south eastern corner of the site and Tree 7.<sup>1</sup>

6.63 Mrs Cooper's formal consultation response was prepared in July 2003. As such, it was compiled some time after English Nature published advice on the management of veteran trees (DCC3/1, Appendix 20). Her assessment of the proposals and their ecological impacts can be summarised from the memorandum as follows (CD5/2.5):

1. The survey methods and resulting descriptions were adequate.
2. The site was of limited biodiversity internally.
3. The evaluation methods were recognised and the conclusions acceptable.
4. All of the impacts had been clearly identified and followed through with concerns being limited to comments.
5. The proposals provided useful mitigation.
6. The restoration would be acceptable.
7. By way of a conclusion it would be difficult to maintain any concerns as being reasons for refusal in the light of the assessment.

6.64 That assessment of the proposals which, as Mrs Cooper accepted, was not provisional or qualified in any way and was intended to inform the decision making process, has as its context the following:

1. At that stage (i.e. by July 2003) the existence of the Hobby was known and was obvious.
2. The Lowland Derbyshire Local Biodiversity Action Plan (LBAP) had been published in March 2003 (DCC3/1, Appendix 24a).
3. There had been a Lowland Biodiversity Partnership Action Plan in existence since 2001.

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<sup>1</sup> For location of tree 7, see CD23A.

4. The Natural Area Profile had been published in 1997.
  5. The English Nature Veteran Trees publication had been published in 2000. That publication had explained fully the significance and value of veteran trees and was accordingly available to inform the judgments reached in the memorandum in July 2003.
- 6.65 It is also relevant to bear in mind that there were in place at that time policies in the Amber Valley Local Plan such as EN18; policies such as EN8 in the Draft Review Local Plan; Structure Plan Policies such as Environment Policy 16 and Minerals Local Plan Policies such as MP1(4), all of which, if Mrs Cooper had thought it appropriate, could have been drawn on in order to mount a case against the proposals similar to that put to the inquiry by the County. However, at that time such a case was clearly considered not credible.

*The Hobby*

- 6.66 The Hobby is a statutorily protected species and, as a consequence, is worthy of particular consideration having regard to its occurrence in the area on and around the site. The relevant statutory provisions are clear and, notwithstanding its current resurgence, the approach to it ought to be one which respects its conservation status and relative scarcity. In UK Coal's view, the appeal proposals have adopted an approach which fully respects the significance of the species and what is known about it.
- 6.67 In considering the impact of the proposals on the Hobby, it is appropriate to record the agreement reached at the end of Mrs Cooper's evidence that provided Crows continue to nest in this area, and there was no reason to suppose that they would not, then the Lodge House proposals need not represent any threat to the Hobby in this locality or its status more widely. That, coupled to the acceptance of the proposition that, even if the bird were disturbed by the proposals, that disturbance for the lifetime of the workings would not be likely to have any impact on its conservation status, is sufficient, UK Coal submits, to deal with the suggestion that the proposals should be rejected because of such an impact.
- 6.68 However, Mrs Cooper's evidence, prior to being brought to a proper consideration of the status of the species and the impact of the proposals, had been wont to exaggerate both the scarcity of the species and its sensitivities. The following were clearly and incontrovertibly established through consideration of the evidence with Mrs Cooper:
1. The species is under-recorded. Accordingly, when considering their numbers, one should bear in mind how notoriously difficult the Hobby is to identify and the extent to which its habits are such that under-recording has been a significant feature in the past (DCC3/1, Appendix 4, p.403; Appendix 12, p.4; Appendix 13, p1).
  2. The breeding frequency and range of the bird has expanded and continues to expand (ibid, Appendices 1, 3, 4 and 12).

3. The JNCC Rare Breeding Birds Panel has now categorised the species as being "*less scarce*" (ibid, Appendix 2) with no caveats entered indicating that there was any need for special care because of the use of an apparently arbitrary 300 breeding pairs number in the assessment. British Birds (ibid, Appendix 4) indicates that the numbers could be now as high as 2,200 pairs in the UK, a conclusion which is clearly supportable by reference to other data.
  4. Whilst Mrs Cooper has drawn on the Nottinghamshire data, that data is incomplete because of an absence of any thorough survey work (ibid, Appendix 9, p.1). But the Hobby has been found in association with gravel pits, apparently active mineral workings (ibid, Appendix 10).
  5. Some of Mrs Cooper's Appendices are now of distinctly historical relevance such as Appendix 11, a 1996 publication, some ten years out of date in its assessment of the status of the bird. More recent assessments such as The Derbyshire Bird reports for 2003 and 2004 (ibid, Appendices 14(a) and (b)) identify the bird as uncommon but increasing with 2004 indicating that there were "*numerous ... records*" of the bird.
  6. The gap between 1938 and 1975 in the occurrence of the bird was clearly not a gap which was related to either the start or continuation of opencast mining operations in this area. Indeed, the birds have returned in the context of opencast mining and so cannot be said to have been deterred by it.
  7. Equally, its return cannot be on the basis that all of the trees have suddenly become mature. Rather, it seems it is likely to be related to the availability of food resources and the increasing availability of Crows' nests as a result of less persecution of that species: (ibid, Appendix 1 pp131 and 135). The connection between food and the return of the bird and its spread in occurrence suggests that, to the extent that the appeal proposals would provide such habitats, they could themselves contribute to its continued resurgence.
- 6.69 The evidence which is available is summarised in Mr Messenger's 2005 paper which establishes that the bird is "*continuing to do well in Derbyshire*", enjoying a good success rate, has an increased range, is enjoying a population boom, is highly productive, and that there is little to prevent it doing well (DCC3/1, Appendix 13, p7). The main threat is the loss of suitable habitat, but there is no evidence anywhere, in all of the publications, as Mrs Cooper agreed, to support the view that the threat to it is due to a loss of mature trees. Indeed, the literature establishes that the bird is resilient and has taken in some circumstances to nesting in more urban locations (ibid, Appendix 13, p7).
- 6.70 Mrs Cooper accepted that, on the basis of the information which is available, the description of the bird as being adaptable and resilient was appropriate and, although her evidence purports to identify that it has complex requirements (e.g. DCC3, para

7.2.2) that claim is not supported by reference to the published material. DCC3/1, Appendix 12, page 2 establishes that in Derbyshire the bird favours lowland farmland (either pasture or tilled land for growing crops) which it was agreed is not an exacting requirement; its only other requirement is for trees with Crows' nests, which again could not be regarded as rare. The bird has switched from elms to oaks in the light of the demise of the elm population.

- 6.71 As to the size of trees, the bird favours heights between 10 and 30 metres with the majority of nests between 13 and 18 metres (ibid, p3). Within the boundaries of the site (excluding the mature woodland) there are some 89 trees in excess of 13 metres high, of which 55 are oaks providing potential opportunities (DCC2, Table 1). Although it is suggested that the bird prefers solitary trees, that is clearly a limited way of expressing the fact that the bird will nest in trees which are either in hedges or fields and often on the edge of woodlands as the evidence at Lodge House shows (DCC0/2).
- 6.72 Mr Messenger's paper, whilst identifying oak as the preferred species for nesting also indicates that ash has been used as have electricity pylons. Most often the trees used are in hedgerows (DCC3/1, Appendix 13, p1). The bird's resilience and adaptability and its lack of any specific requirement is further demonstrated best by the note from Mr Messenger which shows that in the last five years the bird has used four different trees, three of them on the edge of woodlands, one in a line of trees and one in a field (ibid, Appendix 15 and DCC0/2). The birds are opportunists (ibid, Appendix 13 , p7) and they will clearly take advantage of any suitably located Crows' nest, something which may be forced on the bird bearing in mind the fact that the Crows' nests are themselves not indestructible.
- 6.73 Mrs Cooper's evidence was also wont to make much of the requirement for a so-called "guard tree". But the fact is that none of the publications produced identifies such a requirement, as opposed to indicating the bird's preference for a nest site which has a branch or branches nearby, either in the same tree or in a nearby tree, from which the nest can be seen, not so much to guard it but as to provide a perch to enable food gathered by the male bird to be transferred to the female bird. It is particularly to be noted that, although Mrs Cooper was identifying the source of the guard tree requirement as being Mr Messenger, none of the material published by Mr Messenger identifies any guard tree requirement. Rather, it appears to have been Mrs Cooper's interpretation of conversations with him which resulted in her identifying this requirement as opposed to anything that had arisen from his observations.
- 6.74 Nothing now appears to turn on the territory size that the bird usually occupies. The evidence indicates that the territories might be defined by distances of three miles between nests but on occasion down to one mile has been observed (ibid, Appendix 13, p5). The absence of territories in any particular area where they might have been expected is, it seems, more likely to be the result of the bird simply being missed than the absence of the bird.
- 6.75 In their consideration of the appeal proposals and the extent to which mitigation is available, UK Coal have engaged the most experienced organisation in the Hawk and Owl Trust and the most experienced individual within that organisation in order to

provide them with advice (APP12, Appendix 2). That advice is accepted as coming from a properly qualified source. The methodology, that is the fixing of nest baskets in suitable trees, is a tried and tested one. Suitable trees have been identified in a suitable habitat by a suitably qualified person. Notwithstanding, in a context where the bird has a super abundance of available trees and available Crows' nests to choose from (APP0/3) it is difficult to see that the acceptability of UK Coal's proposals should turn on whether or not the bird actually requires the nest baskets which have now been provided. In substance it is perhaps best to approach the nest baskets as being the guarantee of the availability of a suitable nest site in a suitable location rather than something which is necessary because of the absence of any such opportunity elsewhere in the bird's territory.

- 6.76 The suggestion that the birds should be regarded as sensitive to footpath usage is not supported by any of the published material or by the references which we have seen to the bird's resilience and adaptability. The fact that in other countries it has become established in urban locations simply serves to demonstrate that this truly is an opportunist which, given the appropriate food and nest sites, is willing to establish itself in a wide variety of locations.
- 6.77 More generally, the restoration proposals make provision for a series of elements which would encourage small woodland birds and dragonfly populations. In the context of the reappearance of the Hobby, and the relationship to suitable habitat and food sources, this should be regarded as significant. There is no question of needing immediate replacements for the veteran trees being removed from the site because of the admitted availability of a vast number of other suitable locations within the territory.
- 6.78 Against this background there is now no basis for the rejection of these proposals taking fully into account the status of the Hobby as a protected species and having full regard to the development plan policies which relate to the species.

#### *Veteran Trees*

- 6.79 With regard to veteran and other tree loss, Mrs Cooper's evidence needs to be put in the context of the fact that the Coalfield Estatelands key characteristics do not, contrary to her assertions, include mature hedgerow trees (CD22/3, p107). In relation to veteran trees, Mrs Cooper accepted that the approach taken in PPS9 with regard to veteran trees could be contrasted with the approach taken to ancient woodland (PPS9, para 10). As to veteran trees outside of ancient woodland, the Lodge House proposals do not offend against any criteria which have been established to protect veteran trees occurring in any significant numbers, such as the County Wildlife Site Criteria. Also, it is self evident from the way in which the proposals emerged that the guidance in PPS9 that encourages the retention of veteran trees has been fully respected to the point where, when Mrs Cooper identified in the course of giving her evidence that she would prefer to see Tree 8 retained, UK Coal took steps to redesign the proposals and retain a tree which it was practicable to retain without any significant loss of coal (CD23A and Plan C).

6.80 Accordingly, UK Coal submits that the loss of 14 veteran trees, one near veteran tree and the other trees, making a total of some 26 (CD23A), should be seen in the context of:

1. The retention of the vast majority of trees within and around the site. In substance all of the features which might be regarded as being of ecological interest would be retained.
2. The existence of significant areas of mature trees in and around the site and the contribution that they make to ecology. These would not be threatened by the proposal.
3. The evidence that this is not the only location within this area where veteran trees occur in the landscape (APP12B).
4. The agreement that the site is not a (remnant) parkland landscape with significant trees being retained in that context. Accordingly, Mrs Cooper's highlighting in her Appendix 24a of guidance in relation to parklands is misplaced and irrelevant.

6.81 With regard to the veteran trees which would be lost, Mrs Cooper accepted that these trees do not have the characteristics normally associated with veteran trees. In particular, most trees are freestanding and, where they are in hedgerows, the hedgerows are of no particular value. The associated pasture also lacks composite flowers and umbellifers, and the trees themselves lack ecological interest by way of associated bat roosts or any other features.

6.82 The Lowland Derbyshire LBAP (DCC3/1, Appendix 24a) specifically supports UK Coal's assessment of the value of the veteran trees on the site in as much as the table indicates that "*isolation and fragmentation leading to poor dispersal of dependent species*" is a threat. Trees on the restored site would not be subject to such a difficulty; with the restoration proposals, existing trees and woodland habitats would be properly connected. In addition, the threat arising from the non-recruitment of younger trees and a skewed age structure would be addressed by the proposals, as would the threat from a cessation of management which Mrs Cooper accepted there would be a lack of any incentive to undertake in the absence of the Lodge House proposals.

6.83 Against that background it is necessary to record that English Nature's Profile for the Coal Measures Natural Area (DCC3/1, Appendix 18) does not support the view that this area has been rendered any less ecologically rich as a result of earlier opencasting proposals. Likewise, Mrs Cooper's assessment that the "*site is unusual and important [for veteran trees] in the local and sub-regional setting*" (DCC3, para 5.3.1.7c) is not supported by any evidence. Indeed, her own assessment was that "*internally the site is limited in its biodiversity*" (CD5/2.5).

6.84 In these circumstances, whilst UK Coal accepts that there would be a loss of veteran trees and that veteran trees have inherently a value both from a landscape and

ecological point of view, in this instance the loss would be significantly mitigated by the circumstances related to these trees. In ecological terms the trees are agreed to be deficient with regard to the characteristics normally associated with veteran trees. Accordingly, while their loss must be regarded as a negative impact in terms of the scheme, it is an impact which would be significantly mitigated and then needs to be judged in the context of restoration proposals which would ultimately have very significant positive effects for biodiversity.

#### *Restoration Proposals*

- 6.85 Despite the content of Mrs Cooper's proof of evidence it seems clear, following her cross-examination, that the different elements of the proposed restoration would make a positive contribution to biodiversity in the area. The mixed deciduous woodland, totalling some 23.8ha, is agreed to be entirely appropriate and in accordance with the Landscape Character of Derbyshire Assessment. It is a primary habitat and a prominent key characteristic in the Coalfield Estatelands (CD22/3, p109 and p223). The landscape character guidance has taken into account biodiversity (ibid, p.217) and the planting and management guidelines aim to promote linked extensions to ancient woodlands and enhance physical links between isolated woodland and hedgerows (ibid, p109). Such planting would be in accordance with the Regional Spatial Strategy, the Structure Plan and the Derbyshire targets identified in the LBAP (DCC3/1, Appendix 24(b) p.9).
- 6.86 The acidic grassland which is proposed amounts to some 1.7ha. It is a site specific opportunity related to the existence of the sandstone substrate. There is again no doubt that the Lowland Derbyshire LBAP looks for the recreation of this habitat at a significant scale - 50ha by 2010 - and its provision would be in accordance with the action plan (DCC3/1, Appendix 24(c), pp2, 6, 7 and 8). Other than an issue related to the ability to sustain the grassland which appears to ignore the existence of the sandstone substrate, it is not clear what reasonable objection could be made to the proposal bearing in mind its entirely positive contribution to national, regional and local targets.
- 6.87 The area of species rich grassland proposed is some 20.9ha. Although Mrs Cooper suggested its location is unclear, there was not any inquiry about it and the restoration plan (Drg 177/DO3A) and the measurements in the Statement of Common Ground (CD23, p7) show that the County Council must have realised where it would be located. It is clear from the plan that the habitat would link a series of other habitats. It would contribute to the objectives and targets identified in the Lowland Derbyshire LBAP (DCC3/1, Appendix 24(c), pp7 and 8).
- 6.88 The proposals also include ponds and wetlands which the Landscape Character Assessment identifies as being appropriate in this location (CD22/3, p223). Mrs Cooper confirmed in answers in cross-examination that it would contribute to the means by which the food source for the Hobby would be maintained and enlarged.

- 6.89 Against that background, and in the context only of the ecology of the area it is clear that, within a relatively short timeframe, the Lodge House proposal would deliver significant biodiversity gains.
- 6.90 In the context of the policies which were considered by Mrs Cooper, there is no basis for suggesting any inconsistency with the approach in PPS9 in as much as there are no statutory or designated sites which would be affected by the proposals. Also, with regard to veteran trees, it is quite clear that encouragement to their retention has been achieved. The proposals fully reflect the integrated approach to development and nature conservation evident in the Government objectives set out on page 2 of PPS9 and the key principles (ii) and (iv).
- 6.91 In relation to the Structure Plan, Environment Policies 14 and 16 were considered by Mrs Cooper. But having regard to their terms, the status of the Hobby, and the evidence in relation to the trees on the site, there is no basis for suggesting any conflict.
- 6.92 The Minerals Local Plan policies are focused on the identification of adverse effects and acceptable levels. On Mrs Cooper's evidence there is no basis for suggesting that adverse effects have been identified with regard to the single protected species involved, that is the Hobby. With regard to other aspects of the proposals, the impacts have been contained to what should be regarded as acceptable levels, while the benefits in terms of biodiversity are clearly being maximised and would be substantial.
- 6.93 So far as the Amber Valley Local Plan Review is concerned, Mrs Campbell's evidence in relation to policies EN8, 9, 13 and 14 made it clear that there is no conflict identified with those policies.
- 6.94 Mrs Cooper's evidence contained the attempt to elevate the site to a candidate County Wildlife site on the basis of the veteran trees (DCC3/1, Appendix 26). What is clear from her evidence and an examination of the appendix is that, notwithstanding the attempt to promote the site as being worthy of designation as a County Wildlife site, it does not, as Mrs Cooper accepted in cross-examination, meet the designation criteria. Further, there is no evidence that the designation criteria have been altered in any way which would make it credible to suggest that in the future the site would be likely to meet the criteria.
- 6.95 The same sort of approach to the veteran trees can be seen in English Nature's letter to Mrs Cooper (DCC3/1, Appendix 16). Here there is no evidence to show that the site is *"unusual and important"*, neither has evidence been produced to support the view that *"biologically, culturally and aesthetically the site is likely to be of county/regional importance"*. Indeed the evidence from Mr Ellis and Mrs Cooper as well as UK Coal's witnesses, indicates the contrary. English Nature's assertion that there are very few sites in the coal measures where veteran trees can be found is not supported by any evidence and is positively countered by the survey arranged by Dr Mansfield (APP/12B).



- 6.96 Finally, with regard to policies, Mrs Cooper drew attention to the Regional Spatial Strategy and its Appendix 5. It is, of course, correct that the Regional Spatial Strategy identifies veteran trees as being a strategic resource, but in the same category are also farmland and other habitats which could not possibly be regarded as being particularly scarce. The reason for identification of veteran trees and other habitats as being regionally strategic is not clear from RSS8 but on the basis of the more recent advice in PPS9 it seems clear that the proper approach is to approach the veteran trees on the basis of individual specimens being in the “*encouraged to retain*” category rather than representing any more significant impediment to any particular development proposal.

*WHEG/SMAG Concerns*

- 6.97 WHEG/SMAG raised other issues with regard to nature conservation including Water Voles, Brown Hares, Bats, Great Crested Newts and Badgers. In the light of Dr Mansfield’s evidence, UK Coal submits that there is no basis for regarding the proposals as having any identifiable adverse impact in respect of any of these species. It is quite clear from that evidence that the Environmental Assessment work has been properly and competently undertaken, and the significant impacts identified, with no reasonable basis for suggesting that any other species would be adversely affected. The agreed conditions address that which is necessary to ensure continued protection of the species. It should be noted that where the conditions make provision for post consent surveys, the basis for this is not that inadequate surveys have so far been carried out, but rather to ensure that before work starts checks are made to ensure that there has been no material change.

*Conclusion*

- 6.98 Looking at the ecological impacts in the context not only of the working of the site but also its restoration, it is clear that this site is one where there is currently limited ecological interest but where there is significant potential to materially enhance biodiversity and make it appropriately accessible to others. On the basis of the evidence this is not a situation in which there is a particularly fine balance. Rather, having regard to the absence of any identified impact with regard to the Hobby, the limited interest related to the veteran trees, and the very significant biodiversity gains to be achieved from the restoration, the balance is firmly in favour of permitting the proposal.

*Noise*

- 6.99 Some care is necessary when considering the noise issue having regard to the approach which the County Council and others have adopted. It is clear from Mr Charles’s evidence that no issue is raised specifically in relation to noise impacts by the Borough Council’s Environmental Health Officer upon whose advice the County Council has relied with regard to noise issues. Notwithstanding this, the County Council seeks to present a case which relies on noise in certain unquantified respects so far as the reasons for refusal are concerned. For example, with regard to the impacts on Bell Lane and impacts on Shipley Country Park.

6.100 On the basis of the evidence before the inquiry, and the agreement reached with the Borough Council, UK Coal submits that the following is clear:

1. The operations have been designed in such a way that they would not materially breach any known standard with regard to noise emissions, including standards related to public recreation areas regarded as being stringent by all informed sources.
2. The agreed noise conditions<sup>1</sup> not only meet the minimum requirements set out in MPS2 but go beyond that in specifying levels which are, both in relation to temporary operations and normal operations, comfortably inside the upper limits. For recreation areas the conditions respect the World Health Organisation guidance.
3. There is accordingly no basis for making any complaint with regard to an adverse impact from noise in relation to any noise sensitive location identified as such and having any quantifiable standard applied to it.

6.101 In these circumstances the County Council's case with regard to the Country Park and the users of Bell Lane becomes a generalised assertion that there would be audible noise from the site and that this would have an adverse effect on amenity. This case is put without acknowledging the benefits which would arise as a result of the significant reduction in the level of vehicular traffic on Bell Lane consequent on the removal of traffic serving Prospect Farm and Two Elms (APP4, Appendix 30A).

6.102 Whilst UK Coal agree that the operations would not be inaudible at all stages, there is no evidence with regard to either the Country Park or Bell Lane to demonstrate that, with the operations proposed and the soil bunds placed along Bell Lane as proposed, there would be a level of noise perceived on Bell Lane which should be regarded as disturbing as opposed to, from time to time and in an unspecified way, audible. It has always been open to the County Council, notwithstanding the views of the Borough Council, to seek its own advice with regard to the noise impacts of the proposals so as to demonstrate that, for example, on Bell Lane, the levels of audibility would be such that they would be materially disturbing and therefore substantially impact on the amenity of the right of way. Their reluctance to obtain such advice is itself an adequate testament to the difficulty of demonstrating that there would in fact be any significant impact on amenity.

6.103 In these circumstances it would be inappropriate to make any assumption or guess as to the level of audibility bearing in mind the barrier effects which are identified and the extent to which operations would be conducted either behind the shielding outer faces of the over-burden mounds or within the void.

6.104 Very much the same point can be made with regard to Shipley Country Park. There, however, there is evidence from Mr Charles that there would be substantial

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<sup>1</sup> See Appendix E, Conditions 13 to 19.

compliance with the standards set by the WHO "Guidelines for Community Noise". This standard is acknowledged to be demanding. Accordingly, there is no basis to suggest that users of the Country Park would be disturbed by noise.

- 6.105 With regard to any occupied dwellings, there is simply no reason to suppose, on the basis of the evidence, that any occupied dwelling would be likely to suffer any adverse effects as a result of site generated noise.

### ***Rights of Way***

- 6.106 The County Council's case with respect to rights of way focuses on the impact on Bell Lane. But the focus is on the basis of a complete failure to produce any evidence which would define or particularise the impact. Rather, it relies on a generalised assertion that there would be an impact which would be adverse, notwithstanding that it would have been possible to have particularised that with regard to matters such as noise and dust deposition. There is also the failure to acknowledge the benefits arising from the removal of traffic from the lane whilst opencasting is in progress (see para 6.101 above).
- 6.107 Care is required when approaching the issue of the impact on Bell Lane because, as the WHEG/SMAG photographs demonstrate (WHEG/SMAG/1, Appendix 4.1), the approach to the site from the west along Bell Lane is through Manchester Wood. Accordingly, there would be no perception of the site workings until actually emerging from the wood. It is accepted that, at that point, because of a lower section of hedgerow, there would be the opportunity to see the soil and overburden mounds to the south and east. The essential character of the lane is linear, however, and that would not be changed by the proposals.
- 6.108 Approaching from the Shipley Country Park end, the opportunity to see the works until more or less within the site area would again be extremely limited because of the existing vegetation and the topography. Here also the linear character of the lane would be preserved, albeit that the glimpse views through the hedgerows and existing gaps would be lost as a consequence of the soil bunding. There would be an impact with regard to the vehicle crossing, particularly at the times of heavy usage (APP3, para 6.9.2 et seq and APP4, Appendix DB29). However, the impact of that would be ameliorated by the control of the crossing and the prevention of vehicle movements across the lane at a point which, Mr Bolton suggested, might be when users are some 70m from the crossing point.
- 6.109 In summary therefore, whilst there would be an adverse impact on Bell Lane (APP18, para 4.5.4), that adverse impact would be limited in its spatial extent and also limited and mitigated by the factors identified above. The Bell Lane survey (APP4, Appendix 30A) records the number of people using the lane on Wednesdays and Saturdays at times when the site would be operational. This survey did not suffer from the deficiencies in the County Council's survey included in Mr Holmes's evidence (DCC4/1, Appendix 4) in as much as it accurately identifies people who are using the section of Bell Lane which would be affected by the opencasting. Plainly the lane is used, but the survey shows that the use by walkers/joggers, cyclists and horse riders is

relatively limited and nothing like the level of usage that might be associated with popular rights of way in other locations.

- 6.110 In addition, it is not appropriate simply to focus on the working life of the site in identifying the effects. The benefits that would come from the scheme after restoration also need to be taken into account. These would include new rights of way to a series of areas which are acknowledged attractions, such as Whiteley's Plantation, and to the ecological areas proposed as part of the restoration scheme. These rights of way would create both circular routes linking to Bell Lane and a useful connection to the northern part of Smalley. In the light of the encouragement which the MLP gives to the provision of new opportunities for access, restoration and nature conservation with restoration schemes (CD20/4, para 5.15), the benefits related to rights of way which can be accessed from Bell Lane are significant matters.

### ***Archaeology***

- 6.111 It is evident from the WHEG/SMAG submission that the cultural and industrial heritage of the area is important to local people (WHEG/SMAG/1, paras 11.16 to 11.19).
- 6.112 There is a comprehensive assessment of the potential archaeological value of the site within the ES (Annexure F). Post medieval bell pits are the principal feature of interest. The County Archaeologist and WHEG/SMAG are both content with the quality and scope of the assessment and the Council agrees that all that is required is a condition which essentially requires a watching brief, as envisaged by MLP Policy 7. In cross-examination WHEG/SMAG acknowledged that the nature of any archaeological value in the site is only ever likely to be revealed and understood if it is coaled. Therefore, coaling of the site will add to the sum of knowledge of the mining history of this area to the benefit of local people and others who are interested in it.

### ***Dust and Air Quality***

- 6.113 The case advanced by WHEG/SMAG on air quality made serious and alarming assertions about risks to human health and was ostensibly supported by a review of medical and epidemiological research. But there were difficulties insofar as, firstly, the author of the evidence was not available to answer for it to the inquiry. The second difficulty is that those who did appear to defend the evidence at the inquiry had not troubled to read the evidence of UK Coal's expert witness, Mr King, whose evidence has the benefit of thirty one years of experience to support it. The third difficulty is that the WHEG/SMAG case is demonstrably partial and selective to the point of being inflammatory. This is illustrated by two examples.
- 6.114 The first example is the leap which WHEG/SMAG make between the acknowledged concerns about particulates as an important air quality issue and the activity of opencast coaling. It is wholly inappropriate to cite generic studies on the potential effects of PM<sub>10</sub> and to rely upon them without any evidence, or even effort, to link such studies to opencast workings. To the casual reader, it appears that there is a well

established body of opinion which links almost all air quality ills to opencasting when in truth there is no such causal link.

6.115 Secondly, any local person, and indeed the Secretary of State, would be concerned to learn that “children in opencast communities had significantly more GP consultations for respiratory illness than children in control communities” (WHEG/SMAG/1, para 3.22). This is a corruption of the conclusions reached by Dr Pless-Mulloli whose work (the Newcastle Study) is endorsed by the Department of Health via its Committee on the Medical Effects of Air Pollutants (COMEAP) and incorporated, with only minor alterations, into MPS2. Dr Pless-Mulloli and COMEAP in fact found and concluded (APP8, Appendices 1 and 2):

1. Overall, the number of consultations made to general practitioners was similar for children who lived close to opencast sites compared to those who did not.
2. The respiratory health of children living in communities close to opencast sites was very similar to that of children living in communities distant from such sites.
3. There was no increase in asthma prevalence or exacerbation of the condition.

6.116 It is unfortunate that such conclusions did not find their way into the WHEG/SMAG evidence and still more unfortunate that the WHEG/SMAG “evidence” has been in the public domain and hence susceptible to influencing the views of local communities.

6.117 It is to be noted that the WHEG/SMAG case was not advanced as a “perception of harm” case. If it had been so advanced, then it would not have been entitled to any weight, given its misleading basis.

6.118 WHEG/SMAG is the only party to the inquiry which advanced a case related to dust or air quality. As to dust, rather than fine particulates, the County Council is content that this is a matter which may be controlled via the Dust Management and Action Plan (CD23, Appendix 2). For their part WHEG/SMAG acknowledged the plan as being appropriate in its approach to both dust mitigation and monitoring in respect of dwellings.

6.119 As to the impacts, the site is generally further from residential areas than other previous opencast schemes in the locality. There would be fewer than 10 properties within 100m of site activity, all close to the access point. The potential sources of nuisance dust at these properties would be limited to the initial construction, and subsequent restoration, works around the site entrance and to the ongoing emissions raised by traffic entering and leaving the site. With regard to the latter, all lorries leaving the site would be sheeted and would have driven along a 1km long hard surfaced road between the coal processing area and the site access point. They would also pass through a wheel wash, some 250m from the site exit (Drg 177/DO2A).

- 6.120 These features, and in particular the controls which are present in the Action Plan, amply comply with the guidance in MPS2 and its Annex.

### ***Traffic***

- 6.121 The County Council as Mineral Planning and Highway Authority have never raised any objection on road traffic or safety grounds and did not do so at the inquiry. However WHEG/SMAG pursued a case, which Mr Thorne confirmed as being a complaint that the percentage increase in traffic is the main issue, particularly HGVs. Further, he considered that any traffic increase would be an inconvenience for people. So much was confirmed in SMAG's closing submission (WHEG/SMAG 13, para 6.4):

*"The real argument over traffic shouldn't be whether there is an increased risk of personal injury accident but whether the passing of a coal truck be it full or empty causes additional distress to the local people whose houses and lives they actually affect".*

- 6.122 This case was not disclosed at all on the WHEG/SMAG evidence which is entirely concerned with capacity, pollution and safety. It appears from the closing submissions that that case has been abandoned.
- 6.123 The context of this issue is an agreed route for coal lorries which would be limited to the use of the A608, south of the site. The S106 Agreement prevents the use of other routes and so the issues are limited to the capacity and safety of the use of an A road. There is no capacity issue, only some gamesmanship with the traffic numbers. WHEG/SMAG would have the Secretary of State calculate traffic impact by reference to the absolute numbers of HGVs using the route. Evidently, such an approach would yield the perverse outcome that under-used roads could not and should not accommodate additional traffic.
- 6.124 In fact, Mr Gallear's evidence is that the additional 118 HGV movements per day generated by the site would be a contribution which falls within what might be expected to be the daily variation in traffic. In any event, it is evident that the impact would not be significant - the increase in total vehicles would be less than 2% and the percentage of HGVs would be less than 3% of the traffic flow on the A608 (CD21/13, para 4.5).
- 6.125 The safety case was simply not advanced by WHEG/SMAG. No case was put to counter the accident data provided by Mr Gallear. This data shows personal injury accident rates on the A608 are generally lower than could be expected for comparable roads elsewhere (APP15B, Table 2.5 and para 2.12).
- 6.126 Whilst there is no road safety issue which might arise from these proposals, it is acknowledged that Smalley has a need to control the speed and behavior of traffic on the A608. Mr Thorne confirmed that traffic calming measures were something which the community welcomed. This is a potential use to which a community fund might contribute if local people were so minded.

## ***Hydrology and Hydrogeology***

### ***Introduction***

- 6.127 The quality of surface and groundwater discharges is controlled by other legislation and its own specialist regulator – the Environment Agency. The guidance in PPS23 is quite clear that the land use planning and pollution control regimes have separate functions and it is presumed by the planning system that other controls will be effective. Notwithstanding this, UK Coal Ltd have always taken the concerns of the NCB No 5 Area Fishing Club seriously and for that reason instructed Dr Blythe to address them.

### ***The Concerns Expressed by the NCB No 5 Area Fishing Club***

- 6.128 The origin of the fishing club's concern is an historical discharge from a coal washing plant to the Mapperley Reservoir. The issue was the suspended solids content which resulted in an accumulation of sediment and high turbidity which damaged the fishery. It is such discharges which the Club seek to avoid. Mr Webster, on behalf of the club, was content to accept that if a discharge consent and its controls would prevent unacceptable discharge of suspended solids, then he would be content – he had no other issues of concern in respect of the development.
- 6.129 In response to these concerns, Dr Blythe confirmed that settling lagoons would be designed to ensure that the discharge met the levels set on any consent and that, if necessary, it would be feasible to fit control mechanisms to prevent discharge in breach of the consent. If there were any doubt as to whether water quality could be maintained, then the example of the carp pond at Park Brook serves to show that discharges from opencast sites may be compatible with sensitive fisheries.
- 6.130 Via his questions of Dr Blythe, Mr Webster also addressed the chemical composition of perched and other groundwaters. This point was pursued in the face of the following evidence:
1. The groundwater level is maintained regionally at many tens of meters below the pavement of the proposed excavation.
  2. Perched groundwaters within the site are present in small volumes which move slowly owing to the low storage and hydraulic conductivity of the strata.
  3. Perched groundwaters are not connected to the two watercourses near the site. Indeed, the watercourses lose water to the ground, not the other way around.
  4. The quality of the perched groundwaters approximates to that required for drinking water.
  5. The excavation and backfill would not produce any sort of hydraulic barrier.

- 6.131 In evidence, Mr Webster expressed particular concern about one determinant within the analysis report by Dr Blythe (APP20B, Table 1), namely its electrical conductivity. That concern was dealt with by bringing Mr Webster's attention to the fact that the water was slightly harder than the other two samples. This in turn required further explanation of the role of magnesium in water hardness and assurances via still further evidence that magnesium is in fact beneficial to health and not a determinant for which it has been found necessary to specify an environmental quality standard (APP20C).
- 6.132 The closing submissions of the No 5 Area Fishing Club set out a range of concerns which fail to engage with the evidence and which lack internal consistency. For example, complaints are made that the proposal would reduce water supply to Mapperley Reservoir (NCBFC/3, para 6), whilst suggesting that large quantities of water could be pumped into the reservoir with abnormal levels of dissolved substances (NCBFC/3, para 9).

*WHEG/SMAG Concerns*

- 6.133 WHEG/SMAG also expressed an interest in hydrology and hydrogeology. A written submission by Mr Henshaw (WHEG/SMAG/5) expanded on the WHEG/SMAG proof, but he was unavailable to answer questions on it. Examination of the assertions made by Mr Henshaw in respect of spring discharges of mine water showed that they were misconceived. The two springs which are shown within Appendix 6 to the WHEG/SMAG evidence are in fact located distant from the site and are associated with coal seams which are very much deeper than those which would be worked at the site.

**Mitigation of Adverse Effects by Conditions and Obligations**

- 6.134 The above submissions have drawn, where appropriate, on the conditions and S106 obligations. In essence, the conditions and the obligations provide for the means by which the mitigation and/or benefits of the proposal as identified in the Environmental Statement and the evidence can be secured. Thus, for example, the condition related to noise has made clear and specific provision for the limitation of site generated noise in a way which reflects the evidence and the highest environmental standards which UK Coal pursue.
- 6.135 With regard to the conditions and obligations, it is not part of the County Council's case to suggest that other conditions or obligations should be being offered on the basis that something different could be offered which would better match a test of highest environmental standards (see MPG3, paragraph 36). The Secretary of State can accordingly proceed on the basis that the Lodge House proposals, and the conditions and obligations which would give effect to them, would secure a scheme which the County Council is unable to think of any material improvement to.



## **Local or Community Benefits and the Use of Land in the Green Belt**

### ***Local or Community Benefits***

6.136 The benefits of the proposal comprise (APP18A, para 3.1.5):

1. ***The creation of new woodland areas, which would result in an improved landscape structure, and the translocation of mature hedgerows to adjacent areas requiring improvement.*** The proposal to create new woodland areas accords with all of the relevant policy requirements including the Derbyshire Landscape Guidelines (see paras 6.19 to 6.22 above). There is no suggestion that the development plan and other guidance is wrong, out of date, or irrelevant in relation to the area. Therefore this would be a substantial benefit which policies have been specifically designed to secure. The translocation of mature hedgerows is not something which is challenged as being impracticable and it has not been suggested that any other hedgerows on the site should be translocated. Neither is it argued that the receptor sites are ones that would not benefit from the mature hedgerow translocation. Rather, they are areas which would materially benefit in a way which is consistent with policies for the area.
2. ***Improved biodiversity through the creation of a variety of habitats.*** The biodiversity gains offered by the proposal are closely aligned with, and referable to, national, regional and local targets (see para 6.85 et seq above). Unless those targets are to be effectively displaced, which has not been suggested, it is an inescapable conclusion that there would be a significant benefit.
3. ***Improved public access to the countryside through the creation of additional footpaths and bridleways and the improvement of existing routes, providing improved links to the Country Park and other strategic recreational routes*** (see para 6.110 above). The Council's Countryside Manager, Mr Holmes, welcomed the increased access to the countryside which would be offered by the proposals. Additionally, the areas of woodland which are around parts of the site are in the County Council's ownership so that there would be the opportunity, if the County Council wishes to take advantage of it, to not only provide the links proposed by UK Coal, but additional links to further enhance the accessibility of the area. The bridleway links would provide circular routes and the opportunity to avoid traversing the A608 for those who come from the north of Smalley. The link to other strategic recreational routes is an undoubted advantage. Here also all the relevant policies encourage the enlargement of the public rights of way network, which, in this instance, ought to carry additional weight because of the opportunity to link into the Country Park and link to areas of particular ecological interest.
4. ***The improvement of 53.8ha of soils including 28.4ha of damaged soils.*** This matter was addressed by the evidence of Mr Stapleton (APP9). The

improvement is not challenged; what is challenged is the weight that should be accorded to it. National policy focuses on the improvement of the soil resource and this is reflected in the Regional Spatial Strategy (CD20/1, para 4.3.3). The proposal fully accords with the objectives of national policy and achieves that in the context of an approach which is fully integrated with the proposed restoration. Mr Ellis in cross-examination accepted that the improvements in soil quality would not be achievable by other means. Mr Stapleton also made clear that any expectation that there might be widespread gains to biodiversity and woodland/tree cover in the locality as a consequence of other landowners taking up available grants was not realistic in the light of the local pattern of land holdings and the track record thus far.

5. ***The creation of jobs and associated economic benefits*** (APP17). Although there was some issue between WHEG/SMAG and UK Coal on the quantum of local employment and benefits, the issue appears to be non-existent as one of substance in as much as there is no doubt that the site would create employment opportunities. Based on what has happened at other sites, those employment opportunities would be focused on the local area, that is people within 10 miles (APP3, para 9.2; APP17, para 3.7). In Amber Valley, where the local population shows lower economic activity levels and a skills profile which would match the skills necessary to work on the site, there is clearly an opportunity to provide something which for some people would be of real benefit. In terms of expenditure, Mr Lucas's evidence was largely unchallenged. Accordingly, the benefits can be taken to be those set out by him (APP17, para 3.14). It is no part of UK Coal's case to suggest that there would be many hundreds of jobs. However, the evidence identifies that there is a useful match between what would be offered here and what is needed in this area, and a consistency with the newly adopted Local Plan's regeneration policies.
6. ***The provision of 1 million tonnes of coal to the electricity supply industry*** (APP1). Approximately one million tonnes of coal from the site would go a relatively short distance to Ratcliffe on Soar Power Station where it can be burnt (APP2, Appendix 8). In doing so it would avoid the need for one million tonnes of imported coal to be shipped a very substantial distance from somewhere else in the world (probably either Russia, South Africa or South America) via congested elements of infrastructure in the UK which could be better used for other purposes. At the East Pit Surface Mine Site public inquiry, the Inspector's view was that the transportation of such bulky materials as coal from other parts of the world is contrary to the most basic principles of sustainability (APP1, para 5.14). That view holds good in this case. In addition, given that it is Government policy to look to diversity as a part of the way in which security of energy supplies is achieved, the coal from this site would represent an important and useful addition to diversity and security of supply. Indeed, as last winter demonstrated, such security and diversity is genuinely needed, having regard to the potential vulnerability of supplies from elsewhere, whether in the form of coal or gas. In putting this

case it is not necessary to gainsay the outcome of the Energy Review<sup>1</sup>. In the current situation and in the context of current policy, it is clearly a benefit to be able to utilise indigenous supplies of coal that are capable of being won at an acceptable environmental cost.

7. ***The need to maintain an effective mining industry in the UK.*** Linked to the above point is the strength of the argument in favour of maintaining an effective coal mining industry within the UK, where there are still vast reserves of coal. At the present time UK Coal has one opencast site which is coaling within England at Maiden's Hall. Whilst other sites have been consented there is still a significant reduction in the tonnages of coal which are being won from UK sites and still an obvious concern that, in the absence of a significant uplift in the number of consented sites, there will remain a threat to the existence of a viable UK coal industry. The Lodge House site has its role to play in that regard. That role should not be denied on the basis of it providing "only" one million tonnes of coal. If such an argument were to be accorded any significant weight, then it could be applied to very many surface mine proposals with the consequence that the cumulative effect would be the undesirable and inappropriate reliance on imports with all the adverse sustainability considerations that arise.
8. ***The offer to contribute to a local trust fund in order to fund community projects.*** At the inquiry there was a tendency to regard this element as being something to which significant weight should not be given. Such an approach does not do justice to the policy in MPG3 at paragraph 8. It is clearly the Secretary of State's view that community benefits of the kind which might be secured through the Community Fund<sup>2</sup> can be capable of outweighing the environmentally unacceptable impacts of a particular proposal. In this regard it should be noted that the policy set down in MPG3 paragraph 8 is unique in providing the opportunity for developers to secure planning permission for schemes which are regarded as environmentally unacceptable, but which bring with them local and community benefits which clearly outweigh the likely impacts. The wording of paragraph 8 (ii) is "*provide local or community benefits*" (emphasis added), in order to make the point that the benefits can be either local or community, with the definition of what the community is being somewhat at large. At Lodge House, the Community Fund which UK Coal is offering would be a community fund which would operate to secure genuine and material benefits to the local area. Elsewhere, community funds have been used to directly fund important local facilities or their repair or extension. In other circumstances they have been used in order to provide the opportunity to achieve match funding from other sources. To suggest in these circumstances that £100,000 being made available to the local community in that sort of way is of little weight does not do justice to

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<sup>1</sup> Inspector's note. The inquiry was concluded before the Energy Review was published.

<sup>2</sup> See S106 Agreement (INQ/6), Schedule, paragraphs 10 and 11.

the policy and the significance which the Secretary of State has attached to the opportunity to provide such benefits. At Lodge House the benefits that the Community Fund would secure would be local and capable of being significant. Accordingly, they should be given weight.

- 6.137 In these circumstances it can be concluded that the local or community benefits of the Lodge House proposal, including the economic benefits, would be significant.

***Use of Land in the Green Belt***

- 6.138 This matter was dealt with in the evidence of Mr Hollister on behalf of the County Council who accepted when cross-examined that the approach adopted both in his proof of evidence (DCC1) and also in the report to committee (CD7/1) was wrong. This is because in his approach to a consideration of paragraph 1.6 of PPG2 he clearly misread the advice at paragraph 3.13. The PPG2 advice makes clear that developments should “*so far as possible contribute to the achievement of the objectives for the use of land in the Green Belts*” with, he accepted, the necessary implication that it was not necessary to contribute to all, or indeed any, as long as it could be demonstrated that as far as possible the objectives had been achieved. His attention was drawn to paragraphs 7.8.2/3, paragraph 7.9.1 and paragraph 7.10.1 of his proof as indicating that he had adopted the wrong approach because he was looking for the proposal to contribute to all of the objectives identified at paragraph 1.6. The same approach was evident in the Report to Committee (CD7/1 at pp36/37).
- 6.139 Following this it was then agreed with him that, firstly, the proposal would meet the objective of providing opportunities for access to the open countryside for the urban population; secondly, it would provide opportunities for outdoor recreation near urban areas; thirdly, it would retain attractive landscapes; and fourthly, enhance the landscapes near to where people live. The only issue Mr Hollister took with that objective was that it might take some years to achieve. He further accepted that the proposal would meet the objective of improving damaged and derelict land around towns to the extent that it would improve the damaged land from earlier open casting. He agreed it would secure nature conservation interests and produce ecological benefits and he confirmed that he took no issue with the objective of retaining land in agricultural forestry and related uses in the light of what the scheme was designed to do.
- 6.140 Against that background, and the evidence as a whole, it is plain beyond any doubt that the proposal would materially contribute to the objectives for the use of land in Green Belts set down in PPG2, paragraph 1.6. This contribution should be given weight.

**Compliance with the Development Plan and Government’s Policies for Coalmining set down in MPG3**

- 6.141 The Inspector’s note (INQ1) suggests this involves consideration of whether:

1. the proposal is capable of being operated and restored to the highest environmental standard;
2. the impact of the proposals on the environment would be acceptable or capable of being made acceptable by the agreed planning conditions and obligations;
3. and, if not, whether the local or community benefits that the proposals would provide would clearly outweigh the likely environmental effects.

***Operation and Restoration to the Highest Environmental Standard***

- 6.142 Before dealing with this aspect of the issues raised by the note, it is necessary to consider the extent to which this proposal should be taken to represent appropriate or inappropriate development in the Green Belt. Here Mr Hollister accepted, when cross-examined on the matter, that the tests and approach set out in his proof of evidence with regard to the Green Belt were wrong and muddled and failed to address the issues in an appropriate way. It is plain that in considering development in the Green Belt the first thing to consider is whether it is appropriate or inappropriate development. That involves, with regard to mining operations, a consideration of the advice in paragraph 3.11 of PPG2.
- 6.143 Notwithstanding Mr Hollister's evidence, and indeed in the face of his answers, the Council attempted to suggest that the openness test in paragraph 3.12 of PPG2 should be applied to mineral developments. That is plainly a misconstruction of the advice in PPG2. The heading to paragraph 3.11 is "*Mining operations, and other development*". Paragraph 3.11 is dealing with mining operations and sets out clear tests for deciding whether or not development is appropriate or inappropriate. Those tests are based on the Secretary of State's acknowledgement that minerals can only be worked where they are found and their extraction is a temporary activity. In that way they are distinguished from the other development referred to which is addressed in paragraph 3.12 and does not have those characteristics. Paragraph 3.11 then makes it clear that mineral extraction need not be inappropriate development, it need not conflict with the purpose of including land in the Green Belts, subject to the provisos that high environmental standards are maintained and the site is well restored.
- 6.144 The simple issue in this case therefore, in deciding appropriateness or inappropriateness, is whether or not high environmental standards would be maintained and the site would be well restored.
- 6.145 With regard to high environmental standards, no one at the inquiry, including the County Council, was able to point to any aspect of this proposal which does not represent high environmental standards. Rather, the County Council's case in cross-examination of Mrs Campbell appeared to proceed on the basis that, because the proposal would have some impact on users of Bell Lane, which was not quantified or particularised, that must mean that it was not maintaining high environmental standards. But that is the wrong approach to the application of the guidance. At the inquiry, the County Council was, firstly, unable to point to any aspect of the

development which should be designed differently so that the site would be operated at some different or higher environmental standard. Secondly, with regard to standards which were identified and which are capable of being objectively considered, they were unable to identify the breach of any such standard. The County Council's real case is not so much related to this criterion, related to appropriateness or inappropriateness, but rather to the overall acceptability of the development which falls to be considered at a later stage in the context of paragraph 36 of MPG3.

- 6.146 Further support for UK Coal's approach to Green Belt policy, is derived from Mr Hollister's acceptance that, in drawing up the policy in MPG3 and PPG2, it was reasonable to assume that the Secretary of State was aware of the nature of opencast coal operations. That this is so is clear from MPG3, paragraph 7. Mr Hollister further accepted that there was no indication in MPG3 that opencast operations were inherently inappropriate in the Green Belt or intrinsically unacceptable anywhere. Indeed, the policy set out at paragraph 8 explicitly assumes that such proposals can be made environmentally acceptable.
- 6.147 Following his answers in cross-examination, there was also no further attempt to suggest that the approach adopted in the Windsor case (DCC1/2), which clearly turned on its own facts and the policies in the development plan applying in that case, should be adopted at Lodge House. In particular, the matter was not pursued with any witness called on behalf of the Appellants.
- 6.148 As to restoration, the County Council raised no issue with regard to the site being well restored and the ability of UK Coal to achieve that. It follows that the development should be regarded as appropriate development, a conclusion which is consistent with the Secretary of State's conclusions in the Captain's Barn Farm case (APP19/B). As such it relieves UK Coal of any need to justify their proposal by reference to very special circumstances.
- 6.149 It also follows that the impact on openness test set out in paragraph 3.12 of PPG2 is not a test which should be applied to mineral development. Indeed, if it were to be applied, it seems to be entirely contrary to the Secretary of State's approach and expectations arising from the opening sentences of paragraph 3.11 and that which is necessarily inherent in any mineral operation.
- 6.150 If it were necessary for UK Coal to rely on very special circumstances, then attention is drawn to the circumstances identified in Mrs Campbell's evidence (APP18), and in particular to the substantial benefits which would flow from this proposal in this location relative to development plan and other policies for the area.
- 6.151 Notwithstanding that there is a major issue between the County Council and UK Coal as to the form that restoration should take (see para 6.19 et seq above), Mr Hollister further agreed when cross-examined that the proposal as a whole should be regarded as consistent with the overall thrust of the Regional Spatial Strategy for the East Midlands (RSS8). Specifically he agreed that it would accord with:

1. The approach to soil resource (RSS8, para 4.3.3).

2. The approach to woodland cover (ibid, para 4.3.4).
  3. The regional priorities for woodland (ibid, para 4.3.12).
  4. The need to plant, applying the guidance in landscape character assessments, with the reliance on the EDWP (ibid, para 4.3.13).
  5. Policy 29 and the opportunities identified there for increasing woodland cover.
  6. The desire to conserve or enhance specific landscape types (ibid para 4.3.15). Of the examples given, none occur within the site.
  7. The use of landscape assessments in the development control context, identified in Policy 30.
  8. The net loss approach to biodiversity issues, set out in Policy 28.
  9. The Appendix 5 habitat management and recreation targets and the contributions the proposals would make to a range of habitats where there are quantified targets.
- 6.152 He further accepted that neither the County Council's reasons for refusal nor their statement of case suggested any conflict with RSS8.
- 6.153 As to the Structure Plan, this identified that the Green Belt has a specific and identifiable purpose in the area – namely to prevent the coalescence of the Derby and Nottingham built-up areas and to maintain the separate identity of Derby, Duffield, Belper, Ripley, and the Erewash Valley towns and villages the north and east of Derby (CD20/3, para 2.68). This role of the Nottingham-Derby Green Belt also reflected in paragraph 3.5.33 of RSS8. It is agreed that this development would not harm the identified purpose of keeping the towns of the area separate from one another.
- 6.154 The County Council's approach to the proposal was to take the view that the "*intrinsic nature*" of opencast proposals is such that they should be regarded as unacceptable in this area because of the "*residual impacts in term of visual, noise, dust etc which inevitably arise... at opencast sites*" (CD7/1, p27). But there is nothing in any guidance which adopts such an approach, suggesting that they are unacceptable in principle because of "*residual impacts*" or indeed anything else.
- 6.155 In this regard Policy M6 of the Structure Plan (CD20/3, para 9.34) draws attention to "*Opencast Constraint Areas*" and their role, which is to identify areas where there is a particular concentration of interests of acknowledged environmental importance making it appropriate to maintain the general presumption against opencast working. The Minerals Local Plan adopts the same approach with regard to such areas, drawing attention to the identification of the main constraints at para 13.51 and the environmental interests which might be engaged at para 13.52. These include natural woodlands and other natural history features.

- 6.156 The Minerals Local Plan was revised in November 2002 and it is no part of the County Council's case to say that it is out of date or entitled to less than full weight. Paragraph 20.9 of the Structure Plan makes it clear that the County Council was cognisant of the need to avoid damage to the setting of Shipley Country Park. Notwithstanding this, the Opencast Constraint Area (OCA) around Shipley Country Park was drawn in such a way that no part of it intrudes onto the appeal site. In addition, there is no policy which protects the setting of Opencast Constraint Areas. Other Opencast Constraint Areas were not so tightly drawn – e.g. the Calke Abbey OCA extends well beyond the boundary of the formal parkland.
- 6.157 Despite this the County Council effectively rejected the proposal, not because there is some better way of designing the site or some higher environmental standard which could be achieved, but simply on the basis of the intrinsic impacts from an opencast proposal which the County Council finds objectionable. In essence, the County Council's case as put by both Mr Ellis and Mr Hollister is that this is an area where, however good the scheme, it would be unacceptable because of the intrinsic impacts in an opencast proposal and the characteristics of the area. That effectively amounts to a retrospective ad hoc application of an Opencast Constraint Area policy to the site. It is an approach which should be firmly rejected.
- 6.158 Such an approach is to be seen against the background of:
1. The Hobby having been in the area for 14 years.
  2. The trees having been there for very many years longer, and a landscape character assessment having been prepared and the trees identified since at least 2000.
  3. No material change in the landscape since the development plan was formulated.
  4. Shipley Country Park having been in existence since 1976 with the visitor numbers as high as they currently are since 1990.
  5. The coal having been there and the County Council having known that it was there throughout that period.
- 6.159 In this context it is significant to note that the County Council's approach at the outset, before they had even considered the merits of the proposal, was to suggest that it would be unacceptable (DCC1, para 4.1.1).
- 6.160 As to whether or not there are any other indications that the site would not be operated and restored to the highest environmental standards, it is agreed that the site is not included in any identified constraint area, whether related to landscape or ecology in the Structure Plan, the Minerals Local Plan or the recently adopted Amber Valley Borough Local Plan Review. There was some attempt in cross-examination to persuade Mrs Campbell that there might be a conflict with Policy EN8 and possibly EN9 of the Amber Valley Local Plan (CD20/8, p63 and CD20/8A, Chapter 6, p12).



However, those policies are both under the heading "*Landscape Features*", and obviously need to be read together. Policy EN8 applies only to what are described as "*significant trees*" which begs the question as to whether in this case the trees which would be lost are indeed significant. For the reasons identified by Mrs Campbell and relying on Mr Rech's evidence, Dr Mansfield's evidence and Mr Ellis's and Mrs Cooper's answers in cross-examination it is plain that these trees could not be regarded as being significant. In any event, Policy EN9 appears to expressly contemplate circumstances in which there would be a significant adverse impact on the landscape but permission would be granted as a consequence of the provision of alternative replacement or additional features within the site or on other land in the ownership of the applicant.

- 6.161 There are other indicators of the extent to which the proposal is adopting the highest environmental standards in its pursuit of not only the working method, but also the restoration, which UK Coal argue would be appropriate.
- 6.162 Firstly, the proposal's commitment to the EDWP and the application of the Derbyshire Landscape Character Assessment in drawing up the restoration proposals serves to illustrate the extent to which highest environmental standards have been adopted (APP0/12, para 146).
- 6.163 Secondly, no case relying on conflict with other policies in the Minerals Local Plan has been advanced by the Council. When cross-examined in relation to the plan's general approach to acceptability, including acceptability in the context of Green Belt circumstances, Mr Hollister agreed that it was, in essence, not to require that there should be no impact from mineral workings but rather that the impact should be "acceptable" having regard to the considerations identified in the relevant policies.
- 6.164 Cumulative impacts are referred to in Policy MP4 of the Minerals Local Plan. Here, the case which the Council advance is not the collective effect of elements of the proposal but the collective effects of a number of developments (Reasons for Refusal, para 2, 2<sup>nd</sup> bullet point). At the inquiry, however, the County Council did not produce any evidence which identifies the extent to which opencast coal operations have had any materially harmful cumulative effect on the landscape or landscape features in this area. Indeed, to the contrary, Mr Ellis identified the area in the 3km zone around the site as being relatively well wooded notwithstanding that it was precisely the same area that he identified as having been subject to significant open cast workings (see para 6.26 above).
- 6.165 In a similar way Mr Hollister drew attention to the fact that opencast proposals had been a very significant force for good in this area (DCC1, para 3.4.1). This makes it the more difficult for him to support, without some specific evidence, the assertions contained at, for example, paragraph 9.2.3 of his proof where he claims that previous workings had resulted in significant loss of important landscape features. To the extent therefore that it is suggested that highest environmental standards would not be being maintained at Lodge House because of cumulative impacts, the County Council not only lacks any evidence to support that view but its own evidence actually

contradicts the suggestion of adverse impacts by pointing out the extent to which opencast operations have been a force for good.

***The Impact of the Proposals on the Environment and Whether they Would Be Acceptable or Capable of Being Made Acceptable***

- 6.166 In the policy context this involves essentially a consideration of Policy MP27 in the Minerals Local Plan. That is the policy specifically formulated to regulate opencast coal operations, drawn in the light of MPG3 and not suggested by the County Council to be out of date.
- 6.167 Section A of the policy is effectively a repetition of the guidance in MPG3, paragraph 8 (see para 6.136 above). Section B raises the question of whether the proposal is environmentally acceptable or capable of being made so. Here, the relevant matters are in the Green Belt, whether the development can be operated and restored to the highest standards, which is addressed above; and the extent to which the proposal would adversely affect efforts to attract or retain investment in the area (CD20/4, para 13.46). With regard to the latter, the County Council not only mounted no case but does not challenge with any evidence of its own Mr Lucas's evidence as to the potential positive effects of the proposal on economic activity in the area.
- 6.168 Section C of the policy draws attention to the benefits and a consideration of them and identifies that importance will be given to those benefits that would be unlikely to be achieved by any other means. It suggests that particular account should be taken of the matters set out in sub-paragraphs (1), (2), (3), and (4). In respect of these Mr Hollister agreed in cross-examination that:
1. None of the benefits which were identified as flowing from the proposal have been suggested to be achievable by any other means.
  2. The environment and communities of the area would benefit from the proposals by the enhancement of the landscape and the contribution to biodiversity which has been identified. That approach is consistent with paragraph 14 of MPG3.
- 6.169 Sub-paragraph (4) of Section C of the policy draws attention to the extent to which the proposal would provide employment opportunities or other economic benefits. The extent to which the proposal would be beneficial in this regard is dealt with in para 6.136 above. This benefit seems to have been accepted in the Report to Committee (CD7/1, para 2.7).
- 6.170 In these circumstances it is clear that the impact of the proposals on the environment would not only be acceptable but should be welcomed when the proposal is considered as a whole. That is not to deny that there would be some limited adverse impacts during the working of the site, but they would be limited and rely on assertion rather than any attempt at quantifying them. They should be judged against the overall effects of the proposal, not only during its working life but also in the period both immediately after and in succeeding years while the restoration achieves its desired

results. All of those matters would be secured by agreed planning conditions and S106 obligations.

- 6.171 The third matter identified with regard to the policy considerations was expressed as one of whether the local or community benefits that the proposal would provide would clearly outweigh the likely environmental impact. That is in essence the MPG3 paragraph 8(ii) test, referred to in para 6.136 above. The benefits are all of the kind which the policy appears to anticipate will be relevant and they are quite clearly capable of being taken into account not only by reference to MPG3 but also Policy MP27 of the Minerals Local Plan.

### **Conclusions**

- 6.172 It is unfortunate that the County Council should have so fundamentally misunderstood Government policy in MPG3 and the policy in its own Structure and Minerals Local Plans as to suggest that the proposal should be regarded as unacceptable because of the intrinsic nature of opencast operations and the residual effects that would arise. That conclusion appears to have had scant regard to the extent to which the area lacks any characteristic which attracted any designation of any kind, and the extent to which it had clearly been viewed as an area which was not appropriate for designation as an Opencast Constraint Area.
- 6.173 The County Council's persistence in its view and the attempt to further it by attempts at County Wildlife Site designation and the making of a tree preservation order merely serve to highlight the inappropriateness of the approach.
- 6.174 Fairly and objectively judged, in the context of all of the relevant policies and guidance applying to the area, the proposals can be seen to encapsulate everything that should be regarded as positive and beneficial to be achieved by way of mineral workings. The characterisation of schemes which bring landscape and biodiversity benefits as priority schemes in paragraph 14 of MPG3 is a testament to the extent to which this proposal should be welcomed rather than rejected.
- 6.175 There has been a concerted attempt by WHEG/SMAG to present these proposals in a misleading and distorted fashion. It is disappointing that the communities in the area should have been so misled as to the range of impacts of the proposal whether related to dust and health effects, highways, the impact on woodlands, or other aspects such as noise. The fact is that the communities' approach to these proposals has undoubtedly been shaped, at least in part, by some very unfortunate statements. It has been suggested that the community in this area is experienced with regard to the impact of opencast operations and comes therefore to the judgment on these proposals against the background of that experience. If that is correct, then Mr Bolton's evidence and his experience at the Club Room Farm site should be remembered. There, notwithstanding objections to the proposal at the outset, and the need to go to appeal to obtain a consent, the scheme attracted very little complaint and appears to have operated entirely satisfactorily. This was an outcome which the liaison committee endorsed at its final meeting.

- 6.176 In these circumstances the Secretary of State should be slow to take the view that the communities' views here are entitled to significant weight where those views appear to have been unfairly influenced by misleading information. In addition, whilst some disturbing and alarming suggestions were made with regard to, for example, dust and health effects, causing the Appellants to present detailed evidence to address those matters, when it came to a consideration of that evidence, it seems that it has either not been read or, if it had been read it was not then subject to any substantive challenge.
- 6.177 The Secretary of State's guidance indicates that the views of the Mineral Planning Authority should be carefully considered and subject to normal rights of appeal should prevail. That again assumes that the views of the Mineral Planning Authority have been properly formed, taking a proper view of policy and having regard to all relevant material considerations. As has been demonstrated in this instance, and accepted by Mr Hollister in cross-examination, the approach was erroneous and ended up with, in effect, an objection in principle to opencast proposals in this area, rather than a merits consideration of the proposal and its impacts. Such an approach of the Mineral Planning Authority should not be allowed to prevail.
- 6.178 UK Coal accordingly invites a recommendation that planning permission should be granted and the grant of planning permission subject to the agreed conditions and S106 obligations.

## **7. THE CASE FOR DERBYSHIRE COUNTY COUNCIL**

### **Introduction**

- 7.1 The area of the appeal site is 122ha. Of this, 92ha would be stripped of soils and almost 64ha would be coaled to a maximum depth of 41m. Mounds of topsoil and subsoil would be up to 5m and 8m high respectively. The two overburden mounds would be 17m high. In the County Council's view, operational activity on the site would be damaging to the amenity and to the environment.
- 7.2 The proposed engineering operations would involve the use of very large pieces of plant and dump trucks that dwarf the largest vehicles that appear on the roads (APP4, Appendix DB3). At certain times of day, especially in winter, parts of the site and a section of Bell Lane would be lit.
- 7.3 About one million tonnes of coal would be won from the appeal site, which would be transported from the site by road, probably to Ratcliffe on Soar Power Station.
- 7.4 The concerns of the County Council are focussed on:
1. the impact of the development on the landscape;
  2. the impact on veteran trees and the Hobby, a bird listed in Schedule 1 of the Wildlife and Countryside Act 1981; and
  3. the impact of the development on users of Shipley Country Park and Bell Lane.
- 7.5 These concerns should be viewed in the context of a landscape that is neither derelict nor despoiled, nor does it suffer from any instability. Although a part of the appeal site (some 20 ha) was the subject of opencasting some 60 years ago (DCC2/2, Figure 2), the landscape presents as mature farmland, managed as a mix of arable land and grassland.

### **Baseline Conditions**

- 7.6 Apart from the farm house and buildings at Prospect Farm, the site is open and rural in nature. No part of it presents as "urban fringe" nor does it have any of the hallmarks of urban fringe locations. It is the most tranquil part of a wider area of tranquillity bounded by the A608, A609 and the western edge of Heanor (DCC3/2, Figure 7). There are 2.2km of hedgerows and 165 trees within the site.

### ***Hedgerows and Woodlands***

- 7.7 The hedgerows on site have been graded (APP12, Figure 3). The use of the system of grading is not the subject of any objection by the County Council. Nevertheless, it does not provide a complete picture of the value of the particular hedgerows, either in terms of their ecological value, or their contribution in the landscape.

- 7.8 All of the hedgerows on site, except H32, are Grade 3 or above, that is, they are of moderate value or better (ES, Annexure D, para 2.4). Grade 2 hedgerows are of moderate to high value and Grade 1 hedgerows are of high to very high value. Two Grade 2 hedgerows (Nos H18 to the north of Bell Lane and H34 to the south of Bell Lane) are proposed to be translocated to land to the east of Smalley which was part of the Willow Ley opencast site.
- 7.9 The hedgerow grading plan (APP12, Figure 3) gives the impression that the hedgerows around the perimeter of the proposed extraction area are discontinuous and that others are only of moderate value. From that position it may be concluded that the ecological linkages within and around the site are broken.
- 7.10 The tenor of the Environmental Statement (ES) and the evidence presented by UK Coal is that the woodlands adjacent to the proposed extraction area, (i.e. Whiteley's Plantation, Mundy's Plantation, John Wood, Abbot's Rough and Manchester Wood<sup>1</sup>) are fragmented, isolated areas that require linkages to be provided. In fact, none of these areas is isolated or fragmented ecologically.
- 7.11 To gain a proper understanding of the ecological linkages on the site it is necessary to look not only at the hedgerow grading plan (APP12, Figure 3) but also at the aerial photographs (e.g. DCC3/2, Figure 12). From these it is readily apparent that there is a continuous belt of trees and other vegetation stretching from west of Whiteley's Plantation around to the east to Mundy's Plantation and John Wood, separated only by the width of Bell Lane, down to Abbot's Rough and beyond to the west. The band of vegetation follows stream lines that run to the north, east and south of the site. Accordingly, where one sees gaps in the hedgerows on APP12, Figure 3 along the northern, eastern and southern boundaries there is a substantial band of vegetation.
- 7.12 At a more detailed level one sees, for example, that hedgerow H24 in the north eastern corner of the site, which is shown as Grade 3 (i.e. of moderate value only), has within it six trees of which three are veteran trees (T61, T62 and T63) and 3 are mature (T58, T59 and T60) (APP12A). The hedgerow grading system, in so far as hedgerow trees are concerned, distinguishes only between trees that are more than or less than 0.2m diameter. However, a substantial mature tree has more ecological interest than one which is immature and a veteran tree much more interest than either. An oak tree with a diameter of 0.2m would not be regarded as mature. The overall ecological value of hedgerow H24 is very significantly more than its grading would suggest.
- 7.13 There are on and immediately adjacent to the appeal site networks of natural habitats that link sites of biodiversity importance and provide routes or stepping stones for the migration, dispersal and genetic exchange of species with the local environment. No part of the appeal site or adjacent woodlands is isolated. The small woodlands and the links provided by hedgerows provide the stepping stones for flora and fauna envisaged in Article 10 of the Habitats Directive 92/43EEC (see Circular 06/2005, para 88).

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<sup>1</sup> For location of woodlands see DCC3/2, Figure 4. Mundy's Plantation is not shown on the plan, but is the name given to the section of John Wood north of Bell Lane.

***Protected Species on Site***

- 7.14 The ES identified that a number of protected species either breed on site or may do so. Since it was prepared it has become apparent that the value of the site is greater than originally believed.
- 7.15 The Appellants were apparently unaware of the extent to which the Hobby, a "Schedule 1" bird, uses the appeal site and the adjacent woodlands. Both Dr Mansfield and Mr Shawyer did not know either of the trees used for nesting or when they were so used. Neither were they aware of the trees used as guard trees on the site (see also para 7.91 below).
- 7.16 The Appellants were also apparently unaware of the use of the mature and veteran trees on site used by the Kestrel (an "Amber" list species) and the Little Owl (APP12, Appendix 2).
- 7.17 The appeal site is also used by the Brown Hare, a number of species of bats as well as Badgers, a large range of birds and the Slender Groundhopper (a Derbyshire Red Data Book species).

***Conclusion***

- 7.18 The appeal site is attractive in landscape terms and valuable from an ecological perspective. There is a substantial overlap between issues of landscape and those of ecology (CD 21/1, para 3.26). At the inquiry the UK Coal witnesses attempted to down grade some elements of the landscape - Dr Mansfield suggested that the veteran trees in the north-eastern sector of the site were isolated and Mr Rech suggested that they were of lesser value because the trees did not lie in parkland. Both of those approaches are misguided. It is plain that there are eight veteran trees in the fields in the north-eastern part of the site (APP12A, Figure 1, trees 61 to 68). These trees are not isolated. Nos 61, 62 and 63 are located within hedgerow H24 which also contains three mature trees (see para 7.12 above). Moreover, the furthest of those six trees is only some 70m from the wooded ecological corridor to the east, and no tree is more than 15m from the next.
- 7.19 The position is similar in respect of veteran trees 65-68 (which although not located in an existing hedgerow are a similar distance from the ecological corridor to the east and Whiteley's Plantation). The remaining veteran tree in that location, T64 is rather less than 20m from Whiteley's Plantation and connected to it by a hedgerow which is not shown on Dr Mansfield's hedgerow survey (APP12, Figure 3) but is clearly seen on the aerial photographs (DCC3/2, Fig 12).

***The Policy Context***

- 7.20 The principal policy questions that arise in this appeal may be summarised as follows:
1. Is this mineral development "appropriate" in the context of operational development carried out in the Green Belt?

2. Will the highest environmental standards be achieved during both the operational phase of development and the restoration phase of the development?
3. If this mineral development is not “appropriate” in PPG2 terms, are there very special circumstances that justify the grant of planning permission?
4. Is the nature conservation interest on the site protected in accordance with policy objectives?

### **PPG2 – Inappropriateness and Openness**

#### **7.21 Paragraph 1.4 of PPG2 states:**

*“1.4 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness .....”*

#### **7.22 Paragraph 3.1 of PPG2 states:**

*“3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances. See paragraphs 3.4, 3.8, 3.11 and 3.12 below as to development which is inappropriate.”*

#### **7.23 Generally, the construction of new buildings inside a Green Belt is inappropriate save in a limited number of circumstances (PPG2, para 3.4). One of the examples provided in paragraph 3.4 (under the heading “New buildings”) is that concerning essential facilities for outdoor sport and recreation etc which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. In contrast, paragraph 3.8 (under the heading “Re-use of buildings”) advises that the re-use of buildings within the Green Belt is not inappropriate provided (amongst other matters) that the development does not have a materially greater impact on the openness of the Green Belt and the purposes of including land in it.**

#### **7.24 Paragraphs 3.11 and 3.12 are dealt with under the single heading “Mining operations, and other development” and state:**

*“3.11 Minerals can only be worked where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. Mineral and local planning authorities should include appropriate policies in their development plans. Mineral planning authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration. Relevant advice is in MPG2 and MPG7. Paragraph 3.13 below is also relevant to mineral extraction.*



*3.12 The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt (advice on material changes in the use of buildings is given in paragraph 3.8 above). ”*

- 7.25 Paragraphs 3.13 and 3.14 of PPG2 address land use objectives (set out in paragraph 1.6 of the guidance) and require, amongst other matters, that where large scale development takes place, including mineral extraction, it should so far as is possible contribute to the achievement of the objectives for including land in Green Belts.

***The Captain's Barn Farm, Weston Coyney, Appeal Decision***

- 7.26 The Captain's Barn Farm appeal decision (APP19B) relates to an application for planning permission to extract and process conglomerate and sandstone at Weston Coyney, Staffordshire. It was issued in February 2005. In paragraphs 6, 7 and 15 the ODPM dealt with the issues of openness and appropriateness and agreed with the conclusions of the Inspector. Broadly, both the Inspector and the ODPM considered that the harm to openness caused by the extraction of mineral and its processing would be slight. The Inspector set out his conclusions in respect of Green Belt considerations in paragraphs 11.3 to 11.12 of his report (IR). In paragraph 11.3 he appears to have accepted the argument that PPG2 does not apply a test of "impact on openness" for mineral workings such as that to be applied to engineering and other operations (see paragraphs 3.11 and 3.12 of PPG2). Later in his recommendations (IR, para 11.8) he records that, even if he were to take into account the impact on openness of the Green Belt, his conclusion would be unaltered because openness would not be seriously affected (IR, para 11.9).
- 7.27 In the Council's submission, the ODPM did not in the decision letter grapple with the issue of principle, that is whether the issue of openness is relevant in determining whether mineral extraction is appropriate in PPG2 terms.
- 7.28 Turning to the points made at the beginning of paragraph 3.11 of PPG2, it is plain from any number of cases that merely because an activity or building is limited in duration (i.e. "temporary") that will not render it "appropriate" in Green Belt terms. At the inquiry Mrs Campbell accepted that stationing a gypsy caravan or mobile home in the Green Belt site for a temporary period would be inappropriate (provided there were no agricultural justification). She further accepted that a caravan use of land would not become appropriate merely because at the end of the use the land could be well restored (even to the highest conceivable standards) and would not conflict with the purposes of including land in the Green Belt.
- 7.29 Paragraph 3.11 of PPG2 also refers to minerals only being worked where they are found. However, as a matter of principle this point appears to be little different to the circumstances that are referred to in paragraph 3.8(a) of PPG2 which relates to the re-use of buildings in the Green Belt or, perhaps more appositely, the carrying out of engineering or other operations that need to be undertaken in a Green Belt location and

perhaps could not be undertaken elsewhere. It might be said that there are always alternative locations for operational activity but there are not in respect of mineral working. However, that is an improbable suggestion. Rarely could it be said that minerals lie only in one location. Coal is a widespread mineral and nobody has begun to suggest that the appeal site is the only location in which coal may be opencast. Nor has it been suggested that reserves of opencast coal only lie in the Green Belt.

7.30 The Council submits that the second sentence of paragraph 3.11 of PPG2:

*“Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, providing that high environmental standards are maintained and that the site is well restored ...”*

is addressing more than the “purposes of including land” point. If it were to be so targeted why would there have been two clear parts to the sentence broken by the colon and why would it not have stated:

*“If mineral extraction does not conflict with the purposes of including land in Green Belts and high environmental standards are maintained and the site is well restored then such mineral extraction will be appropriate.”*

7.31 The Council invites the Inspector and the Secretary of State to express a clear view as to the interpretation of PPG2 in respect of mineral extraction and to conclude that if it materially affects openness of the Green Belt it should be concluded that it is inappropriate notwithstanding the “conflict with the purposes” point. If the Secretary of State were to agree with the approach of the County Council, then there would be consistency with the approach set out in paragraph 13.22 of the Minerals Local Plan (CD 20/4) which requires that:

*“.....the development, operation and reclamation of the site should not materially impact on the open character of the green belt nor conflict with the purposes of including land within it , as set out in PPG2.”*

as well as the approach taken by the Inspector in the Windsor Opencast Site appeal (DCC1/2, IR para 141).

***Would the Appeal Proposals Result in a Loss of Openness?***

7.32 The site plan (Drg 177/D02A - Plan B1) shows the extent of working. There is no doubt that the development would be plainly visible from the western side of Shipley Country Park, from Bell Lane and from a number of other locations.

7.33 The construction of topsoil, subsoil and overburden mounds would appear as major engineering or other operations on site. The noise from plant constructing them would be apparent at distance and would tend to draw the eye to the plant in question. Along Bell Lane in particular the loss of openness would be ever present. Somebody walking or riding along the lane would have the impression of travelling along a tunnel with mounds rising to 5m on either side. The hedging that lines the lane would

not hide the security fencing, the soil mounds or the overburden mounds to the south of Bell Lane. In winter, lighting would add to the industrial atmosphere.

- 7.34 The proposed haul road within the site would run either side of Bell Lane. Accordingly, the noise from heavy vehicles, and in dry conditions some dust, would be quite apparent to users of the lane, even during the periods when earthmoving vehicles are not crossing it. At those times when large dump trucks are crossing (some 222,000 times during the course of operations) the impact would be substantial.
- 7.35 Notwithstanding the phased operations proposed, extensive parts of the site would either be being worked or used for the construction of the topsoil, subsoil or overburden mounds. The diagrams at APP14, Appendix 12 show the various mounds at various stages during the period of working. The construction of the topsoil/subsoil mounds just to the north of Bell Lane is not an activity that is completed until year two and then there are significant gaps towards the eastern end of the lane looking north. Gaps also open both to the north and south of Bell Lane by year 4 to reveal working/restoration activity using large scale plant.
- 7.36 None of the topsoil or subsoil mounds would look natural, nor would the two overburden mounds.
- 7.37 There is also the question of lighting. The County Council accepts that it did not require details to be provided with the planning application, nor did it raise lighting as an issue when it determined the application. The Council also acknowledges that lighting of the working areas would only be required between 07.00-09.30 and 15.30-19.00 during the winter. Accordingly, the impact would be limited. Notwithstanding this, Environmental Impact Assessment Regulations require an applicant to set out in the description of the development “an estimate by type and quantity” of, amongst other things, lighting (DETR Circular 02/99, Annex C, para 1(c)). There was no description of lighting set out in the information supplied by UK Coal. There ought to have been.<sup>1</sup>
- 7.38 The position at Lodge House would be in contrast to that described in the Captain’s Barn Farm appeal. There the appeal site extended to 10.58ha overall of which 8.97ha would form the extraction area (APP19B, IR para 2.2). It was to be worked in relatively small discrete sections (ibid, para 10.58). The volume of traffic would be low and the site would be well screened by existing topography (ibid, para 11.11). Only a proportion of the 8.97ha would be mined (ibid, para 2.3). Accordingly, it is perhaps unsurprising that the Inspector and the ODPM formed the view that there would be little impact on openness. Also, whilst the quantity of mineral to be excavated at the appeal site and at Captain’s Barn Farm is broadly similar (1m tonnes and 1.2m tonnes) some 11.8 million tonnes of overburden would need to be moved at the appeal site (APP3, para 5.5), albeit that most of it would remain below ground level.

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<sup>1</sup> Notwithstanding this submission, Counsel for the Council confirmed following his closing submissions that no point was taken on the adequacy, or otherwise, of the ES.

- 7.39 The answer to the question would there be a loss of openness associated with the appeal proposals, is undoubtedly that there would be a very substantial loss in openness and impact on the open character of the Green Belt during the 4½ year period of operational activity. Accordingly it should be concluded that the development is inappropriate in the Green Belt.
- 7.40 Even if this argument does not find favour with the Secretary of State, the issue remains, but in a different context. The requirements of paragraph 13.22 of the Mineral Local Plan is clear (see para 7.31 above). The open character would to all intents and purposes be lost completely. That loss should be given very significant weight. The area would have been transformed from a mature agricultural landscape to an industrial landscape and with all the activity associated with large scale opencasting. The harm would be substantial.

***Very Special Circumstances***

- 7.41 UK Coal have not advanced any very special circumstances to justify the development. Therefore, if the development is inappropriate then, in the absence of very special circumstances, the appeal should be dismissed.

**MPG3 - The Presumption Against Coal Extraction**

- 7.42 Paragraphs 7 and 8 of MPG3 set out the presumption against coal extraction. The presumption applies to opencasting or deep-mine extraction of coal, and to colliery spoil disposal. Notwithstanding that the presumption applies to those forms of operations, opencast coal working is picked out as being different from those other operations. Paragraph 7 states:

*“7. Opencast coal working differs from many other types of mineral working due to the overburden that has to be removed, and stored, to access the coal; the use of large engineering plant and machinery; and the need, often, to transport the coal won over significant distances .....”*

- 7.43 Although the coal is said to be destined for Ratcliffe on Soar Power Station, and therefore will not travel a long distance, the other elements of this part of paragraph 7 have a particular resonance, albeit in this appeal one might add “and covers an extensive area”. Paragraph 7 then continues:

*“On the other hand, the large amounts of material that have to be removed means that, through careful restoration, original landforms can be recreated, or more attractive ones produced over time. In some cases, opencasting can clear derelict and despoiled land, or remove instability from old mineral workings, and thereby restore the land ultimately to a better condition than it was before .....”*

- 7.44 The County Council accept that the appeal scheme enables the original landform to be recreated but does not agree that a more attractive landform would be produced. In the context of paragraph 7 of MPG3 it is patently wrong to perceive the very limited

improvement in the soil resource on site as fairly falling within clearing “*derelict and despoiled land*”. The land is not derelict and that small part that was subject to mineral workings sixty years ago has not prevented its use for intensive agricultural purposes (both as grazing land and for arable purposes). There is not a need to “*clear*” any part of the site for it to remain in productive agricultural use.

7.45 Paragraph 7 of MPG3 further continues:

*“However, the Government takes the view that, although some sites are capable of being well restored, opencast mining can be very damaging to the environment and amenity of a locality whilst it is taking place, and the restored landscape can take many years to mature ....”*

7.46 In this regard, the County Council accepts that the site is capable of being well restored. The Council nonetheless considers that the coaling would be very damaging to the environment and amenity of the locality (but not the residential amenity) and that the restored landscape would take many years to mature.

7.47 Paragraph 7 of MPG3 concludes:

*“The proposals for restoration, and the extent to which the proposals provide local or community benefits must be weighed against the severity of the harm likely to be caused during the duration of the development and the time it would take for the landscape to regenerate following restoration.”*

7.48 Paragraph 8 of MPG3 (after the 5 tests) explains that the costs and benefits of an opencast proposal are best assessed by the local authorities and communities “... *who know the area best and are more directly affected ...*”

7.49 On a fair reading of the “local or community benefits” point, even where there may be community benefits that extend beyond the immediate locality, MPG3 envisages that those who are local and are most directly affected by the proposals are best placed to balance the costs and benefits of an opencast proposal (see also para 7.73 et seq below).

7.50 Paragraph 8 of MPG3 sets out the “presumption against” unless the relevant tests are met. In the present case tests (i), (ii) and (v) are relevant. These are:

*“(i) Is the proposal environmentally acceptable, or can it be made so by planning conditions or obligations?”*

*“(ii) If not, does it provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?”*

*“(v) Proposals within the Green Belt must meet the additional test in paragraph 36 below.”*

7.51 Paragraph 36 provides, so far as is material:

*“... Applications to extract coal ... in the Green Belt should be tested against the highest environmental standards. If permission is granted, stringent conditions should be attached to ensure that the site is well operated and restored to the highest standards”.*

- 7.52 At the County level, the Minerals Local Plan (CD 20/4) Policy MP27A essentially repeats tests (i) and (ii) set out in MPG3. Policy MP27B states:

*“B. When considering whether a proposal is environmentally acceptable or capable of being made so, the following will be taken into account where relevant:-*

*1) the need to ensure that, where the proposal lies within the Green Belt, it can be developed, operated and restored to the highest standards”.*

- 7.53 The requirement of the Development Plan, set out in Policy MP27B is somewhat more stringent than that set out in MPG3 paragraph 36. All aspects of an opencast scheme within the Green Belt are to be undertaken to the highest standards. In the context of a county that has been in parts ravaged by opencasting, it is unsurprising that there is a requirement for all elements of a proposal to be undertaken to the highest standards.

- 7.54 The inspector in the Windsor appeal considered the test of the “highest environmental standards” to include (DC 1/2, IR para 139):

*“giving significant weight to the value of existing landscape (including its openness as Green Belt, its present and historic landscape qualities, accessibility and present agricultural use) as a standard against which any proposed change should be judged; and*

*requiring a full assessment of the community impact of extraction (in this case primarily noise, dust and air quality) and assigning weight to the precautionary principle where harm cannot be clearly identified and/or mitigated.”*

- 7.55 The County Council does not argue that the winning and working of coal on the appeal site would be other than in accordance with the best working practices when undertaken pursuant to conditions. The issue is whether, by merely following best practice, one would be undertaking mineral extraction to the highest environmental standards.

- 7.56 UK Coal’s witnesses accepted that there would be an adverse impact on the landscape during operational activity (albeit according to UK Coal’s Witness, Mr Rech, the greatest effect would be reduced from “substantial” to “moderate” with the revised scheme of working (see para 1.2 above)). There would also be an adverse impact on those using Bell Lane (APP18, para 4.5.4). The County Council’s witnesses, Mr Ellis and Mr Hollister, consider that the landscape impacts remain substantial and that the disturbance to those using Bell Lane would be greater than acknowledged by UK Coal. They argue that the “highest environmental standards” would not therefore be maintained.

- 7.57 As an aside, there was some criticism of the County Council at the inquiry for failing to provide technical evidence about the levels of noise and dust along Bell Lane. That technical criticism is misplaced. It is beyond doubt that Bell Lane, sitting as it does in the middle of the appeal site, would suffer from noise and dust. Bell Lane would be transformed from a tranquil country lane into a crossing point for very large dump trucks. It would be hemmed in by fencing, 5m high soil mounds and the 17m overburden mounds to the south. Its very character would be lost during the 4½ year period of operations on site.
- 7.58 In reply to the question “are the highest environmental standards maintained during operations on site in a period of 4½ years?” the answer in respect of Bell Lane is “no”. The same position obtains in respect of the viewpoints, and especially the most sensitive of them at Shipley Hill.

### **The Impact on Shipley Country Park**

- 7.59 Mr Holmes (DCC4), Mr Phillips (DCC5) and many users of the Country Park have pointed out just how important this resource is to the local people in particular. Shipley Country Park is the most important Country Park in Derbyshire. It has come a long way over the last 30 years and provides a wide range of opportunities. The western side of the Country Park, nearest to the appeal site, is the quiet side of the park. It is for that reason the Green Health Partnership is located at “The Garden” within the park and why local groups choose to walk along the western fringe of the Country Park.
- 7.60 PPS9 sets out the Government’s objectives in respect of the broad issue of biodiversity. The third bullet point (first indent) refers to healthy functioning ecosystems contributing to a better quality of life and to people’s sense of well being. That point is similar to points made by Mr Phillips about the health benefits for those who take part in the Green Health Partnership and the points made by Mr Holmes (and others) about users of the quieter areas of the Country Park. One is uplifted when walking in the countryside.
- 7.61 The appeal proposals would completely change the outlook from the western side of the Country Park. Mr Ellis provided an impression of the outlook from Shipley Hill in his photomontage (DCC2/2, Figure 16). There is a dispute as to whether the montage portrays an accurate impression in terms of scale – but Mr Ellis thinks that it does. In so far as colouration is concerned, then it may be that parts of the overburden mounds would appear greener than shown, given that they would be hydroseeded. In addition it may be that the haul road to the north of Bell Lane would be somewhat narrower than depicted. Nevertheless, the impression of the site is broadly fair. It is clear that the site would be intrusive and would draw the eye to it. The view from the Country Park would be transformed for a period of 4½ years. It would be likely to have a negative impact on users of the Country Park and those participating in the Green Health Partnership; their sense of well being would be diminished.

### The Restoration Proposals

- 7.62 In the event that planning permission is granted, the restoration scheme would be the subject of a condition.<sup>1</sup> Nevertheless, it was clear that UK Coal's scheme strongly promotes a scheme of restoration that proposes the planting of some 24ha of woodland. The Council's landscape witness, Mr Ellis, considered that such large areas of woodland planting, which would result, in one case, in a block of woodland extending to 38ha, would be inappropriate.
- 7.63 There was extensive cross-examination of Mr Ellis about the policy support for woodland planting in this locality which is located in the "Coalfields Estatelands" as defined by "The Landscape Character of Derbyshire" (CD22/3, p107). However, Mr Ellis explained, and the document recognises, that the change between one landscape character type and another is not clear cut (CD22/3, p7). In Mr Ellis's view the appeal site lies in an area of transition between the "Coalfield Estatelands" and the "Coalfield Village Farmlands" landscape character types (CD23/3, p103).
- 7.64 The policy background documents that address woodland planting begins with the "East Derbyshire Woodland Project Strategy Document Final Draft" issued in May 1997 (CD22/4). It was never adopted for development control purposes. The Strategy Document covers an area of 180 square miles and notes that the area has a long history of mineral extraction that has contributed towards dereliction and an area that is generally deficient in tree cover (CD22/4, p2). The primary aims of the Project centre around woodland creation and management. It is plain that the Project is not merely a tree planting project, its aims and objectives are more sophisticated than that, although the overall goal is to increase tree cover. Section 1.3 on page 5 of the Strategy Document sets out the Project's objectives. The ninth and fourteenth bullet points of section 1.3 explain that the level of tree planting in an area is to be informed by its context.
- 7.65 The Project Strategy does seek to maximise the opportunities provided by opencast coal operations for tree planting (CD22/4, p34) and to increase the availability of woodlands for enjoyment by local communities. Nevertheless, each part of the landscape within the overall area of 180 square miles needs to be considered to discover what is required within its own local context.
- 7.66 The Landscape Character of Derbyshire, as noted above, identifies the Coalfield Village Farmlands and the Coalfield Estatelands as two landscape types. In both cases the vision for woodlands in these two landscape types is "*Densely scattered small woodlands*" (CD22/3 pp105 and 109). In the case of the Coalfield Village Farmlands small scale woodland planting is sought (between 0.5 - 10ha in extent), and for Coalfield Estatelands small-medium scale woodland planting is sought (0.5 - 15ha). In addition, the conservation and management of mature/veteran trees within hedgerows is an objective in Coalfield Village Farmlands (ibid, p105). Tree groups

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<sup>1</sup> See Appendix E, Condition 44.



around isolated farmsteads and individual parkland trees are to be conserved in the Coalfield Estatelands (ibid, p109).

- 7.67 Space 4 Trees is the Regional Forestry Framework for the East Midlands and was published in 2005 (CD22/2). At page 5 it records that the East Midlands is the least wooded region in the country with around 5% tree cover, well below the average for England of 8%. At page 9 it refers to the relative absence of access to local woodland in the East Midlands and identifies green infrastructure as a regional priority. It builds on the policy approach set out in Environment Policy 16 of the Joint Structure Plan (CD20/3, para 8.79) and Policy MP3 of the Minerals Local Plan (CD 20/4, paras 3.13 and 3.14) to create new woodland planting.
- 7.68 Against that policy background one might ask why is woodland planting not appropriate on the appeal site. However, development proposals need to be considered in their local context. Policy aspirations may inform the decision making process, but it is inappropriate to slavishly adhere to them. If one stands back to look at the appeal site and its immediate environs, it is apparent that there are significant and appropriate (in terms of scale and species composition) woodlands. This is not a locality that is devoid of green infrastructure. Moreover, there is public access to it.
- 7.69 Such statements are supported by the approach of Mr Rech on behalf of UK Coal. He produced the landscape input into the Environmental Statement (CD1/2, Annexure A). In it he undertook a local landscape appraisal and identified three local landscape character types (ibid, Figure 2). Moreover, his background involved substantial work in the restoration of mineral sites in the East Midlands and he would have known of the proper approach to enhancing the woodland provision in the region as a whole. There was no suggestion that Mr Rech was limited in terms of the restoration scheme he might devise.
- 7.70 Mr Rech followed the approach set out in the Guidelines for Landscape and Visual Impact Assessment (CD21/1) and reviewed the existing landscape and visual resource and the baseline conditions. He recognised that landscapes are considerably more than just the visual perception of a combination of landform, vegetation and buildings and embody the history, land use, human culture, wildlife and seasonal changes of the area (CD 21/1, para 2.3). In undertaking his assessment he identified the area's sense of place (ibid, para 2.16).
- 7.71 Within the Environmental Statement (CD1/2, Annexure A para 2.26) Mr Rech recognised that restoration of the landscape grain is "*vitaly important*". In reply during cross-examination he further recognised that landscape grain included landscape structure and that the then proposed new blocks of woodland planting (9.6 ha) was "*in accordance with the established landscape character*" (ibid, para 7.9). Mr Ellis did not disagree with that approach. Notwithstanding this, Mr Rech at the inquiry transformed his position when promoting some 24ha of woodland planting.
- 7.72 The Council submits that UK Coal have gone about lifting policy objectives from policy documents and adopted a "tick-box" approach to the restoration proposals. Such an approach is inappropriate. The provision of large blocks of woodland

planting is inappropriate in a general way - it does not meet the vision of providing small or small-medium woodlands in this area, nor does it accord with the character of the locality identified by Mr Rech. It should be concluded that the revised restoration scheme is inappropriate and does not achieve the highest environmental standards in the context of PPG2.

### **Local or Community Benefits**

**7.73** The local or community benefits of the proposals identified by UK Coal encompass:

1. The £100,000 (10p on the tonne) community fund that is to be set up and administered locally.
2. The new rights of way proposed to be established and access to woodland.
3. The biodiversity benefits.
4. The economic benefits to the locality.

**7.74** It seems to the Council that the benefits of a proposal will reasonably be perceived as having value by a community where the benefits meet a need (broadly defined). The Council is not aware that in respect of the community fund UK Coal has identified any needs that should be addressed. That is not to say that there will not be any benefits, but it does not make it particularly easy to ascribe weight to them.

**7.75** A range of public rights of way would be established which would bring some community benefit. However, the locality has footpaths and a bridleway, some of which link Smalley into the system of paths in Shipley Country Park. It cannot be said that there is a current need for rights of way that is not already met. In the course of the inquiry it was suggested that the proposals would provide circular walks and rides. That is true. Nevertheless, there are already circular walks available, without having to stray very much or at all into Shipley Country Park. The benefits that arise from the provision of rights of way would be quite limited.

**7.76** The position is much the same with respect to access to woodland. There is already controlled public access through John Wood and beyond that access to woodland within the Country Park. The extent of public or community benefit would be limited.

**7.77** The appeal proposals would bring some biodiversity benefits. Some of them would arrive more quickly than others. Probably those benefits associated with the wetlands and neutral and acidic grassland would arrive earliest. Those from the areas of woodland planting would take some decades to be realised. Again in context, this site and the adjacent areas are not devoid of biodiversity interest. There are ancient woodlands and plantations contiguous with the site. Moreover, the bird, bat and other mammalian interest on site is not insignificant. The biodiversity benefits from the scheme to the community similarly are not insignificant but are likely only to be

appreciated in the longer term in the context of a relatively rich environment in biodiversity terms especially within the adjacent woodlands and Shipley Country Park.

- 7.78 Finally, turning to the economic benefits that the appeal scheme may bring. There would be some 40-42 jobs created of which about 25-30 would be local to Amber Valley. However, as Mr Lucas for UK Coal agreed in cross-examination, unemployment levels in the area are very low. The levels are below the England and Regional averages and are just over 2%. Mr Lucas did refer to the hidden level of unemployment in the district of Amber Valley (APP17, para 4.6). However, he was unable to identify the number of individuals who may fall into that category. It appears to be unlikely that many would be involved if only because deep mining ceased within the District more than 30 years ago.
- 7.79 Mr Lucas also referred to the relatively weak employment growth in the District. However, in the context of a period of working of 54 months in an area of low unemployment it is likely that the reference by Mr Lucas to the cushioning effect of the transition towards a more sustainable and "knowledge driven business" widely overstates the benefits.
- 7.80 The overall financial benefit that the development would bring is established by Mr Lucas to be £4m per annum together with the wages paid of about £750,000 per annum. There is also to be taken into account the multiplier effect. In the context of the regional economy those figures are very small and remain so in the context of Amber Valley.
- 7.81 In the Council's submission the employment and economic benefits brought about by the proposals would be very limited. They should be given similar weight.

#### **The Contribution of Coal from the Lodge House Site**

- 7.82 At the inquiry Mr Yaxley provided evidence for UK Coal about the importance of securing domestic supplies of coal and reducing reliance on potentially unreliable foreign imports. At present the UK is reliant to some considerable extent on the import of coal from Russia and South Africa in particular. Mr Yaxley drew attention to the problems that have recently been experienced with European imports of gas from Russia.
- 7.83 It became plain during cross-examination that imports of coal from Russia have not been the subject of any interruption. Neither was there any evidence that supplies of coal from South Africa (or anywhere else) had been unreliable. There was some suggestion that countries such as Russia and South Africa should be perceived as unstable and/or unreliable. However, the Council is not aware that any planning or other policy published by the Government has highlighted that these two trading partners should be viewed as unstable or unreliable – if it is to be a policy approach, then in view of the fact that further applications for opencasting will be made, we ask that the Secretary of State indicate whether Russia and South Africa ought to be seen as unstable and/or unreliable trading partners.

- 7.84 Mr Yaxley also referred to the ports and railways having difficulty accommodating the large scale imports of coal from abroad. There was no correspondence or other documentation to support that view. What is plain is that the infrastructure has coped with the level of imports. One might have expected there to be some publication to support Mr Yaxley's point but there was none. In the circumstances that issue should not be accorded weight.
- 7.85 If permission is granted for opencasting at Lodge House it would contribute during its life between two and three days supply of the UK's needs for each year of operation. In so far as the Ratcliffe on Soar Power Station is concerned, Lodge House would supply no more than a month of its requirements. That level of contribution is very low. Accordingly, the weight to be given to the supply from the appeal site in meeting the need for coal in the UK is also very low. In the Council's submission the argument about need for the coal is not one which should tip the balance in favour of granting planning permission especially having regard to the advice set out in MPG3, paragraph 4 which states:

*"It is for individual operators to determine the level of output they wish to aim for in the light of market conditions, and for MPAs to determine the acceptability of individual projects in accordance with the principles of the land use planning system having regard to the following policies and other material considerations. A contract with any of the public electricity generators does not confer any special status in terms of planning legislation and policy."*

#### **The Significance of Improving the Soil Resource on the Lodge House Site**

- 7.86 The soil resource on the Derbyshire coalfields is naturally generally poor. On the appeal site there is an absence of the best and most versatile soils for that reason. Mr Stapleton gave evidence for UK Coal that the scheme of restoration would provide some improvement in the quality of the soil resource (which is intensively used for agricultural purposes). The County Council do not seek to challenge that such improvements are achievable. The significance of the improvements is a different matter. There may be some modest benefits in terms of flexibility and yields where the land is not used for forestry purposes, wetland or hay meadow. However, the benefits would not have the result of taking the soil resource into the category of the best and most versatile agricultural land. In those circumstances there should only be accorded the most limited weight to the improvement in the soils on the site.

#### **The Hobby**

- 7.87 The appeal site and the adjacent woodlands have been used by the Hobby to breed for some 14 years. Its success rate in breeding has been above the Derbyshire average.
- 7.88 The Hobby is protected by its inclusion in Schedule 1 to the Wildlife and Countryside Act 1981. It is a secretive bird. Within Derbyshire it is rare with fewer than 25 breeding pairs recorded and it is listed in the Derbyshire Red Data Book. It appears that in Derbyshire at least the recorded Hobby numbers are likely to be very close to

the actual number, no doubt due in some large measure to the efforts of Mr Messenger and Mr Roome (DCC3, para 3.3.6).

- 7.89 The appeal site is crossed only by Bell Lane and a short section of footpath No 6 in the extreme south-eastern corner of the site. The remainder of the site is farmland without public access. Of course, agricultural activity takes place in the fields. Nevertheless, agricultural activity tends to be mechanical and repetitive and without much human presence save within the cab of the tractor. It is likely to be the sort of activity that wildlife take least exception to. It is patently quite different from the impact of individuals walking or riding along a path, perhaps stopping from time to time and engaging in conversation.
- 7.90 The Council's Ecologist, Mrs Cooper, produced a plan and schedule showing the location of the trees used by the Hobby for breeding (DCC0/2). Seven trees were used in the period 1992-2005. Three of the trees were located within the appeal site, only one of which (T44) was known by Dr Mansfield. Two of the other nesting sites were on the edge of Abbot's Rough and one at the south-western corner of Whiteley's Plantation. None of those three sites was known to either Dr Mansfield or Mr Shawyer.
- 7.91 Mrs Cooper also identified a number of guard trees (numbered 4, 5, 6, 8, 9, 10, AA, 43, 45, 65 and 66) which had been indicated as being important by Mr Messenger. She was cross-examined about the absence of any published data relating to the significance of guard trees. It is plain that there is no published information. Nevertheless, the information was provided by Mr Messenger who clearly has a detailed understanding of the habits of the Hobby. The information supplied by Mrs Cooper about the guard trees was detailed and convincing.
- 7.92 The Hobby is discriminating in seeking nest sites, which are generally old Crows' nests. The appeal site and the adjacent woodlands at Abbot's Rough and Whiteley's Plantation have provided suitable sites in the past. These are remote from dwellings and public rights of way. However, the proposed restoration plan seeks to locate a bridleway and a footpath adjacent to Abbot's Rough and therefore very close to nest sites B, C and F. Another path would be adjacent to nest site E at Whiteley's Plantation. Nest sites D and G, located in the field in the north eastern sector of the site, would be lost.
- 7.93 By way of mitigation, UK Coal offer to provide two artificial nest sites at Flatmeadow Farm. These have now been installed. No guarantee as to their success could be or was given by Mr Shawyer. Moreover, there is no evidence that the Hobby has ever used trees for any purpose within Flatmeadow Farm, or the land to the north.
- 7.94 The Hobby appears to be discriminating in the choice of the sites it uses, notwithstanding that it does not always return to the same tree. For two years it did not even return to breed in or adjacent to the appeal site (1994 and 1995). It is appropriate to adopt the precautionary principle in considering whether the future of a Schedule 1 protected bird is likely to be secured.

- 7.95 The numbers of Hobby within the UK has increased over the past 20 years. In the early 1980s its numbers were very low, perhaps less than 300. In 2002, the Rare Breeding Birds panel recorded that the number of breeding pairs stood at between 277 and 590 (DCC3/1, Appendix 3). Other observers consider that numbers are much higher, perhaps 2,200 - 2,500 pairs (DCC3/1, Appendix 4). But these estimates are based on a number of extrapolations, and it is appropriate to adopt a precautionary approach in respect of the population of the Hobby having regard to the level of protection it is afforded under the Wildlife and Countryside Act. This is especially so when, in absolute terms, one is dealing with relatively small numbers.
- 7.96 PPS9, paragraph 16, advises that planning permission should be refused where there is harm to protected species unless the need for and benefits of the development clearly outweighs the harm. In that context the species referred to (the Hobby in this case) is the species on that site and not the whole of the UK population. This policy is reflected in Environment Policy 14 in the Joint Structure Plan (CD 20/3).
- 7.97 The general advice in PPS9 is to be considered in the context of species identified as being of principal importance for the conservation of biodiversity in England, for example, the Grey Partridge which is listed as one such species but it is not included as a Schedule 1 bird. Accordingly, one should adopt a particularly cautious approach in relation to the Hobby in the context of the need to be sure it will not be harmed unless the need for and benefits of the development are particularly compelling.
- 7.98 It is a given that there would be harm to the Hobby that resort to the site. The next issue is whether the mitigation measures would secure their ability to breed at Flatmeadow Farm. This cannot be guaranteed. The best that could be hoped for is that the mitigation would be successful in a location not previously used by the Hobby. There is a considerable shadow of uncertainty about the mitigation proposal.
- 7.99 The next point to arise is whether or not the Hobby would return after the completion of the development, if the mitigation is unsuccessful. The life of the development is 4½ years, which is very similar to the lifespan of the Hobby once it has fledged. There must in such circumstances be a real risk that those birds and their progeny that have frequented the site since 1992 permanently cease to do so. Other birds may at some stage use the site and its margins, if it is perceived as suitable. But the additional numbers of walkers and riders along newly created pathways may be a limiting factor for further colonisation, as may the growth of trees near to Whiteley's Plantation. There is a risk that the site would no longer be used by the Hobby.
- 7.100 As to the benefits of the appeal proposals in a biodiversity context, the Council accept that, as the restoration scheme matures, it would provide more diverse ecological areas and that the numbers of birds resorting to the site would be likely to increase. However, there is no argument maintained by UK Coal that other Schedule 1 birds would necessarily be attracted to the site. In those circumstances the Council submits that one cannot safely conclude that the ecological benefits of the scheme would outweigh the harm caused. The appellants have failed to make their case in respect of the Hobby.

### **Veteran Trees**

- 7.101 The Regional Spatial Strategy for the East Midlands (RSS8) notes that the region has a relatively poor level of tree cover (RSS8, para 4.3.13). Appendix 5 of RSS8 identifies veteran trees as a local habitat of strategic significance. UK Coal have sought to play down the importance of veteran trees by referring to such trees as being the ecological flavour of the moment, and pointing to the absence of data in respect of restoration targets and regional management targets. In addition they drew attention to the asterixes against veteran trees (indicating a local habitat of strategic significance) and drew attention to the same notation against farmland and large rivers. The implication of this appears to be an attempt to show that veteran trees are of limited importance.
- 7.102 In the Council's view the approach of UK Coal is misconceived at every level. They presented some evidence (APP12B) that the areas to the north of the appeal site also contained veteran trees, some 27 such trees. This is not challenged. The evidence appeared to be produced to show that veteran trees are not rare.
- 7.103 There has been a great deal of work undertaken in respect of veteran trees. That work is led by English Nature. The work is incomplete but the following points have gained general recognition and support of every tier of government from the Secretary of State down:
1. The UK holds 80% of Europe's resource of veteran trees (DCC3/1, Appendix 24a, p2). Where the UK holds a large proportion of Europe's overall population of a species/habitat it imposes a special obligation to protect it.
  2. Veteran trees are important both in groups, which are usually small, and also individually.
  3. Veteran trees offer a range of habitats from cavities for birds and bats down to a range of epiphytic plants that grow on them and the mosses, lichens and invertebrates that are dependant on them (DCC3/1, Appendix 22, p1).
  4. PPS9, paragraph 10, refers to the need to protect woodlands unless their loss is outweighed by the need for and benefits of the development. Paragraph 10 continues:  
  
*"Aged or 'veteran' trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Planning authorities should encourage the conservation of such trees as part of development proposals."*
- 7.104 In the Council's submission the approach set out in PPS9 is not intended to cloak veteran trees with a limited level of protection which may be easily removed. The true position is that the Government (and local government) seeks to protect veteran trees – indeed where significant harm may arise that would harm biodiversity, there should be

proof that the development cannot be located on alternative sites. In that context no alternative site analysis has been undertaken by UK Coal. The very limited consideration of alternatives by UK Coal was confined to the area immediately around the appeal site and no further consideration of alternative sites was undertaken.

- 7.105 The question arises as to whether there would be any significant harm caused if the site were to lose 14 veteran trees and one near veteran tree (CD23A). The effect would be to remove all veteran trees located in the open fields on the site, except for Trees No 7 and 8. The veteran trees that remain would all be located on the boundaries of the sites or in hedgerows along Bell Lane and to the west of the site. The loss of 11 veteran trees in the north-eastern quadrant of the site, together with a further seven mature trees, would be particularly unfortunate.
- 7.106 On the site there is a significant population of veteran trees and a younger cohort of trees that will in the decades to come also produce the next generation of veteran trees. The landscape would lose:
- the aesthetic appeal of the trees;
  - the gene pool dating back some 300 years;
  - the links with past field boundaries (DCC2/2, Figures 5 and 6);
  - the micro-habitats that the trees provide; and
  - the potential habitats for birds and bats (DCC3/1, Appendix 20).
- 7.107 The Appellants case appears to be that the loss of 14 veteran trees and one near veteran tree is not especially significant. In addition UK Coal referred to the provision of new woodland that eventually would produce veteran trees. Finally, they drew attention to the threats to the trees.
- 7.108 The number of trees involved is patently not de minimus. It is the Government's policy to protect individual trees. This is reflected in Environment Policy 16 of the Joint Structure Plan (CD 20/3, para 8.78). The loss of the trees constitutes significant harm in the context of PPS9.
- 7.109 UK Coal would, as part of the scheme, plant new woodland. But those trees would take some 50 or more years to reach early maturity (the area is an area of slow tree growth – DCC2/1, Appendix 1, p99). It is likely to be some 150-200 years before any of the trees may be considered veterans. Accordingly, there is no replacement of the important genetic and ecological resource that the veteran trees comprise for at least two lifetimes.
- 7.110 UK Coal also draw attention to the threats that veteran trees face. However, it is clear that UK Coal is not a threat to those trees if the appeal is dismissed (APP0/9). Moreover, the hedgerows in which some of the trees are located are also protected by the Hedgerow Regulations 1997.



- 7.111 There was an additional point made by UK Coal and it was that there is no real prospect of additional tree planting or hedgerow enhancement taking place on the site because of the nature of farming on the site. That may currently be true. And, whilst UK Coal hold out hope that they will receive permission to extract coal from the site, that is unlikely to change. However, if those hopes are dashed, then the position may change. Across the country Government initiatives have been successful in promoting ecological interest in the countryside. It was said, on behalf of UK Coal, that schemes such as Environmental Stewardship have been less successful in the locality than elsewhere. Notwithstanding this, there has been a sea change in the approach to developing the ecological resource in the countryside. UK Coal are a large landowner locally; it seems inherently unlikely that they would wish to be known as being unsympathetic in that respect.
- 7.112 The raft of planning policies that protect veteran trees establish a high hurdle for UK Coal to overcome. The loss of a third of the veteran trees on the site is a large scale loss of a valuable habitat that in the Coalfields Natural Area is particularly restricted in extent. There can be no doubt that the loss is significant in PPS9 terms and should not be permitted otherwise than in accordance with that advice.

### **Conclusions**

- 7.113 Large scale opencast coal mining is proposed in a tranquil rural environment adjacent to the important Shipley Country Park. Although the proposals would eventually bring some longer term benefits in terms of ecology, they would come at a significant cost. There would be cost in terms of the loss of openness and adverse impact on the landscape in a locality that has had to endure opencast coaling each decade since the 1940s. There would also be the cost in disturbing the preferred site of the Hobby and the loss of 26 mature and veteran trees. The loss of 14 veteran trees is not able to be compensated for until the ultra-long term; nor could the loss be offset by the creation of other habitats.
- 7.114 The restoration proposals (in whatever form) would leave the landscape raw and immature. Photographs of some other mineral sites show trees which, some 10 years or so after planting, undoubtedly look young. If the appeal succeeds, this would be imposed on the present mature landscape. It would not be beneficial.
- 7.115 None of the benefits that would derive from the appeal proposals would be especially weighty (e.g. the provision of some 40 jobs in an area of very low unemployment or the modest improvement on the soil resource). The overwhelming majority of local people remain unimpressed by the local and community benefits referred to by UK Coal.
- 7.116 Overall the claimed benefits would not be sufficient to dislodge the presumption against opencast coaling set out in MPG3. Accordingly, the appeal should be dismissed.

## 8. THE CASE FOR WEST HALLAM ENVIRONMENTAL GROUP AND SMALLEY ACTION GROUP

**Inspector's Note.** At the inquiry the West Hallam Environmental Group (WHEG) and the Smalley Action Group (SMAG) presented a joint case. Details of the two groups can be found in WHEG/SMAG/1, paras 2.1 and 2.2, WHEG/SMAG/13, paras 1.3 and 1.4 and WHEG/SMAG/14, Appendix A.

### Introduction

- 8.1 WHEG and SMAG oppose the proposal to opencast the Lodge House site. They are voluntary, non-political bodies with no paid staff, formed to represent the views of local residents. Submissions to the inquiry were prepared during the members' spare time and at their own expense. The participation of WHEG and SMAG is clearly acceptable; there is no evidence to suggest that they did not accurately represent the fears, perceptions and experience of local communities.
- 8.2 During cross-examination WHEG and SMAG were sometimes accused of being unfair or unbalanced in their approach, and unable to prove some of their evidence. But this misses the point of what the two organisations tried to do. UK Coal have their experienced marketing campaigns, paid expert witnesses and a well briefed legal team who are veterans of many a public inquiry, and know exactly how to ask questions to obtain the answer they want to further UK Coal's case. The WHEG and SMAG witnesses may, at times, have blundered and flustered their way through their evidence, but this should not detract away from the fact that this evidence has been delivered - from the heart and on behalf of communities that do not want the Lodge House scheme to proceed. This evidence was neither biased nor irrational.
- 8.3 WHEG and SMAG cannot see any benefit either in the short term or the longer term that justifies at least four years of constant disturbance only to produce coal that would be burnt in about two weeks per year for three years at a local power station.
- 8.4 There is also a very real fear that Lodge House would be but a stepping stone into the much larger Mead site. UK Coal has consistently refused to confirm that if they gain approval for Lodge House they would not apply for an extension into the Mead site. Evidence that this is a real threat includes the soil survey that took in much more of Mead than the Lodge House site alone, and the anecdotal evidence whereby certain of UK Coal's consultants (whilst on site) told a local farmer that they (UK Coal) "want the lot". In addition, UK Coal has applied for extensions in the past, for example at Stobbswood. The evidence is far from certain, but it does indicate that there is a real risk. The fact that UK Coal refused to include an undertaking in the S106 Obligation committing them not to seek planning permission to extend Lodge House adds to this risk and fear.

### History and Archaeology

- 8.5 The Derby and Derbyshire Joint Structure Plan 2001 records that "*Derbyshire is well endowed with a diverse range of heritage features, historic buildings, wildlife habitats*

*and resources, trees and woodlands. All contribute to the quality of the environment". It confirms that many are under threat from development and states that "the high quality of the heritage is a major factor in the decision of businesses to locate, re-locate or stay in Derbyshire. The protection of Derbyshire's heritage is therefore ... of considerable economic importance" (CD20/3, para 8.2).*

- 8.6 Smalley is a village lying 6 miles north-east of Derby. It is recorded in the Domesday Book of 1086 and the Saxon Charters of 1009. Many residents now commute to either Derby or Nottingham for work, but a strong sense of community and pride remain. Smalley has frequently won "The Best Kept Village in Derbyshire Award" and in 2002 was nominated "The Best Kept Village in Amber Valley".
- 8.7 Coal mining has been associated with the village for over 400 years but when opencasting began in the 1940s it was explained to residents as an emergency measure. Since 1944 there have been 24 opencast sites in operation in and around Smalley (APP19, Appendix 5).
- 8.8 Smalley is a beautiful place in which to live. It is peaceful and green with mature trees and hedgerows and an abundance of wildlife and habitats. The bluebells in Spring are renowned locally. It is true that the area has been mined and the areas where this has occurred are obvious, even years later - poor drainage, straggly hedgerows, lack of mature trees, uniform fields - but they are slowly recovering and integrating into the surroundings.
- 8.9 Bell Lane is an integral part of the village leading down past Manchester Wood and John Wood to Shipley Country Park and Mapperley Reservoir. It possibly dates from the 13<sup>th</sup> Century. It derives its name from the crude bell-shaped coal pits excavated by the Abbots of Chester, evidence of which is recorded in the Sites and Monuments Record (ES, Annexure F). A tertiary flint flake from the early neolithic/bronze age and a Roman coin have also been found locally.
- 8.10 These finds, combined with the evidence of ironstone at depth beneath the unexcavated parts of the site and the threat to the post medieval bell pits, suggest that more detailed and planned investigations are required.
- 8.11 UK Coal has indicated that, if and when an archaeological discovery is made, they would stop and investigate this and would call in local experts to perform a full and detailed examination. However, it is common sense that large-scale mechanised earthmoving operations would harm archaeological features. There is a real risk that archaeological finds may be destroyed if UK Coal perceive that delay would be incurred by any investigations.

#### **Landscape, Environment and Visual Impact**

- 8.12 This is a key area of concern. The proof of evidence (WHEG/SMAG/1, Section 4) highlights what would be either lost for a considerable time or possibly lost for ever if opencasting proceeds. It is certain that the landscape would never be the same again - the contours may be very similar, but that is all. The main concerns include the effect

on Shipley Country Park; the loss of 26 mature trees and 2km of hedgerow; and the potential for soil quality to be lowered, leading to slower tree growth and higher tree mortality on restored land.

- 8.13 There is no doubt that the proposals would affect the view and atmosphere of Shipley Country Park. The park currently overlooks a swathe of typical Derbyshire coalfield countryside. This would be changed forever. In the short term it would be replaced by a series of huge holes surrounded by equally huge piles of soil and overburden. Visitors to the park would hear the sounds of reverse beepers, diesel engines, earth scraping plus the all pervading dust and smell. How do the Groups prove this and bring hard evidence to back this up? They cannot because so far nothing like this has been allowed to happen. But the risk is there. It is common sense that such impacts would arise. The cumulative impact would be significant and adverse.
- 8.14 The site would also be visible from Smalley, Marlpool, Heanor, Stanley Common, West Hallam, Mapperley and Shipley. Even if the actual excavations would not be seen, the soil mounds certainly would be. Even without extensions into the Mead site, opencasting would be in progress for 4 or 5 years. When the works are complete and the landscape restored, its appearance would be very unnatural.
- 8.15 As to Bell Lane, this is a special asset to Smalley and for all who use it. The proposed development would drastically affect the beauty of Bell Lane with spoil heaps on both sides, plus noise, dust and danger from site machinery and the crossing point.
- 8.16 The loss of established trees should be avoided where at all possible, as should the loss of hedgerows. Local evidence shows that newly planted trees and woodland do not do well on previously opencast land (WHEG/SMAG/1, Section 5 and Appendix 5). This was supported by reports from local residents who spoke of the poor state of recently introduced trees on former opencast sites.
- 8.17 All locals know that the drainage on the proposed site is bad in places. However, this doesn't seem to stop grasses and many other wild plant species from growing. Crops are good, by the standards of the area. What guarantees would there be that post opencasting this situation would be improved as UK Coal claim? Is the benefit of having slightly better soil quality and not so muddy boots outweighed by having the earth torn apart for four years? The local residents do not think so.
- 8.18 It is common ground that four mature woodlands lie very close to the proposed site (Abbot's Rough, John Wood, Manchester Wood and Whiteley's Plantation). Some are primary woodland. UK Coal claim that there is no danger to these and argue that the ecology of these woods would be largely unaffected. The Groups disagree (WHEG/SMAG/1, paras 4.11 and 4.13 to 4.19). The danger to these woodlands should be treated seriously. UK Coal may say that they care about these woodlands, but are they really going to go out of their way and incur additional expense to avoid damaging these areas? The Groups' view is that there is a significant risk to their future wellbeing.

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### Health and Pollution

- 8.19 Pollution caused by opencast coal mines has a detrimental effect on the health of those living within the surrounding communities. The associated effects include reduced life expectancy, increased incidences of lung cancer, increased cardiopulmonary mortality, increased hospital admissions for asthma sufferers and those with chronic obstructive pulmonary disease or chronic bronchitis, and skin and eye conditions.
- 8.20 There are over 10,000 homes within three miles of the proposed Lodge House site along with numerous schools and nursing homes.
- 8.21 The principal sources of pollution generated by opencasting are known to be fine dust particles generated by the mechanical removal of the overburden (the precise effects of which varies according to the proportions of shale quartz and clays present) and fine particulate matter emanating from diesel emissions both on-site (e.g. from earthmovers and trucks) and from the movement of extracted coal through the surrounding communities by HGVs. These sources together produce a range of respirable particulate matter ranging from very fine (PM<sub>2.5</sub>) to less fine (PM<sub>10</sub>).
- 8.22 The first "Newcastle Study" (endorsed by COMEAP and funded by the Departments of Health and the Environment) showed that opencast communities had on average 14% higher PM<sub>10</sub> concentrations than the control communities and that elevated PM<sub>10</sub> levels in the opencast communities were not associated with permitted site opening hours or monitored wind direction.
- 8.23 This evidence supports the Groups' view that UK Coal would not be able to control PM<sub>2.5</sub> and PM<sub>10</sub> emissions. In addition to the recognised problems associated with PM<sub>10</sub>, the Groups argue that the harmful effects of PM<sub>2.5</sub> must also be taken into account as these particles pass further into the respiratory tract and possibly into the circulation.
- 8.24 In addition to the quoted "orthodox" and Government publications highlighted, the work of Dr Dick Van Steenis should be noted, as published on "The Country Doctor" website. He states (CD3/2, p15):
- "Ambient PM2.5s recorded in Derbyshire in 1999/2000 were consistent with 2-3 years reduction in lifespan while analysis of content of the particles identified the sources as opencasting of coal, demolition at a brownfield site and chimney emissions"*
- "PM 2.5s stay in the air for up to a week and result in maximum adverse health effects at some 0.5 miles from road vehicles, 3 miles from earthmoving equipment in opencast sites....."*
- 8.25 He also states, firstly, that asthma prevalence has increased in those areas of North Derbyshire where opencasting operations have been carried out, in particular in relation to the longstanding operation at Arkwright; and secondly, that the amount of

particulate matter in the diesel exhaust fumes of one earth mover is equivalent to the exhausts of 900,000 Volvo V70 cars.

- 8.26 At the inquiry new evidence was submitted, extracted from the Margam Health Impact Assessment (WHEG/SMAG/4). The evidence supports the assertion that the potential for the local population to be affected by particulate matter created by the mining operations and associated HGV movements is real and documented. High-risk groups for adverse effects of particulates include the elderly, infants and those with existing acute respiratory infection or cardiovascular problems.
- 8.27 Whilst it was suggested during cross-examination of Mr Steiner that the evidence was not balanced, where matters are in dispute it is for each party to produce the evidence for consideration by the decision maker.
- 8.28 As to UK Coal's evidence on air quality, it should also be noted that the "Newcastle Study" was of only six weeks duration in four out of the five communities monitored, and only 24 weeks in the fifth. In contrast, a typical opencast operation takes several years to complete. Also, the study group did not include all the "at risk" groups, such as the elderly or those with compromised respiratory function. Nor was account taken of any cumulative effect of successive opencast operations, which, in the case of Lodge House, extend back over some 60 years. The paper produced by UK Coal during cross-examination (APP8A) should be given limited weight having regard to the variations that will occur between one local area and another and Mr King's inability to answer questions relating to its statistical relevance.
- 8.29 The provisional EU objective to reduce PM<sub>10</sub> levels from 40µg/m<sup>3</sup> to 20µg/m<sup>3</sup> by the end of 2010 would be compromised with respect to the timescale of Lodge House. Having regard to the initiatives to continuously improve air quality standards on health grounds, it would be entirely illogical to allow an operation that would increase PM<sub>10</sub> levels, even if the actual rise were only the 2µg/m<sup>3</sup> suggested by the Newcastle Study.
- 8.30 Written evidence submitted by Dr Holland (WHEG/SMAG/11) and Mr Paget (INQ/4/3) provide first hand evidence of the adverse effect of particulates on the health of local people. Photographs produced by Mrs Charlton (DC1) graphically illustrate the dust generated on the Carrington Farm site. Mrs Riley (BR1) spoke of the local heath benefits of Shipley Country Park and its environs noting "it's a huge resource for pleasure, peace and quiet." Others who spoke echoed this view.

### **Ecology**

- 8.31 UK Coal's proposals include opening to the public a number of areas that are currently out of bounds. Additional access can be good, but there is also a risk that areas that are currently the safe preserve of wildlife could be damaged if the public are allowed to explore them. It may be better to leave these areas private.
- 8.32 During the inquiry a number of inconsistencies and discrepancies were found in UK Coal's survey material (WHEG/SMAG/1, paras 7.2 to 7.5). This is unacceptable and leaves open the question as to what is the true case.

- 8.33 The site is a unique ecosystem, as are all such sites, in terms of ecological interest and biodiversity. Lodge House and its surrounding area should be viewed in terms of its significant local importance, and not be judged against any regional or national picture. No other local area will present exactly the same list of species of conservation concern, particularly birds, including the Hobby, plus Bats, Badgers, Brown Hare, and Water Vole. The ancient woodland that borders the site cannot by definition be recreated once it is damaged or destroyed.
- 8.34 Whilst UK Coal questioned the presence of the Water Vole, local residents have seen evidence that it exists on the site (WHEG/SMAG/9). It is common sense that established local knowledge will be superior to short-term and non-independent studies on behalf of the applicant. The matter merits further independent investigation. Equally UK Coal's evidence on the "benefit" of translocating the Slender Groundhopper from its present habitat to a new location is at odds with the basic principles of ecology. No evidence was provided by Dr Mansfield that translocation would be successful.
- 8.35 WHEG and SMAG have highlighted the fact that there is an established and valuable ecosystem existing on the proposed site. This ecosystem supports a number of regionally and nationally important species. However, this is of secondary importance to local residents. They know there is a wide selection of wildlife on the site and they want it to stay, so they can show their children what a real Hare or Badger looks like without resorting to inspecting road kill, books or videos.

### **Traffic**

- 8.36 Traffic is an area of great concern, particularly to residents of Smalley. Their concerns include:
- the predicted 82.2% - 108% increase in HGV traffic - 100,000 additional HGVs during the operation (WHEG/SMAG/1, para 9.10 et seq);
  - increased noise and air pollution from HGVs (CO<sub>2</sub> and diesel fumes);
  - potential road safety hazards with the site access, route of egress and Bell Lane;
  - 264,000 movements across Bell Lane;
  - traffic queues and delays, with likely short-cutting through residential areas.
- 8.37 UK Coal has produced three traffic reports stating that there is no reason for local residents to be concerned about the additional traffic from the Lodge House site. However, the residents strongly disagree. They live alongside the road; they use it every day at all hours, and can say that any additional HGV traffic would make a significant and detrimental difference to the people who use it. In addition to houses, the main road through Smalley is fronted by the village shop, the post office, public

houses, the village hall, community centre, a primary school and play group and two nursing homes. All these would be directly affected by increases in noise, dust and pollution, especially from HGVs.

- 8.38 UK Coal also used personal injury accident data to support their case. WHEG/SMAG do not dispute that HGVs have not been involved in many personal injury accidents. But UK Coal cannot prove that an HGV did not play a contributory part in any of these accidents, or played a very real part in any number of non personal injury accidents. The inescapable risk is the near miss, or the slight damage to a vehicle that is caused by an HGV speeding through the village.
- 8.39 UK Coal cannot guarantee that none of their coal trucks (or those of the third party transport company employed to transport the coal) would break the speed limit through the village. They cannot guarantee that they would not intimidate slow drivers; that they would not barge their way past villagers who have parked on the main road; that they would not drive so close to pedestrians so as to almost blow them over. The real argument over traffic should not be whether there is an increased risk of personal injury accidents but whether the passing of a coal truck would cause additional distress to the local people whose houses and lives they would affect.
- 8.40 In addition to the volume of traffic, the effects of air and noise pollution caused by these additional HGVs also need to be considered. HGVs travelling along the A608 through Smalley are noisy and smelly (WHEG/SMAG/1, para 9.29 et seq). An empty coal truck is very noisy as it bumps over pot holes and drain covers and a loaded one pollutes the air when the engine has to cope with pulling a 20 tonne load of coal. HGVs scare people and animals; they bully other drivers and take a very long time to stop, especially in the wet and in an emergency.
- 8.41 If opencasting were to extend into the Mead site, then the traffic issues would extend for approximately 15 years.

#### **Land Quality**

- 8.42 Evidence shows that UK Coal's draft soil handling strategy grossly exaggerates the potential improvement of agricultural land quality. During cross-examination, Mr Stapleton confirmed that the claimed "potential" improvement from Grade 4 to Subgrade 3b land (APP9, Table 3) would only be realised by farmers working on the land after the initial 5 year restoration period required by condition. He was unable to quantify the amount of Subgrade 3b land that would be created. There is no guarantee that the claimed improvements would be achieved. Mr Stapleton's evidence on this matter also serves to show just how long soil recovery could take on the agricultural land. The length of the recovery period is not just an issue for woodland and habitat areas.
- 8.43 When asked to comment on the WHEG submission that improvements in agricultural land quality could be achieved much more quickly without any of the risks from opencast mining, he advised that existing land improvement methods used by farmers normally realise soil depths of some 45cm, whereas UK Coal's soils handling



proposals would realise depths in excess of 100cm. He commented that the authorities consider this more desirable, but was unable to advise which crops would benefit.

- 8.44 WHEG and SMAG acknowledge that the concerns over the original 5-year aftercare period employed in previous opencast schemes has been addressed by the additional 20 year management plan for woodland and habitat areas included in the S106 Agreement. This is a positive step by UK Coal to attempt to counter the immaturity of previous sites which is still evident more than 30 years after restoration. However, it also serves to illustrate the long-term effect opencast operations inevitably have on landscape maturity.
- 8.45 Evidence of these long term effects on the landscape is provided by the photographs of the Kirk, Godkin and Club Room Farm opencast sites (WHEG/SMAG/1, Appendix 5). These images of local sites demonstrate that, irrespective of the past history of any particular site, the general appearance and land quality on restoration is substantially the same - immature and unnatural. Biodiversity is low, and even recessive, and this condition persists for decades. In her written submission, Mrs Trevan provides experience of unsuccessful woodland planting around the Country Park (VT1). Mr Mullard (RM1) also indicated that successful tree planting is already being undertaken in the area under the English Woodland Grants scheme. The collateral ecological, landscape and soil structure damage to non-reclamation areas of opencast sites also needs to be considered.
- 8.46 The Lodge House proposal is not a reclamation proposal and cannot be justified on the basis of reclamation-related long-term benefit.

#### **Hydrology and Hydrogeology**

- 8.47 There is substantial disagreement between UK Coal's witness and WHEG's advisor on the hydrological and hydrogeological significance of the proposal. WHEG contend that serious questions remain over the type of waters to be encountered within the Lodge House excavations and their contamination potential. The evidence presented in this respect demonstrates that in a number of areas the evidence of Dr. Blythe is incorrect, and that the potential outcomes (or lack of the same) described in his evidence are without foundation and based on an incorrect/incomplete appreciation of local conditions, geology, and past events.
- 8.48 WHEG contend that backfilling of excavations has the potential to disturb or block the established flow patterns towards Woodside that exist in the laterally dipping strata above the excavation pavement (WHEG/SMAG/5). Because of this there is potential for polluted groundwater/gases to emerge at the surface to the west of the backfilled excavations, leading to contamination and waterlogging. This scenario has already been experienced following backfilling of the Whitehouse excavations.
- 8.49 During its operational phase, Lodge House would present the potential for ecological damage due to further localised depression of the water table in an area where the water table is already artificially depressed via abstraction at the Woodside pumping station. Derbyshire Wildlife Trust, in their consultation response also expressed

concerns about the lack of data with regard to hydrological impacts on vegetation within adjacent ancient woodlands (CD5/1.16).

- 8.50 WHEG evidence included images of the contamination of near-surface ground waters of the type that would inevitably be encountered by any excavations at Lodge House (WHEG/SMAG/1, Appendix 6). This has not been recognised by UK Coal, and no mitigation measure or potential mitigation is included, is envisaged or can be perceived that would protect ecologically sensitive areas, particularly the designated discharge catchment, Mapperley Reservoir.
- 8.51 In WHEG's view, the hydrological and hydrogeological effects of opencasting at Lodge House could result in long-term and irreversible environmental damage. Accordingly, planning permission should be withheld. Failing this, conditions should be imposed requiring UK Coal to demonstrate conclusively at the outset that the operations would have no environmental consequences for the local area.

#### **Noise**

- 8.52 The Group's principal concerns regarding the noise predictions (WHEG/SMAG/1, Appendix 8) have been resolved by the agreed condition. Notwithstanding this, concerns remain over the impact of the works on users of Bell Lane, who would be seriously affected by noise (and dust) from plant, including that crossing the lane. The impact would be particularly significant in the school holiday period.

#### **Economics**

- 8.53 Mrs Charlton, with some 32 years experience in the opencast industry, is well qualified to comment on the employment and economics evidence submitted by UK Coal for the Lodge House proposal. In her evidence (WHEG/SMAG/1, Section 10) she questions several aspects of UK Coal's case as put to the inquiry. The weakness of this evidence, and the flaws in it were further exposed when Mr Lucas was cross-examined. Particular concerns include:
- 8.54 Firstly, the claimed fit between the skills that would be required by the workforce at Lodge House and those available locally. Mr Lucas was unable to clarify how many economically inactive men in the workforce would be offered employment at Lodge House. Notwithstanding his claims that mining was a traditional industry in Amber Valley, with a surplus of redundant appropriately skilled local labour, he conceded that the specialized operatives required to manage the site and to operate the heavy plant would probably need to be sourced from further afield.
- 8.55 Secondly, no evidence was submitted by UK Coal to support their claim that £4 million per annum would be spent on goods and services for Lodge House. In response to questions, Mr Lucas advised the inquiry that the figure was based on an economic study of spending patterns in Leicestershire, supplied to him by UK Coal, but not included as evidence. He could not say which Amber Valley supply companies would actually benefit. Further questioning of Mr Bolton confirmed that

UK Coal would supply the major items of plant from their existing resources. The fitters required to maintain the plant would be UK Coal employees.

- 8.56 Thirdly, the wage rates which the analyses assumed would be paid were far higher than those actually paid at the Forge and Monument Site (WHEG/SMAG/1, paragraph 10.27).
- 8.57 Overall it became clear that Mr Lucas's evidence on employees, salary structure and suppliers was based solely on information supplied to him by UK Coal. No evidence was provided to support the factual accuracy of this information and the assertions made.
- 8.58 Moreover, if UK Coal's expenditure figures are accepted, it appears that the mine would operate at a loss (WHEG/SMAG/1 para 10.49 et seq). This suggests that either UK Coal plan to work additional reserves by expanding into the Mead site, or that the claimed expenditure on goods and services has been grossly exaggerated.

### **Cumulative Impact and Quality of Life**

- 8.59 Cumulative impact does not relate solely to the simultaneous operation of opencast sites, but to the ongoing effect of working (and reworking) opencast sites in the area. Large areas of land near to the Lodge House site have been worked for coal over a period of more than 60 years (APP19, Appendix 5). The cumulative effect on the landscape has been significant, with the East Midlands now having the lowest percentage of tree cover in England. For the communities involved, there is the constant threat of more opencast misery and local residents suffer the pressures of the perpetual fight to preserve the environment, local amenities, history and culture. Their health and wellbeing is adversely affected. The psychological impact, including stress and depression, was clearly evident when the residents made their submissions to the inquiry.
- 8.60 UK Coal's decision not to agree to an undertaking preventing them from applying to expand into the Mead site adds to the stresses imposed by the Lodge House proposal.
- 8.61 Notwithstanding this, there has been no opencast mine operating in Smalley since 2004. The quality of life in the village is good and the village is expanding. UK Coal claim they want to be a good neighbour and that Lodge House would bring jobs to the area and other benefits. Similar promises have been made by opencasters for at least two decades, but they do not convince those communities that have past experience of the actual impacts. The overwhelming feeling in the community is that opencast mining should not be allowed to start again.
- 8.62 At Lodge House the benefits would be limited. There would be some jobs, but these would probably not be filled by local people. New trees would be planted and the proposed wetlands, woodlands and footpaths would be visible to and useable by locals. The potential soil improvements, however, would mainly benefit UK Coal and their tenant farmers.

- 8.63 The costs, on the other hand would be substantial. There would be additional health risks, dust and pollution, a huge set of holes in the ground and soil mounds, and additional HGVs passing through the village. The landscape would be devastated by the removal of established trees and hedgerows and would take many years to recover. The “short duration of development” would be a very significant period in the life of a child.
- 8.64 Whilst the proposed conditions might offer some protection, many are dependent on the optimal operation of environmental management systems which the evidence shows have not been effective elsewhere. Additionally, the residents question who would police compliance with the conditions. The fear is that once an issue is raised it would take an enormous amount of effort by the local liaison committee and the Council to ensure that something is done. In the meantime the issue would be there, be it noise, dust, lack of water or flooding. In their opening submissions, UK Coal claimed the fears expressed by local residents were “irrational”. Significantly, however, they did not produce a single witness who lived near to a previous opencast site to reassure local residents that they really do have nothing to worry about.
- 8.65 Overall the evidence produced at the inquiry has done nothing to reassure WHEG, SMAG and the local residents they represent that their concerns are irrational or otherwise unfounded. If the proposal is allowed to proceed, the effect on the landscape and ecology of the site, the Shipley Country Park and the living conditions of nearby residents would be significant and adverse. The evidence presented has not shown that the site is capable of being operated and restored to the highest environmental standards, or that it would be made acceptable by the agreed planning conditions and obligations. The purported local or community benefits that the proposal would provide would not clearly outweigh the likely environmental impacts and have been rejected by residents who have long standing experience of opencast mining.
- 8.66 Accordingly, the appeal should be dismissed.

## **9. THE CASE FOR SMALLEY, MAPPERLEY AND SHIPLEY PARISH COUNCILS**

### **Smalley Parish Council**

- 9.1 Smalley Parish Council (SmPC1) note their members' and parishioners' concerns about noise, dust and pollution and the increased lorry traffic which would pass through Smalley if the opencast mine goes ahead. These lorries would pass the Church Hall, where a playgroup meets, and the Smalley Richardson School. There is no pedestrian crossing at either location.
- 9.2 In the Council's view, the safety of children is a matter of paramount importance. Planning permission for the development should be refused.

### **Mapperley Parish Council**

- 9.3 Mapperley Parish Council (MPC1 to MPC4) opposes the proposal. For centuries the parish has had a close relationship with the coal industry, but attitudes have hardened, especially since the introduction of industrial-scale opencast mining. In a referendum organised by the Council, 88% of respondents opposed opencast activity in the area.
- 9.4 The cumulative effects of noise, dust, vibration, air, water and light pollution would affect and disrupt residents' quality of life.
- 9.5 UK Coal claim that restoration techniques have improved. But, even with the latest strategies, hedgerows are straight and treeless, devoid of variety. Grass is synthetic in appearance due to the zealous application of nitrogen fertilizers. The restored landscape lacks mature features. The trail of destruction from opencasting is visible across the East Midlands. The Council's fear is that Lodge House would become another second-rate landscape. Many residents would not live to see the promised restoration works mature.
- 9.6 MPG3 and Policy MP27 require coal extraction in the Green Belt to be tested against the highest environmental standards. But UK Coal's commitment to these standards is brought into question by their actions at Eastwood (MPC3).
- 9.7 Between 5 and 10% of pupils at Mapperley Primary School suffer from respiratory conditions. Other sufferers live at Park Hall which is only 650m from the site. The Parish Council finds it difficult to accept that these individuals' respiratory health would not be affected. Experience at Carrington Farm suggests that the company would not always diligently fulfil its dust suppression obligations.
- 9.8 Local farmers rely on the land within the area to sustain their farms. If the proposal goes ahead, this land would not be available to rent for several seasons. However, if these farmers were offered longer-term rental agreements, they would be in a position to invest time and money to improve the land. There is no need to opencast the site to achieve this.

- 9.9 In line with Green Belt policies, the local area has over the years evolved into a local recreational oasis, frequently used by villagers and people who support local livery businesses. It is the proximity to Shipley Country Park and the local rights of way network, including Bell Lane, which makes these businesses successful. Opencasting would not only be visually offensive, but could also endanger horse riders using Bell Lane. The area outside the park boundary, including Mapperley Village, is regarded by many people as an extension to the park. The footpaths, roads and bridleways, including Bell Lane, draw people from the outlying areas to its hub. People choose to visit the park to escape industrial activities; they do not want to be confronted by an opencast mine. Mapperley Primary School and the Derbyshire Wildlife Trust have links with the park and nearby nature reserves. Teaching children to protect and conserve flora and fauna habitats, when at the same time opencasting is taking place on adjacent land, would send them a confused message. It is imperative that the importance of the park is not underestimated.
- 9.10 UK Coal's true intentions were exposed during the S106 negotiations. If the appeal is successful there is no commitment on UK Coal's part not to seek to extend the workings into the much larger Mead site.
- 9.11 People accept that there is a need to burn coal. But opencasting is a double edged sword - extracting it is immensely destructive to the environment; burning it contributes to global warming.
- 9.12 For the reasons given above the Secretary of State should dismiss the appeal.

#### **Shipley Parish Council**

- 9.13 Shipley Parish Council (ShPC1) objects to the proposed development. It is now some 50 years since opencasting was last undertaken on the site and the area has regenerated as Green Belt pasture land. The site contains many mature trees, hedgerows and two small copses. It provides a stable habitat for birds, animals and plants and is a valued visual and recreational amenity for residents of surrounding villages. This landscape would be destroyed and would take many years to recover.
- 9.14 The 4½ years of opencast activity would have many negative effects and no benefits. Coal lorries and service vehicles passing through the congested main street of Smalley and along the A608 would increase the safety hazards and detract from its rural feel. Heavy plant operating on the site would result in noise, dust and fumes and diminish the quality of life of local residents. When the site was previously worked blasting was also necessary.
- 9.15 The effects of the development would be felt outside the site boundary and would drastically reduce the enjoyment and amenity of the surrounding countryside and Shipley Country Park, which overlooks the site and attracts 500,000 visitors each year. Local economic benefits would not be significant. The promised community fund would equally not be significant when shared between the many communities affected.

- 9.16 The adverse impacts on the environment, landscape, visual amenity, wildlife, nature conservation and accessibility are not acceptable and cannot be made so by planning conditions. It would not be possible to maintain the highest environmental standards required by Green Belt policy. The benefit of additional woodland, ponds, marshes, extended rights of way and the community fund would not compensate for the destruction of an area which is not currently in need of improvement.
- 9.17 The presumption against opencasting set down in MPG3 and Policy MP27 of the Minerals Local Plan would not be overcome. Accordingly, planning permission should be refused and the coal left in the ground to cover a possible future emergency.

## **10. THE CASE FOR NCB NO 5 AREA FISHING CLUB**

- 10.1 The NCB No 5 Area Fishing Club has some 600 members. It leases the fishing rights to Mapperley Reservoir. This reservoir was badly affected by opencast coal mining in the late 1970s, particularly from the Whitehouse site. During the works, the lake, which was previously clear, became clay coloured. Weed growth died. Fish catches fell to virtually zero. Sedimentation was extensive, with up to 1m of clay deposited in the main lake. It was some 10 to 12 years before reasonable fish catches were again recorded. Only recently, some 25 years after the pollution occurred, has weed growth again been observed in the shallower north-western end of the reservoir. Prior to the opencasting there were no problems with water flow into the reservoir, or its quality.
- 10.2 The situation at Mapperley Reservoir is unusual in that the large area of still water into which the effluent would be discharged allows all the larger, and a large proportion of the smaller, particles to drop out of suspension. The streams feeding the lake are small and, for parts of the year, dry. Consequently, at times, the only feed to the reservoir would be effluent discharged from the proposed opencast site.
- 10.3 Because the effluent from the opencast site would not be diluted, the quality of the discharge water would need to be consistently high. Vast storage facilities would be required on site, with large settling lagoons, to ensure that all water is collected and retained long enough for the suspended solids to settle out. Even this would not address the potential problem of dissolved chemicals in the old mine water, which tests have shown to have high levels of conductivity. If flocculants are used to reduce the level of suspended solids in the outflow from the treatment ponds, problems would be exacerbated. Flow paths could also be opened up between the former Whitehouse opencast site and the proposed workings, allowing contaminated water to enter the reservoir.
- 10.4 The history of previous opencast sites, including Monument, suggests no reliance should be placed on UK Coal's on-site control or management skills to effectively control the quality of effluent discharged from the site.
- 10.5 As to the flow in the streams, opencast mining has the potential to disrupt the natural drainage paths which could reduce the flow to the streams feeding the reservoir. This in turn could lead to water levels falling, with serious consequences for the fishery.
- 10.6 Any failure to properly control discharge from the opencast mine would not only damage the fishery, but would also damage the areas of wet woodland habitat at the north-western end of the lake and along its southern shoreline.
- 10.7 In the Club's view it would not be possible to guarantee safe discharges from the site and the application should be rejected as environmentally unsound. However, should the project go ahead, stringent water quality standards should be applied to the discharge consent. In order to ensure that these are not breached, the effluent from the site should be treated and continually tested for suspended solids and chemical contaminants, with fully automatic, fail-safe monitoring, control and recording



equipment connected to a remote 24/7 manned site. This monitoring should be entrusted to an independent body, not UK Coal or the Environment Agency who do not have sufficient staff to provide the level of monitoring that would be required.

## 11. THE CASE PUT BY OTHER OBJECTORS TO THE PROPOSAL

- 11.1 **Bob Laxton MP** draws attention to the nature of the A608, particularly where it passes through Derby. There are several hazards long the route which the coal lorries would use, including several dangerous bends (BL1). Morley Primary School sits alongside the road.
- 11.2 The section of the route within the Derby City boundary is congested, particularly at peak times. Rat-running between the A608 and the A52 through the Oakwood Estate and other local roads is currently a problem (BL1). These roads are not suitable for HGVs. Additional traffic generated by the proposed opencast mine would add to the congestion and disturbance that residents in the Spondon, Oakwood and Derwent Wards already suffer.
- 11.3 **Judy Mallaber MP (JM1 to 3)** considers that the proposal runs totally counter to the MPG3 guidelines on opencast mining and the provisions relating to environmental considerations, community benefits and the Green Belt. It would not be environmentally acceptable; indeed it would do environmental damage. Neither would it provide local or community benefits that clearly outweigh the likely impacts. The community, which has experience of opencast mining over a long period, does not support the proposal. Their views should be given weight. They are understandably fearful that if the Lodge House scheme goes ahead it would extend into the larger Mead Site (JM2).
- 11.4 There are areas where opencasting can be of benefit, particularly where it takes place on unstable or derelict land that need reclaiming. But here there is no reclamation argument.
- 11.5 Key aspects of MPG3 (revised) of particular relevance include the presumption against development set down in paragraph 8. This is the only area of planning where the presumption is against development. It means UK Coal must prove their case beyond doubt. The burden of proof is on them. Paragraph 7 of the guidance provides the reasoning for this:

*“the Government takes the view that although some sites are capable of being well restored, opencast mining can be extremely damaging to the environment and amenity of a locality whilst it is taking place, and restored landscape can take many years to mature”.*

- 11.6 In assessing impact, the views of the community are central, and paragraph 8 of MPG3 states:

*“The Government recognises that the costs and benefits of an opencast proposal can best be assessed by the communities and local authorities who know the area best and are most directly affected. Accordingly.....MPAs’ assessments of the environmental acceptability or otherwise of individual proposals should normally prevail.”*

- 11.7 Paragraph 18 of the guidance states that the cumulative impact of the development on the community and the environment will be taken into account.
- 11.8 As to the specifics of the proposal:
- There would be a significant loss of mature trees and hedgerows on the site and potential disturbance to Manchester Wood. The veteran trees which would be lost provide a habitat for roosting bats and birds. Trees in which the Hobby, a schedule 1 listed bird, breeds would be removed. Species rich pasture would be lost, as would a roost site for bats. Badgers and Hares, which have been seen on site, would be disturbed. A pair of Buzzards has also recently appeared. The proposed woodland planting would be out of keeping with the landscape. The cumulative impact of a succession of opencast sites on the landscape also needs to be considered.
  - Prospect Farm Cottage would be demolished. Residents at Lodge House and other houses on Bell Lane would be disturbed. There would be an intrusive visual impact from Mapperley Village, Marlpool and Bell Lane.
  - The impact on Shipley Country Park would be serious, with one of the most popular walks over Shipley Hill from the visitor centre to the reservoir completely spoilt by the development. Horse riders using Bell Lane would be disturbed. UK Coal's claim that restoration would improve access to the site should be afforded minimal weight - there are already enough footpaths.
  - HGV traffic on the A608 would be nearly doubled. In Smalley village the route passes two schools and a playgroup. Road safety is a matter of great concern to residents.
  - The alleged benefits to the economy are insubstantial. Unemployment in Amber Valley is relatively low.
- 11.9 The environment is about more than rare birds and mature trees. It is about landscape, about tranquillity, about views that would be spoilt by the development and which cannot be replaced. Currently, local people enjoy walking through the site - it is not an area that is tucked away. Opencasting the site cannot be made environmentally acceptable. The community benefit would not clearly outweigh the impacts. Accordingly, in accordance with MPG3, planning permission should be refused.
- 11.10 **Councillor Eric Lancashire (EL1 to EL3)** notes the changes that have taken place in the area since the sites of Mapperley, Shipley Woodside and Shipley Coppice collieries were restored. The landscape is different to that seen in the 1960s. The site is part of a pleasant, tranquil landscape that now shows little evidence of previous despoliation. Industry does not intrude on the area.
- 11.11 Residents see no benefit in the proposal. They see active despoliation with soil movements, landscape change, noise, dust and traffic movements increasing to higher

levels through Smalley. Even with traffic calming measures in place, dangers remain. Coal vehicles would be confined to the A608, but service vehicles could use other roads, including the route through Lower Kilburn, Kilburn and Horsley Woodhouse which passes schools, playgroups and the medical centre.

- 11.12 MPG3 contains a clear presumption against development such as that proposed at Lodge House. The report to the Planning and Control Committee was comprehensive (CD7/1). The Committee's resolution to refuse planning permission (CD7/2) should be upheld.
- 11.13 **Councillor Kevin Parkinson (KP1)** reports that when canvassing for the local elections, Lodge House was the main concern raised by local people. He endorses the decision of the Borough and County Councils to recommend refusal of the appeal.
- 11.14 **Mrs Charlton (DC1)** reports that her husband worked in the opencast industry for 32 years as a plant operative. His work included work at the Carrington Farm site. There no water was available on site for dust suppression. It was not imported until after an official complaint had been made. Breach of condition notices were served and the HSE served an improvement notice on the operator (H J Banks). The extent of the nuisance is clear from the photographs supplied.
- 11.15 At Lodge House, UK Coal's dust action plan has shortcomings. The same number of bowzers is proposed as at Park Wood, but that was a smaller site, with less coal. Evidence from other sites suggests that UK Coal's assurances that nuisance dust would be controlled should be given little weight. Large quantities of PM<sub>10</sub> particles would also be emitted by the diesel plant operating on the site. These have documented toxicological effects. Planning permission for the Lodge House site should be refused.
- 11.16 **Amy Booth (AB1)** presented a petition signed by 97 people from her school objecting to the proposal. Many of these questioned why coal is still being used on a grand scale as opposed to renewable energy sources. Damage to the landscape in the area from opencast mining is significant and the ground that has been mined does not look natural, even following planting and many years of growth. The Lodge House site and Bell Lane are beautiful and relaxing places that are important to people's well being. They should be preserved. Opencast mining should not be permitted.
- 11.17 **Mrs Cedervall (GC1)** lives at Park Hall on the outskirts of Mapperley. To the south of her house the landscape is characterised by meadows with wild flowers, species rich hedgerows and clusters of trees of varying maturity. It is a rich colourful tapestry. To the north, where opencasting has been carried out, the grass is green, the hedges uniform and the trees young. The landscape is scarred. Growth of trees is slow and the ground is poorly drained and often waterlogged. The natural beauty of the Lodge House site must not be disturbed.
- 11.18 **Mr Elliott (TE1)** reports that land in Park Hall Lane has taken 25 years to recover from opencasting. He and his wife frequently walk in Shipley Country Park and their enjoyment of the area would be harmed by the noise, dust and visual impact of mining

if the proposal is allowed to go ahead. As they are elderly, they would not live to see the area recover.

- 11.19 **Mr Haley (CH1)** has lived on the edge of Shipley Country Park for 27 years and previously worked as a Countryside Ranger. He is particularly concerned with the biodiversity of the site. Easy access to open countryside can and does improve the physical and mental well being of individuals and local communities.
- 11.20 The site mainly comprises agricultural land which has not been intensively managed. Accordingly, it has a comparatively high conservation value. Abbot's Rough is primary ancient woodland as is 50% of Manchester Wood. Such woodland is rare and valuable; once damaged or destroyed, it cannot be recreated. Whilst the woods themselves would not be opencast, the proximity of the operations to their boundaries would still pose a threat. Changes to the water table would wipe out much of the plant life. Changes in the surrounding area would also affect some of the fauna that inhabits the woodland.
- 11.21 Birds, which are at the top of the food chain, are dependent on the system below them. They are an indicator of the overall health of the natural ecosystem of which they are a part. During 2005 Shipley Birdwatchers group recorded 85 bird species on the site. These included 15 species listed by the RSPB as of high conservation concern; 27 of medium conservation concern and the Hobby which is a Schedule 1 species. This suggests that the conservation value of the site in terms of biodiversity is much greater than that of a newly restored opencast site.
- 11.22 **Mr Henshaw (JH1)** lives in Mapperley Village. He is familiar with the operational and after-effects of opencast mining. The Lodge House site is in the Green Belt. It is a green field proposal, with no reclamation aspect. The local community, who have long been familiar with opencasting, the local authorities, parish councils and local MPs have unanimously rejected the proposal. UK Coal's suggestion that their objections are irrational is arrogant. Bringing the proposal to a public inquiry is an affront to local democracy.
- 11.23 UK Coal point to Shipley Country Park as a product of opencast mining. But they do not mention how long the development has taken, or what local communities had to put up with in getting there. Only those parts of the park that remained free of opencasting are of value in landscape and ecological terms. Elsewhere tree planting failed and the land is poor. If the Lodge House scheme goes ahead, another immature landscape would be created, devoid of many of its current reference points. Residents of Prospect Cottage would lose their home. History suggests that the company should not be trusted.
- 11.24 Lodge House would provide only 0.6% of the nation's annual requirement for coal over its coaling period, equivalent to about 10 weeks burn at Ratcliffe Power Station. With the price increases the company is seeking, will EON Ratcliffe be keen to purchase the coal?

- 11.25 The operational impacts of Lodge House would be negative, despite the proposed mitigation. The uncertainty related to restoration and the future of the land means that residents would have to deal with the aftermath for the rest of their lives. After 65 years of opencast activity in the area, enough is enough. The appeal should be dismissed.
- 11.26 **Mr Mullard (RM1)** notes that tree cover in the East Midlands may be below average, but trees are being planted. Locally a 2.5ha field has been planted as native woodland, backed by grants from English Woodland. In total over 6,000ha of new woodland have been created in the last seven years under this scheme in the East Midlands. Other planting has been carried out by individuals, schools, local authorities and the Forestry Commission. As agricultural land becomes redundant, tree planting should increase.
- 11.27 UK Coal's restoration proposals tend to produce a parkland feel, rather than a natural feel to the land. Their proposals, with ponds and other habitat features, are not in keeping with the traditional pasture land found in the coalfields. Planting on the Club Room Farm opencast site has been slow to establish. If the proposal goes ahead, the quality of the experience of visitors to Shipley Country Park would be compromised. Walking in the nearby countryside would be less fulfilling.
- 11.28 **Ms Riley (BR1)** lives in Mapperley village. She suffers from rhinitis. It is caused by air pollutants, and is getting worse. Mapperley village is quiet and away from main roads. The countryside is pleasant and accessible. It makes her feel better. As a counsellor she is often told by clients that visiting Mapperley Reservoir, bird watching, fishing and picnics in the woods help them to keep going. The area, with its plant and bird life, fish and wild life is a valuable resource for these people. It should not be taken away.
- 11.29 **Mrs Sawyer (JS1 and JS2)** is secretary and media co-ordinator for the West Hallam Environmental Group (WHEG). When the group organised a walk on the site over 200 people attended. They were concerned particularly at the time it would take for the landscape to regain its maturity after opencasting and the site's proximity to Shipley Country Park.
- 11.30 WHEG is a voluntary organisation and all activities are organised in the members' free time. The inquiry has put immense pressure on all members of the group.
- 11.31 **Mrs Trevan (VT1)** argues that if the Government is serious about reducing the emission of greenhouse gases, we should not be encouraging the development of new coalfields. Rather we should concentrate in the short term on less damaging existing sources, such as natural gas. In the long term we should develop clean alternatives such as solar, wind, wave, hydroelectric, nuclear and eventually hydrogen power.
- 11.32 Whilst UK Coal tell the community that they would restore the site, this is at present only a promise. Past experience does not give people confidence that the restoration would happen. Shipley Country Park is 50 years old, but has only recovered from opencasting in the last 10 years. It is a valuable asset, used by locals and others from

further afield. It must be retained unharmed. Opencast sites take many years to recover - as experience at Shipley Country Park demonstrates. They bring unnecessary long term miseries to the people of the surrounding communities – dirt, dust, noise, light pollution and landscape loss, with nothing to offer in return except short term employment for a few.

- 11.33 The application site has been damaged in the past by opencast mining, but has now healed. The clock should not be turned back.
- 11.34 **Mrs Williams (LW1)** reports that her house was 250m from UK Coal's Forge and Monument opencast site. Noise from the earthmovers rattled windows and doors. It lasted from 07.00 to 19.00. Dust clouds covered everything. Acoustic barriers were ineffective in protecting her house and garden which was on a ridge above the excavations. Lighting was intrusive.
- 11.35 Opencasting is now complete, but not the restoration. The landscape is immature. The promised new and improved footpaths and bridleways have not yet been laid. Promised restoration work to the Jessop Monument has not been carried out. Contrary to the restoration plan, nitrogen fertiliser has been applied in the fields which has resulted in rye grass swamping other species. Residents living near to the proposed Lodge House site should not have to endure the experiences suffered by those living near Forge and Monument.
- 11.36 **Mr Bloor (JB1)** lives in Mapperley. Residents of that village are sick of battling with UK Coal over opencast sites. First there was the Shipley West application, now there is the Lodge House scheme. When will it end? Each scheme would reduce the quality of the land which could lead to landfill, industrial units, housing developments and the like. UK Coal would gain financially, but local communities would not benefit from the proposals. The appeal should be dismissed.
- 11.37 **Mr Pilkington (SP1)** lived next to the Grange Farm opencast site in Stanley. At the inquiry into that proposal RJB Mining promised that they would create new jobs; that you wouldn't see or hear the works and that when they had gone you wouldn't know they had been there. The reality was different. Staff commuted from as far away as Chesterfield; the activities were visually invasive and on occasion very and unacceptably noisy. There was some dust and vibration. Lorry movements damaged the road. Repairs are still awaited. Neither UK Coal nor the lawyers they employ have a proper grasp of the true effect that opencast mining has on nearby residents and the environment.
- 11.38 **Ms Flint (LF1)** came from a mining area and understands at first hand that the effect of coal mining on landscapes lasts for more than a generation. Communities may gain temporarily from mining, but in the long term lose out when the coal is gone and there is nothing to replace it. The site is valuable for a range of wildlife. Where will it go if the proposal goes ahead? Open spaces such as that found at Lodge House are also valuable for recreation. It is an oasis under pressure. The land in Derbyshire has suffered more than enough disturbance. It should be left to heal. More should be done to support sustainable energy.

- 11.39 **Mr Maclean** reported that he lived around 1 mile from an opencast site. When it was operating there were black stains on furniture outside. In his experience, dust control measures are not effective at controlling dust that escapes from the face.
- 11.40 **Mrs Whitaker (JW1)** notes that Derbyshire has been plundered in the past for its mineral resources. But now the County stands out in most people's minds for its attractive countryside. It has some of the finest landscapes in Britain. Visitors and local people walk the footpaths in the area surrounding Shipley Country Park and Mapperley Reservoir. They enjoy the experience that walking through the natural unspoilt English countryside brings. Everyone aspires to improve and maintain their lifestyle and the environment. The countryside is worth fighting for.
- 11.41 Residents of the communities near Lodge House do not want opencast mining. The Councils do not want it. There would be no benefit to the local community. We should not be named and shamed by future generations as the ones who were prepared to allow profit making organisations to plunder the environment for a few pounds now, without regard for the long term consequences.
- 11.42 **Mr Weston (MW1)** draws attention to the cultural and historical significance of Bell Lane and the countryside of the wider area vividly described by DH Lawrence in *The Rainbow*. In his writing Lawrence described the landscape as he saw it. Its features can still be seen today. With opencasting these would be lost, as would the potential to increase tourism associated with the connection.
- 11.43 He further questions the logistics of moving the coal to Ratcliffe. More lorries would be needed than UK Coal suggest and these would be using the M1 at a time when widening works are proposed.
- 11.44 When opencasting was first permitted it was in response to a national emergency. Local environmental concerns should now weigh more heavily in the balance than when these permissions were granted. Planning permission should be refused.
- 11.45 **Mr Crawford (JC1 and JC2)** provides photographs of the site, Bell Lane and Manchester Wood taken a few days before he appeared to give his evidence. The area is undeniably beautiful. Its value as a natural resource is worth more than the mineral resource. Either we stop mining now, preserve our countryside and seek alternatives or we carry on mining and when the coal and countryside runs out we will still have to seek alternatives. Without a coherent energy strategy things are drifting without direction. We have to get to grips with this problem. We need to change the way we think and develop alternatives.
- 11.46 In the meantime we might have to buy in additional power from elsewhere. This may be costly, but it is a price worth paying. It would be an incentive to developing more efficient alternatives. In an age where we take seriously the limiting of carbon emissions, the mining of fossil fuels is inappropriate. Planning permission for Lodge House should be refused.



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- 11.47 **Mrs Taylor (LT1)** spoke as a resident of Smalley and committee member of Smalley Preschool Playgroup. She reports that when Carrington Farm opencast site was in operation, local roads were used as a cut through by traffic to avoid the slow lorries passing through the village. These problems disappeared when mining stopped. Dust nuisance also reduced.
- 11.48 Bell Lane at present is a safe lane with an abundance of wildlife, beautiful views and a sense of open space. For children of Smalley it provides a safe route to Shipley Country Park. It is a special place to be, with mature trees, bluebells, cows, and birdsong. This would be lost if opencasting is permitted. It would never be the same again; indeed UK Coal's restoration proposals would be totally out of character and would only serve to act as a reminder of the opencasting. The proposal is simply wrong. Planning permission should be refused.
- 11.49 **Mr Foster (TF1)** reports that when UK Coal approached Smalley Parish Council to present their proposals, he was the Chairman. After the presentation, the overwhelming message was that the villagers did not want the mine. It would not bring local benefits and, in accordance with MPG3, the appeal should be refused.
- 11.50 **Mr Miller** is a resident of Smalley. He has experienced opencasting at the Club Room Farm and Carrington Farm sites. Both were very close to Smalley. Both were small in comparison to the Mead site.
- 11.51 When these sites were operating there was a drone of heavy plant, dust increased, there were more HGVs. The people did not complain. They thought they could not do anything. However, it strengthened their resolve to object to and prevent further opencasting in the area. At Lodge House the destruction of the landscape, noise and dust impacts would not be outweighed by community benefits. The appeal should be dismissed.

## 12. WRITTEN REPRESENTATIONS

Inspector's note. Written representations submitted in response to the appeal, but prior to the start of the inquiry, can be found in the red "letters" folder. Copies of these representations, numbered for ease of reference, are contained in the Core Documents file – Docs CD16/1 to 16/8; CD17/1 to 17/8 and CD 18/1 and 18/2. Representation submitted to the Government Office for the North East (GONE) in response to the advertisement of the footpath diversion order can be found in the black "footpath" file, with copies at CD19/1 to 19/3. Written representations submitted whilst the inquiry was sitting are numbered INQ/4/2 to INQ/4/7.

### Written Representations Submitted in Response to the Appeal

- 12.1 Organisations submitting written representations in response to the appeal included **Smalley, Shipley and Mapperley Parish Councils** (CD16/1, 16/2 and 16/3), **SMAG** and **WHEG** (CD16/5 and 16/6) and the **NCB No 5 Area Fishing Club** (CD16/7). These written submissions reflect the evidence these bodies subsequently presented to the inquiry, the gist of which is summarised in Sections 8, 9 and 10 of this report. CD16/4 is a copy of papers from the **Erewash Borough Council**, Planning Committee (see para 12.11 below).
- 12.2 At appeal stage 34 individuals wrote objecting to the proposals (CD16/8.1 to 16/8.34), two of whom subsequently appeared and spoke at the inquiry.<sup>1</sup> The representations made reflect closely those made by the individuals who appeared at the inquiry. No letters were received supporting the proposals. A letter from **Mr Breen** to Margaret Beckett MP (flagged on red folder) argues that any decision in favour of the proposal would constitute a breach of his human rights.
- 12.3 Following the submission of the revised scheme of working (see paras 1.2 and 1.3 above) a further eight letters were sent to the Planning Inspectorate (CD17/1 to 17/8) and two to Derbyshire County Council (CD18/1 and 18/2). One contained factual information on **Central Networks'** electricity installations in the area and the company's requirements for protection of their apparatus (CD17/2). Another (CD17/5) suggests (without prejudice to the case made for dismissing the appeal) that in the event that planning permission is granted, consideration should be given to not routing all lorries via the A608 towards Derby. Rather, three routes should be approved "*so as to spread the load*". The same letter also suggests that an alternative warning system for reversing vehicles to the normal "bleepers" should be employed to reduce noise nuisance.
- 12.4 The letters sent to Derbyshire County Council include one from **English Nature** (CD18/1) noting that, since the ES was prepared and submitted, 49 trees on the site have been classed as veteran, near veteran or mature. They record that "*they are not satisfied that consideration was given to the importance of these trees when the application was submitted*" and advise that a bat and bird survey of the trees should be carried out.

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<sup>1</sup> Ms Riley (CD16/8.9 and BR1) and Mrs Charlton (CD16/8.29 and DC1).

- 12.5 Whilst the inquiry was sitting, six further written submissions were received. These included petitions from the **Nutbrook Walking for Health Group** (INQ/4/2) arguing that the proposed opencasting would seriously impact on their members' enjoyment of walking in Shipley Country Park and that the associated dust would compromise their return to good health. A second petition from the **Michael House School** (INQ/4/7) objects on the grounds of impact on the countryside, impact on the education of children using Shipley Country Park for field studies, and air pollution.
- 12.6 In INQ/4/3 **Mrs Paget** outlines her experience of opencasting at the Carrington Farm site, including the respiratory and other allergy problems suffered by her son whilst the works were in progress. She reports that after the works had ceased she "*discovered that many other children in the area suffered acute respiratory problems during the opencasting [which] disappeared when H J Banks left Smalley.*" She questions the independence of UK Coal's air pollution witness, Mr King, who co-authored the Newcastle Study and "*owes his livelihood to the opencast industry*".
- 12.7 **Polly Harman** (INQ/4/4) objects on account of the additional dangers that the increased volume of traffic would pose to residents living along the A608. **Mr Harwood** (INQ/4/5) expresses concern that the works would result in a serious detrimental impact on the Manchester Wood, John Wood and Abbot's Rough. **Mrs Hobson** (INQ/4/6) points to the importance of Shipley Country Park for people of all ages and backgrounds, and the adverse effect that the proposal would have on it. Local people's views should not be dismissed as irrational. Quality of life and enjoyment of one's surroundings is priceless. Objective evidence has its place, but must not replace life experience, reality and common sense. That experience tells her that her child's asthma is triggered when he is exposed to environmental pollutants. At Lodge House, the disadvantages, concerns and risks far outweigh the perceived benefits.

#### **Written Representations Submitted in Response to the Footpath Diversion Order**

- 12.8 The three written representations received by GONE in response to the draft footpath diversion order (CD19/1 to 19/3) were each submitted on behalf of horse riders. None objects to the proposal to divert Footpath No 6. Rather, they draw attention to the likely impact of the opencast site on the amenities enjoyed by riders using Bridleway No 5 (Bell Lane) and their safety.

#### **Written Representations Submitted Prior to the Appeal**

- 12.9 While the application was still with the Council, consultation responses were received from the **Coal Authority** (CD5/1.1), **DEFRA** (CD5/1.2) the **Countryside Agency** (CD5/1.4), and **English Nature** (CD5/1.5), none of which registered any objection to the proposals. The **Environment Agency** (CD5/1.10) likewise confirmed that it had no objections to the proposals, but recommended that a number of conditions be attached to any planning permission granted to ensure that appropriate measures are put in place to deal with any contamination found on the site and to prevent pollution of controlled waters.

- 12.10 **Amber Valley Borough Council** (CD5/1.2, 1.6, 1.11 and 1.13) conclude that the proposed development would have a significantly detrimental impact on the environment which would not be outweighed by the local and community benefits offered. As such they advise that the proposal would be contrary to the guidance in MPG3. In the event of the County determining that planning permission should be granted, they asked for conditions to be attached to the consent restricting the number of HGV movements to not more than 120 per day, restricting hours of working to those assumed in the ES, restricting noise levels and requiring implementation of a dust management plan, including provision for monitoring PM<sub>10</sub> particulates to determine compliance with the relevant Air Quality Standards.
- 12.11 **Erewash Borough Council** (CD5/1.8) wrote informing the Council that the Borough's Planning Committee had resolved to object to the proposal on the grounds that (i) the proposal would result in substantial additional heavy goods vehicle movements through the Borough, which may be detrimental to highway safety; and (ii) that the proposal would detract from the character and appearance of the landscape.
- 12.12 **Derbyshire Wildlife Trust** (CD5/1.16) wrote confirming that the methodologies employed by the applicant to assess the site were satisfactory in most respects, but lacking with regard to hydrological impacts on vegetation within the adjacent woodlands. They confirmed that the site does not include any site of County or District value, but is adjacent to three county Wildlife Sites (SINCs) – Abbot's Rough, Manchester Wood and Mapperley Reservoir. They concluded that the application site is of most value for farmland birds, bats and hedgerows; that the impact on farmland birds is likely to be moderate, but difficult to assess; and that the impact on Otters and Water Voles is likely to be negligible. On habitats they concluded that *"there is little direct impact on key habitats of nature conservation concern"* but that there would be indirect temporary impacts on the ancient woodland, mainly through increased disturbance.
- 12.13 On mitigation they express the view that the proposals are *"sufficient to address many of the impacts during the long term"* and that the habitats proposed are appropriate to the area. Notwithstanding this they suggest that the extent and location of new woodlands *"could be significantly improved to deliver more robust linkages and buffering"* and recommend that *"the aim should be to create a larger block of habitat which will have a larger core area especially of ancient woodland"*.<sup>1</sup>
- 12.14 Third party representations sent to the Council before the application was determined include objections from SMAG (CD6/1), WHEG (CD6/2), Judy Mallaber MP (CD6/6) and Bob Laxton MP (CD6/5). Petitions objecting to the proposal were sent in by Mapperley Parish Council (431 signatures - CD5/1.9.1.2) and the Walkers at Shipley Country Park (23 signatures - CD6/4). 118 local residents and other individuals wrote

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<sup>1</sup> Note. This consultation response was written on the basis of the plans as submitted with the application. The restoration proposals were subsequently revised, and the areas of new woodland proposed increased (see para 1.2 above).

objecting to the proposals (CD6/13) and 492 completed and submitted pro forma letters (CD6/10, 6/11 and 6/12). A further petition was also submitted with 36 signatures (CD6/7). A summary of the reasons given for objecting to the scheme can be found in the Director of Environmental Services' report to the Regulatory - Planning Control Committee Meeting of 11 October 2004 (CD7/1).

- 12.15 44 individual letters of support were received from UK Coal employees at the Arkwright Reclamation opencast coal site (CD6/8) and the Forge and Monument opencast coal site (CD6/9).

### 13. CONCLUSIONS

Inspector's Note. In this section references in square brackets [ ] indicate the paragraph in which the relevant source material can be found. Where I wish to draw attention to a particular word or passage, I have done this by underlining.

#### Introduction

- 13.1 Shortly before I opened the inquiry, I arranged for a note to be sent to the Council and the appellants setting out the main considerations as I then saw them (INQ/1). They reflected the Council's reasons for refusal, the policy background contained in the development plan and MPG3, and the main thrust of the evidence as I then understood it. On opening the inquiry I referred those present to the note and invited the parties, if they wished, to advise me if there were additional matters that I ought to consider and address in my report. The invitation was not formally taken up. During the course of the inquiry it became apparent, however, that there was a fundamental difference between the parties relating to Green Belt policy and specifically whether, if it were established that the proposal would harm the openness of the Green Belt, it would, by virtue of that harm, constitute inappropriate development.<sup>1</sup>
- 13.2 This matter is, as I see it, fundamental to the consideration of the merits of the appeal. I therefore deal with it as a preliminary matter.

#### Green Belt Policy – Openness and Inappropriateness

- 13.3 In relation to this matter, it is common ground that the site is within the South-east Derbyshire Green Belt [5.25]. It also seems to me clearly the case that the Lodge House proposals, and indeed most if not all proposals for opencast coal mining in open countryside, must by their very nature involve a material loss of openness for the duration of the extraction period [7.31 et seq]. As MPG3 paragraph 7 notes, opencasting is different from many other forms of mineral development due to the amount of overburden that has to be moved, and stored, to access the coal. That overburden is stored in mounds which, in the case of Lodge House, would be up to 17m high [3.2]. Further smaller mounds would be required to store topsoil and subsoil [3.2]. Offices would be erected together with buildings for plant maintenance. A coal processing yard would be required and a new access road. Security fencing would surround the working area [3.4]. Large earthmoving plant and equipment would be used on the site, and parts of it would be lit in the winter [7.2]. All in all it seems to me that during the extraction period there would be an unavoidable and material loss of openness.
- 13.4 That loss would, in the case of Lodge House, be fully made good on restoration of the site. Indeed, insofar as there is no proposal to rebuild the dwelling at Prospect Farm, which would be lost to the development, it might be argued that there would be a

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<sup>1</sup> The arguments put for the Council on this matter are summarised in paragraphs 7.21 to 7.38 of this report. Those for the appellant are summarised in paragraphs 6.142 to 6.149.

small increase in openness on completion of restoration. There is no suggestion, however, that, merely because the loss of openness would be temporary, that on its own is sufficient to render development “appropriate” in Green Belt terms [7.28].

- 13.5 I turn then to consider the policies relied on by the Council to support their argument that if mineral development adversely affects openness it should be concluded that it is inappropriate. Fundamental to this is PPG2, paragraphs 3.11 and 3.12, which appear under the heading “*Mining operations, and other development*”. Paragraph 3.11 begins by noting that minerals can only be worked where they are found and that their extraction is a temporary activity. It continues “*Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts provided that high environmental standards are maintained and the site is well restored.*” It then advises mineral and local planning authorities to include appropriate policies in their development plans and urges them to ensure that planning conditions for minerals sites within Green Belts achieve suitable environmental standards and restoration. It concludes by pointing to advice in MPG2 and MPG7 and states “*Paragraph 3.13 below is also relevant to mineral extraction.*”
- 13.6 Paragraph 3.12 firstly reminds the reader that the definition of development includes engineering and other operations and making of any material change in the use of land. It then states “*The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belts.*”
- 13.7 As to the Council’s argument, it seems to me that it has some force insofar as opencasting undoubtedly involves a change of use of land and engineering operations. I nonetheless take the view that paragraph 3.12 is not intended to apply to minerals development and that it does not therefore lend support to the Council’s argument that the Lodge House proposal is inherently inappropriate by virtue of its impact on openness. Several matters lead me to this conclusion. In particular:
1. The inclusion of a comma after “*operations*” in the heading to paragraphs 3.11 and 3.12 suggests to me that it is the author’s intention to draw a distinction between “*mining operations*” and “*other development*” – i.e. engineering operations and changes of use of land other than for mining. The policies applying to these are covered by paragraphs 3.11 and 3.12 respectively. That this is the intended interpretation is reinforced by the reference forward at the end of paragraph 3.11 to paragraph 3.13 – if paragraph 3.12 were also intended to apply to minerals development, the reference forward would serve little purpose.
  2. If it had been Government’s intent to apply the openness test to minerals development, it would have been easy to make this clear in the text of paragraph 3.11. However, this was not done.
  3. Also, the policy specifically contemplates that mineral extraction “*need not be inappropriate development*”. Mineral planning authorities are

encouraged to include appropriate policies for mineral extraction in the Green Belt in their development plans.

- 13.8 Further support for the case that opencasting in the Green Belt is not viewed by Government as inherently inappropriate is afforded by MPG3 which wholly lacks any reference to an openness test [6.146]. Rather, paragraph 36 echoes the advice in PPG2 that applications to extract coal in the Green Belt should be tested against the highest environmental standards, with stringent conditions attached to ensure the site is well operated and restored, if permission is granted.
- 13.9 As to the development plan, Structure Plan Policy GDS1 states, amongst other matters, that *“development will not be permitted unless it is clearly needed in connection with agriculture... cemeteries and other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land within it.”* (CD20/3, para 2.77). This mirrors the wording in PPG2, paragraph 3.4 although the scope is wider than that to which it is applied in the policy guidance note.<sup>1</sup>
- 13.10 The policy in the Structure Plan does not specifically address minerals development. Paragraph 2.74 of the supporting text does so, however. It mirrors closely the advice in paragraphs 3.11 and 3.13 of PPG2 and makes no reference to an openness test.
- 13.11 In the Minerals Local Plan, Chapter 13 - Coal - postdates the Structure Plan. Policy MP27 deals with the tests against which proposals for coal extraction will be judged. In relation to proposals in the Green Belt, it advises that *“the need to ensure that, where a proposal lies within the Green Belt, it can be operated and restored to the highest environmental standards”* is a matter to be taken into account in considering whether a proposal is environmentally acceptable. This mirrors the advice in MPG3, paragraph 36. There is no reference in the policy to an openness test.
- 13.12 In the supporting text preceding the policy, paragraph 13.22 touches on proposals in the Green Belt. It states [5.10]:
- “In the case of Green Belts, because minerals can be worked only where they are found and, ... because their extraction is a relatively temporary activity, there is no reason, in principle, for there to be a conflict between mineral extraction and green belt policy, provided that the highest environmental standards are maintained and that the site is well operated and restored to the highest standards. In particular, the development, operation and reclamation of the site should not materially impact on the open character of the green belt nor conflict with the purposes of including land within it, as set out in PPG2.”*
- 13.13 The first part of this again mirrors the advice in PPG2 and the Structure Plan. It recognises explicitly that there is no reason in principle for there to be a conflict

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<sup>1</sup> The words in PPG2 paragraph 3.4 apply to the *“construction of new buildings”*. Those in the Structure Plan apply to *“development – including changes of use of land or buildings”*.



between Green Belt policy and mineral extraction. The second part, however, goes beyond this advising that development, operation and reclamation of the site should not impact on the "open character" of the Green Belt. It could be interpreted as implying that a test of openness should be applied to proposals in the Green Belt, which, in essence, is the line the Council take [0]. However, if the document is considered as a whole, I conclude that this is not the intention. I take this position because:

1. The chapter in which the paragraph appears deals only with coal. Opencasting in Derbyshire has been extensive and the Council would be very familiar with the methods of working and the inevitable impact on openness which arises during the operational phase. If it were intended that any proposal to extract coal which affected openness of the Green Belt should be considered inappropriate, then such a requirement would normally be explicitly stated in the policy. This is not the case.
2. Given the inevitable impact on openness, then the outcome of such an interpretation would be to effectively bring all opencasting in the Green Belt within the general presumption against inappropriate development. This is clearly not what is intended, either by national planning guidance (see paragraph 13.8 above), or by the Structure Plan (see paragraph 13.10 above) or indeed by the Minerals Local Plan.

13.14 Further weight to this is given by the Minerals Local Plan's approach to Opencast Constraint Areas (Policy MP28). Within these areas proposals for opencasting are "*generally unacceptable*" and "*will not be permitted*". The Opencast Constraint Areas include areas in the Green Belt, but only a small part of the total area of the coalfield within the Green Belt. Such an approach would be illogical if a general presumption against opencasting in the Green Belt were to apply because of the impact on openness during the working life of an opencast site.

13.15 As to the Windsor Opencast Site, paragraph 141 of the Inspector's report notes that there was general agreement that opencast coal extraction need not be inappropriate development in the Green Belt. Impact on openness was a consideration which stemmed from the development plan [6.147]. Accordingly, I do not see that the decision lends support to the Council's case. In the Captain's Barn Farm decision [7.26] the Inspector concludes that PPG2 does not apply a test of "impact on openness for minerals workings" (APP19B, Report, para 11.3). He further notes that Policy 27 in the (Staffordshire) Minerals Local Plan requires, firstly, that development in the Green Belt should maintain openness; and secondly, that minerals development which does not comply with [this criteria] is inappropriate (ibid). Plainly therefore, the policy context is different to that applying in Derbyshire.

13.16 For the reasons given above I conclude that the proposal would not, by virtue of its impact on openness, constitute inappropriate development in the Green Belt.

### The Main Considerations

- 13.17 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*
- 13.18 Here the development plan includes the Regional Spatial Strategy for the East Midlands (RSS8), the Derby and Derbyshire Joint Structure Plan (CD20/3), the Derby and Derbyshire Minerals Local Plan<sup>1</sup> (CD20/4) and the Amber Valley Borough Local Plan Review (CD20/8 and 20/8A).
- 13.19 It is common ground that Policy MP27 in the Minerals Local Plan is the key policy against which the proposal should be assessed [6.166, 7.52]. It is specific to proposals for coal extraction and follows very closely the advice in MPG3, paragraph 8. Section A of the policy sets down a presumption against proposals for coal extraction unless the impact on the environment [5.3]:
- "1) is acceptable or capable of being made acceptable by planning conditions or obligations, or*
- 2) if not, the impact is clearly outweighed by local or community benefits that the development would provide."*
- 13.20 Section B of the policy sets down considerations to be taken into account in assessing whether a proposal is environmentally acceptable. Those relevant to the appeal proposal include:
- "1) the need to ensure that, where the proposal lies within the Green Belt, it can be developed, operated and restored to the highest standards" and*
- "2) the extent to which the proposal would adversely affect efforts to attract or retain investment in an area..."*
- 13.21 Section C of the policy provides guidance on the factors to be taken into account in considering whether the unacceptable adverse impact of a proposal is outweighed by the benefits the development would provide. It emphasises that importance will be given to those benefits that are unlikely to be achieved by other means and to proposals involving the reclamation of despoiled land. Other factors to be taken into account include the extent to which the environment or communities of the area would benefit from the proposed working and subsequent reclamation and the extent to which it would provide employment opportunities or other economic benefits.
- 13.22 Whilst there are other development plan policies that are clearly engaged in assessing the proposal, they are for the most part couched in terms that permit development

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<sup>1</sup> Incorporating First Alteration: Chapter 13 – Coal – November 2002.

where it is “acceptable” or where the adverse effects can be “eliminated or reduced to an acceptable level”. Conversely, where “irreparable or unacceptable damage to interests of acknowledged importance” would result, permission will be refused [5.6, 5.13]. In this sense they reflect closely the test set down in Policy MP27, Section A. An exception is the policy on Opencast Constraint Areas, within which coal extraction will not be permitted [5.9]. It is common ground, however, that no part of the Lodge House site is within such an area.

- 13.23 An Environmental Statement (ES) accompanied the application and further environmental information was submitted when the proposed working sequence and restoration proposals were revised [1.2]. It was accepted from the outset by the appellant that planning conditions would be attached to any planning permission granted to ensure that opencasting would proceed only in accordance with the proposals assessed in these documents and to protect local interests of acknowledged importance. Where these matters could not be covered by conditions, it was accepted that a S106 Agreement would be required. Drafts were tabled at the beginning of the inquiry. These were refined during the course of the inquiry and by the time the inquiry closed a suite of conditions had been agreed between the appellant and the Council. Two separate S106 obligations were also completed [1.4, 1.5].
- 13.24 The extent to which any adverse effects on the environment would be mitigated by planning conditions and obligations was thus a matter which the parties were able to fully take into account in assessing the impact of the proposals when they presented their evidence and closing submissions [6.134]. It is also a matter which I am fully able to take into account in making my assessment. I accordingly take the view that the main considerations in this case are:
1. Whether the effects of the proposals on the environment, including effects on the landscape and ecology of the site, effects on Shipley Country Park, effects on the living conditions of nearby residents, effects on efforts to attract or retain investment in the area and cumulative effects would be acceptable (taking into account the extent to which impacts which might otherwise occur would be mitigated by the agreed planning conditions and obligations)<sup>1</sup> - “*Effects on the Environment*”.
  2. Whether the proposal is capable of being developed, operated and restored to the highest standards<sup>2</sup> - “*The Green Belt Test*”.
  3. And, if not, whether the local or community benefits that the development would provide would clearly outweigh the impact on the environment<sup>3</sup> - “*Community Benefits*”.

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<sup>1</sup> See Minerals Local Plan, Policy MP27, Sections A1 and B2

<sup>2</sup> See Minerals Local Plan, Policy MP27, Section B1

<sup>3</sup> See Minerals Local Plan, Policy MP27, Section A2.

## Effects on the Environment

### *Landscape and Visual Impact*

#### *Effect on the Landscape*

- 13.25 The appeal site is located within the Coalfield Estate Lands Landscape Character Area as defined in the County Landscape Character Assessment. The ground is gently undulating and mainly in agricultural use, with a mix of improved pasture and arable land. The main features of significance in the wider landscape are the woodlands around the proposed extraction area (Whiteley's Plantation, Manchester Wood, John Wood and Abbot's Rough) and the strong double hedgerow which runs either side of Bell Lane with its associated trees [6.24]. Lesser, but nonetheless still significant landscape features in a more localised context, include the remaining hedgerows which divide the fields, the hedgerows and trees alongside the track leading to Prospect Farm, and the isolated former hedgerow trees that stand in the fields, particularly in the north-eastern sector of the extraction area.
- 13.26 Overall the quality of the landscape is attractive but, in my opinion, not outstanding. It is not identified as a Special Landscape Area, neither was it identified as an Area of Local Landscape Significance in the recently replaced Amber Valley Borough Local Plan [6.17]. In the Minerals Plan, the boundary of the Shipley Country Park Opencast Constraint Area (OCA) abuts the eastern side of the site, but no part of the site is within the designated area [6.156]. These areas are designated, amongst other matters, having regard to the quality of their landscape, woodlands and other features and there is no suggestion that at any stage the appeal site was considered for inclusion in an extension of the Shipley Country Park OCA [6.15, 6.155].
- 13.27 The site is within the Green Belt and in the area covered by the East Derbyshire Woodland Project (EDWP), within which Structure Plan Environment Policy 4 promotes "*measures to conserve or enhance the environment*" [5.20]. Paragraph 5.15 of the Minerals Local Plan encourages woodland and forestry after uses in the area covered by the EDWP, linked to the provision of new opportunities for access, recreation and nature conservation [6.14].
- 13.28 As to the effect of the proposals on the landscape, plainly there would be significant disruption during opencasting [6.31]. This would last for around 4½ years, but not all parts of the site would be affected for the whole period as both initial clearance and restoration would be progressive. The impact would also be localised and the woodlands surrounding the site and the hedgerows and trees alongside Bell Lane would not be affected.<sup>1</sup> On restoration the landform would be very similar to that seen at present, but with some minor variations to form the proposed ponds and wetland areas.

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<sup>1</sup> Initially the Council expressed concerns that the works could damage the woodlands and hedgerow trees on land adjoining, but not within, the extraction areas. A condition was agreed, however, which would effectively serve to prevent their loss or damage [Appendix E, Condition 27].

- 13.29 As to the hedges, some 600m of existing hedgerow from the proposed extraction area would be translocated to fields to the east of Smalley where they would reinforce and replace existing post and wire field boundaries installed following opencasting in the 1970s [3.9, 7.8]. A shorter length of new hedge would also be provided in the same area.<sup>1</sup> This would be beneficial and, provided that the translocation techniques and aftercare are equivalent to those recently employed at Club Room Farm opencast site, which could be secured by condition [Appendix E, Condition 11], I would expect the translocated hedges to re-establish quickly and grow strongly.<sup>2</sup>
- 13.30 Within the site, the translocated hedges and other less significant hedges that would be removed from the extraction area would be replaced with new hedges as part of the restoration works. These would contain hedgerow trees in line with the planting and management guidelines for the Coalfield Estatelands [6.19, 6.29].
- 13.31 In the short and medium term the most significant landscape loss resulting from the proposals would come from the removal of 26 trees within the site, including 14 classified as veterans [2.11]. Of these, the most significant group is in the north-eastern sector of the extraction area. A few of the trees that would be lost stand within hedgerows, but the majority are former hedgerow trees that have remained freestanding within fields following past hedgerow clearance [6.20]. They are not protected [6.6] and the freestanding trees particularly are potentially vulnerable to damage from agricultural operations and cattle poaching. Accordingly, whilst there is nothing to suggest that they are immediately threatened, their long term survival cannot be assured. Indeed, examination of the historical maps of the area shows that since the 1880s the extent of tree loss in those parts of the site not affected by previous opencast workings has been substantial [6.25].
- 13.32 In landscape terms the veteran trees have an enhanced value because of their historical connection to former field boundaries. However, they are not parkland trees [6.20] and visually there is little to distinguish them from other mature trees of a similar size about the site. Their value in the wider landscape was acknowledged to be limited in comparison to that of the nearby woodlands and hedgerows [6.24]. They are also far from unique in the area; 28 veteran trees within the site boundary would be retained (CD23A, Figure 1) and a survey showed that there are a further 27 veteran trees on land to the north and east of the site [7.102]. In these circumstances I take the view that, from the landscape perspective, the loss of the veteran and other trees on the site, whilst undesirable, would not amount to a fatal objection to the proposal.

#### *Restoration Proposals*

- 13.33 The longer term impact of the proposals on the landscape depends of course on the restoration proposals and it was in this area that there was a sharp difference of opinion between the Council and UK Coal as to precisely what would be appropriate

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<sup>1</sup> See Drawing 177/D02A.

<sup>2</sup> See photographs in APP14, Appendix 9.

[7.62 et seq]. To a degree the argument is academic, as it is common ground that a condition should be attached to any permission granted which would require details of the restoration scheme to be agreed before development could commence [Appendix E, Condition 44]. The restoration proposals would nonetheless be a critical factor in mitigating the medium and long term landscape impacts and many local people and their representatives expressed concerns at the inquiry regarding the potential for poor quality restoration to result in long term harm to the landscape [8.12, 8.16, 8.45, 9.5, 11.16, 11.17, 11.23, 11.27, 11.32, 11.35 and 11.48].

- 13.34 Having visited the area, and several of the sites referred to in the evidence, I understand these concerns. Plainly, in the past the restoration of opencast sites has been less than satisfactory. On the site itself, and on other land between the site and Smalley, post and wire fences were used to divide fields. Hedgerows and trees were not replaced with the consequence that, even decades later, the landscape has an immature feel. In Shipley Country Park, tree growth in some areas is healthy; in others the trees are still struggling some 30 years after they were first planted. At Whitehouse the situation is mixed; hedgerows are healthy but lack hedgerow trees; the woodland has grown well, but is now beginning to suffer from a lack of management. On the Kirk site, in some areas the trees have established well, but elsewhere they are struggling or have failed.
- 13.35 However, there are explanations inasmuch as all are agreed that the drive to maximise the agricultural productivity of the land which underpinned the early restoration schemes, with post and wire fencing dividing uniformly shaped fields, is no longer appropriate. Also Shipley Country Park, and the Whitehouse and Kirk opencast sites were all areas that were badly despoiled by mining. Topsoil, subsoil and other soil making materials on these sites were in very short supply with the result that the basic soil structure of large parts of the restored area is very poor. Also, much less attention was paid to aftercare than is now the case.
- 13.36 In contrast to these, Club Room Farm was a greenfield opencast site. Soil was available for restoration and, some 5 years after restoration was completed, the lake is well established and hedges and trees are making good progress. Plainly, the landscape is still "new" in parts and it will be many more years before the woodlands reach maturity. But progress is impressive and those parts of the site that were restored to non-agricultural uses already appear to have significant value as habitat and recreational areas.
- 13.37 At Lodge House the evidence is that there would not be any shortage of soil for restoration; indeed overall soil quality should be slightly improved (see para 13.121 below). The agreed conditions provide for an initial 5 year aftercare period and the S106 Agreement provides for a further 20 years of aftercare for the non-agricultural areas [1.4]. Accordingly, there is no reason to suppose that restoration would not be fully successful.
- 13.38 As to the proposals, UK Coal's restoration scheme would provide some 24ha of mixed deciduous woodland, 21ha of species rich grassland and 2.4ha of marshland and open water (CD23, p7). There would also be a smaller area of acidic grassland. The

remainder of the site would be restored to agriculture. The County are critical of the amount of woodland proposed and I tend to agree with them that, given the context provided by the established woodlands surrounding the site, the area of woodland proposed would not be as valuable as a landscape resource as it might be in other parts of the Coalfield Estatelands where there is less existing woodland [7.64]. At the same time, I do not see that providing the area of woodland that UK Coal suggest would be in any way harmful. Indeed it would fit well with the policy context for the area including that set by the East Derbyshire Woodland Project and the County Landscape Character Assessment, which consistently seek to increase woodland cover in the area [6.29]. The inclusion of wetlands, areas of open water and species rich grassland in the restoration scheme, whilst primarily adding value from an ecological standpoint, would to my mind also add variety and value to the landscape resource.

- 13.39 Hedgerows would be planted as part of the restoration proposals, with hedgerow trees. These would take time to mature, but in the longer term the result would be a landscape with more hedgerow than at present, and many more hedgerow trees. Again this would be valuable from the landscape perspective and would accord with the tree vision set out in the planting and management guidelines for the Coalfield Estatelands which includes “*densely scattered hedgerow trees*” [6.19].

#### *Visual Impact*

- 13.40 As to the visual impact of the proposals, it is common ground that there would be impacts in visual terms during the life of the workings [6.31]. The changes would be most readily apparent to walkers, cyclists and horse riders travelling along the section of Bell Lane between Manchester Wood and John Wood on the boundary of Shipley Country Park. At the western end, the open views to the east and south which are currently available over the hedgerow on emerging from Manchester Wood, would be obstructed by soil mounds and beyond them the overburden mound. Further along the track to the east the hedges are higher and, in the summer months when they are in leaf, views are largely channelled along the track. The fields to either side can nonetheless be seen through occasional gaps in the hedges and through areas where the hedges are thinner. When the hedges are not in leaf, of course, the fields to either side can be easily seen. During opencasting the soil bunds to either side of the lane would be readily apparent and, beyond these, the upper sections of the overburden mound might also be seen.<sup>1</sup> The bunds would be grassed, which would mitigate their impact to a degree. The voids and the plant working within them would also be largely, if not completely, screened, except at the crossing point. Notwithstanding this I have no doubt that the essential character of the lane - which is currently that of a rural track passing through open countryside - would be radically changed for the duration of the works.

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<sup>1</sup> The sections at APP14, Appendix 14 suggests that the topsoil and subsoil mounds would fully screen the overburden mounds from Bell Lane. However, it is accepted that the topsoil and subsoil mounds would need to be set further back from the lane than shown on the sections to prevent root damage to the hedgerow and hedgerow trees (Appendix E, Condition 27).

- 13.41 As to views from housing and other areas outside the site, the soil mounds lining the access road would be visible in the middle distance from the properties and footpaths on the eastern edge of Smalley, but the extraction area would only be glimpsed from a few locations at a distance of more than 500m. Impact would accordingly be slight from most viewpoints during the extraction period, with negligible change following restoration. Those properties nearest to the point where the access road joins the A608 would, however, experience a moderate impact whilst opencasting is in progress (APP13, para 2.39; DCC2, Sections 5.2 to 5.4 and ES, Annexure G, paras 7.12 to 7.20).
- 13.42 From the other settlements around the site, only distant views of the workings would be possible. From Mapperley, the intervening topography and vegetation would screen views of the extraction area from most parts of the village except from the upper floors of houses in The Limes and from the houses and road at the northern end of the village near Coachways. Whilst the overburden mounds would be more widely visible, they would be grassed and the upper levels would be graded to slopes not too dissimilar to other naturally occurring slopes found in the area. The lower levels would be screened by intervening vegetation. For those properties with more open views towards the site, the impact would be moderate when opencasting is in progress, reducing to negligible on restoration. For the majority of properties in the village, however, the impact would be slight or negligible (6.37; App13, para 2.39; DCC2, Section 5.7 and ES, Annexure G, paras 7.30 to 7.33).
- 13.43 Similarly, from Heanor, the site would not generally be visible except from a few houses and other vantage points on higher ground facing the site. Even from here, the works would be seen at a distance of around 1km in the context of a much closer industrial estate [6.34]. During extraction the visible workings would form a very small component in the overall view and, on restoration there would be little, if any, perceptible change, apart from the general increase in woodland cover which, for the reasons already given, I do not see as harmful. Accordingly, the impact would not be significant.
- 13.44 From outside the site it is common ground that the most significant view of the workings would be from the western side of Shipley Hill where a well used footpath and bridleway follows the line of the private road connecting Mapperley Reservoir to Marlpool [6.38]. From the higher parts of the route, panoramic views are possible towards the site, particularly from the more open section of the hillside to the south of the summit. From here, the overburden mound would be a significant element in the view, albeit that the gradient of the slopes facing the park would be limited and it would be grassed and seeded at the first opportunity [6.36]. The workings would also be readily visible, particularly during the final phases of extraction when the void would be closest to the park. Notwithstanding that much of the panorama would remain undisturbed [6.39], and that the montage produced by Mr Ellis was shown to be a less than fair representation in a number of respects [6.35, 6.36, 7.57], overall there is no doubt in my mind that the visual impact from this viewpoint would be moderate and adverse whilst opencasting is in progress.



- 13.45 On completion of restoration, there would be a minor loss of landscape features insofar as some hedgerows and hedgerow trees that are currently visible on the site would be missing. The main elements of the landscape framework would not be changed, however, and the overall impact of this loss would not be more than slight in my opinion. In the medium term, as the new hedges and woodland begin to mature the impact would reduce to negligible.
- 13.46 Whilst the viewpoint from Shipley Hill would undoubtedly be the most critical, on account of its elevated position and the number of visitors who come to the park and walk the route, views from the footpath to the south of the site, connecting Bell Lane to Mapperley Park<sup>1</sup>, and from the east of the site, connecting the Country Park Visitor Centre to Bell Lane via Flatmeadow Farm, would be similarly affected whilst opencasting is in progress. Footpath No 6 which crosses the south-east corner of the site would be diverted; the extraction area would be close, but screened by a topsoil mound (Drg 177/D02A).
- 13.47 As to lighting, fixed lighting would be required during the winter months in the plant yard and coal processing area and around the offices. Portable lighting sets would also be required to light the extraction area. Whilst these would involve the introduction of new light sources into what is at present a dark area of countryside, it seems to me that any harm on this account would not be significant having regard to the limited times during which the lights would be required and the ability to control glare and the like through the agreed condition [Appendix E, Condition 28]. My conclusions in this regard are reinforced by the lack of any objection on this account on the part of the Council prior to the inquiry opening [6.40].

*Conclusion on Landscape and Visual Impact*

- 13.48 In conclusion I find that the main landscape impact of the proposals would be that arising from the loss of 26 trees on the site, including 14 veterans. The woodlands surrounding the site would be preserved, however, as would the hedgerows and associated trees alongside Bell Lane, which are the main elements in the landscape. Accordingly, the impact would be local and limited. On restoration the landform would be virtually unchanged and new woodlands, hedgerows and hedgerow trees and other landscape features would be introduced which, in the medium and longer term, would be beneficial in landscape terms.
- 13.49 With regard to visual impact, the impact on those living in the settlements around the site would generally be slight during the working phase and insignificant following restoration. The impact on the view from Shipley Hill would be significant and adverse whilst opencasting is in progress and similar impacts would be experienced by users of footpaths to the south and east of the site. The essential character of the length of Bell Lane between Manchester Wood and the boundary of Shipley Country Park would be radically changed whilst opencasting is taking place. On restoration, however, the impacts would in all cases reduce to slight or negligible.

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<sup>1</sup> See Supplementary ES, Annexure G, Viewpoint 7.

13.50 As to the acceptability or otherwise of the proposals, I take the view that, on balance, the adverse impacts that I have identified should not be regarded as unacceptable. I reach this conclusion having regard to:

1. The absence of any direct impact on any area designated as worthy of protection for its landscape value as an area of local landscape importance, Opencast Constraint Area or similar.
2. The absence of significant negative long-term landscape or visual impacts, coupled with the limited duration during which opencasting would take place and the proposals for progressive working and restoration - not all of the site would be affected for the whole of the proposed 4½ year extraction period.
3. The mitigation proposed, including particularly the use of grassed soil mounds to screen the works from Bell Lane and other sensitive viewpoints and the proposal to grass and sensitively grade the more visible parts of the overburden mound.
4. The evidence which shows that the number of walkers, cyclists and others using Bell Lane is limited, particularly at those times when opencasting would be taking place.<sup>1</sup>
5. The discretionary nature of the recreational use of Bell Lane, the other footpaths around the site and the route through Shipley Country Park over Shipley Hill - alternative routes for walkers, cyclists and horse riders are available in the park and elsewhere for anyone who finds the visual impact of opencasting objectionable.<sup>2</sup>

### ***Ecology and Biodiversity***

#### ***Introduction***

13.51 Whilst three County Wildlife Sites and one Candidate Site abut the boundaries of the appeal site [2.8], it is common ground that none of the land within the application area is subject to any designation as a wildlife site [6.160]. The land is for the most part agricultural, of which part is used for the production of arable crops. Most of the remainder is improved grassland and in her consultation response the County Ecologist, Mrs Cooper, agreeing with UK Coal's assessment, reported that the site was of "*limited biodiversity internally*"[6.63]. At the inquiry she confirmed that the Council's primary concerns were limited to the impact on the Hobby and the impact on veteran trees - other matters were capable of being addressed by condition [6.61].

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<sup>1</sup> See APP4, Appendix UKCDB30. On Saturdays in April and May the average number of walkers, cyclists and horse riders using the lane before 13.00 was recorded as 23. On Wednesdays the average number using the lane between 07.00 and 19.00 was recorded as 19.

<sup>2</sup> For alternative walks and bridleways within the Park see DCC4/1, Appendix 5.

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*The Hobby*

- 13.52 The Hobby (*Falco subbuteo*) is a migratory falcon and a summer visitor to the UK. It is statutorily protected and listed under Schedule 1 of the Wildlife and Countryside Act 1981 [7.88]. As such it is an offence to intentionally kill or injure the bird, or intentionally disturb the bird while it is building a nest or is in, on or near a nest containing eggs or young. There is no suggestion that UK Coal would do other than fully comply with these restrictions, however, and, so far as the appeal is concerned, the issue is whether or not harm would result to the species. If the answer is yes, the advice in PPS9, para 16, is that planning permission should be refused unless the benefits of the development clearly outweigh the harm [7.96].
- 13.53 In the UK the evidence is that Hobby numbers have been increasing. It is a secretive bird and because of this its presence generally tends to be under-recorded. Notwithstanding this, there is clear evidence that the numbers of Hobby in the UK have increased significantly in recent decades to a point where the JNCC Rare Breeding Birds Panel has now categorised the bird as being "*less scare*" [6.68]. Some estimates suggest that in the UK there could now be 2,200 - 2,500 pairs [7.95]. As numbers have increased, its territory has expanded northwards [6.68]. The reasons for the number of birds increasing is not known with any certainty, but it is suggested that it may be due to a decrease in the persecution of the Crow, leading to an increase in old Crows' nests which are the Hobby's preferred breeding site. Equally, it is suggested that the increased availability of its preferred food resources may have contributed to its success [6.68].
- 13.54 In Derbyshire the Hobby has been intensively studied for a number of years by Mr Messenger and others. He has recorded some 25 breeding pairs in the County [7.86].<sup>1</sup> Notwithstanding its listing in the Derbyshire Red Data Book, Mr Messenger reports that it is "*continuing to do well in Derbyshire*". It is productive and increasing its range [6.69].
- 13.55 Insofar as the presence of the Hobby on the site is concerned, it is agreed that Hobbys have nested on or about the site each year from 1993 to 2005, with the exception of 1994 and 1995 (DCC0/2). During that time six different trees have been used as nest sites. Some have been on the edges of Whiteley's plantation and Abbot's Rough, but others have been freestanding trees in the fields, including two that would be lost to the extraction area.<sup>2</sup> Since the average lifespan of a Hobby is some 5 years, it follows that several different pairs of Hobbys have chosen to nest on the site during that period (DCC3, para 3.4.3).
- 13.56 As to the specific attractions of the site, there is agreement that the Hobby is an adaptable and resilient bird [6.70]. It favours lowland farmland for nesting and

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<sup>1</sup> Whilst this is the number of recorded pairs, Mr Messenger estimates the total population in Derbyshire as between 25 and 60 pairs (DCC3/1, Appendix 13).

<sup>2</sup> See DCC0/2, nest sites D and G.

normally makes its nest in an old Crows' nest [ibid]. The majority of nests are between 13 and 18 metres high, but they can be as low as 10m or as high as 30m [6.71]. It used to prefer elm trees, but on their demise switched to oaks and has been known to use ash and even electricity pylons [6.72]. It is an opportunist and takes advantage of any suitably located Crows' nest. There is no suggestion that, in the vicinity of the appeal site, these are rare [6.70]. Equally, the evidence is that suitable trees are plentiful and would remain so [6.71].

- 13.57 Whilst it was suggested by Mrs Cooper for the Council that the bird preferred to nest in solitary trees, in the last five years four different trees on or adjoining the site have been used as nest sites [6.72]. Of these two were on the edge of woodlands, and one was in a line of trees following a watercourse. Only one was in an open field [6.72]. She also suggested, in reliance on a conversation with Mr Messenger, that the bird had a requirement for a separate "guard tree" adjacent to the nest tree, and it was accepted that the birds preferred sites with a nearby deadwood or similar perch to enable the male to pass food to the female. However, there was nothing in the extensive literature supplied to suggest that a separate guard tree was required (as opposed to a suitable perch in the nest tree) [6.73] and Mr Messenger did not appear at the inquiry or write to confirm and explain his reported observations. Equally, there was little evidence to support Mrs Cooper's expressed view that the birds would not nest in sites that are subject to human disturbance; indeed they are reported as, in some circumstances, taking to nesting in more urban locations [6.69, 6.76].
- 13.58 As to the impact on the Hobby, two of the trees which it has in the past used for nesting would be lost if the development proceeds. The others would remain. Notwithstanding this, it seems to me that the Hobby is unlikely to use them for nesting when opencasting is in progress, given the level of associated disturbance. The trees on the edges of the nearby woodlands would remain, however, and I see little reason why the Hobby should not return to one or other of them, or some other tree nearby, when the site is restored. Indeed, in the longer term the increased hedgerows, ponds and other features on the site are likely to lead to an increase in the site's food resource and potential attractiveness as a Hobby territory [6.77].
- 13.59 Of course, whilst opencasting is in progress, the Hobby would need to nest elsewhere and, to assist in this, UK Coal have provided, through the Hawk and Owl Trust, nest baskets in suitable trees on land in their ownership outside the site [6.75]. This is an accepted procedure and, whilst there can be no guarantee that the Hobby will use one of the baskets provided in preference to a suitable Crows' nest, I tend to agree with UK Coal that the effect is to guarantee a suitable nest site nearby, in what is clearly one of the Hobby's favoured Derbyshire territories [ibid].
- 13.60 To my mind, the mitigation proposed is appropriate and would serve to ensure that the proposal would not result in material harm to the species. My conclusions in this regard are reinforced by Mrs Cooper's acceptance that, firstly, provided that Crows continue to nest in the area, then the Lodge House proposals need not represent any threat to the Hobby in the locality or more widely; and secondly, that in the event that the Hobby were disturbed by the workings, such that it left the area when they were in progress, then this would not be likely to impact on its conservation status [6.67].

The absence of any objection with regard to the Hobby from English Nature also adds weight to my conclusion.

#### *Veteran Trees*

13.61 In relation to veteran trees, PPS9, paragraph 10, advises [7.103]:

*“Aged or “veteran” trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Planning authorities should encourage the conservation of such trees as part of development proposals.”*

13.62 In the development plan, Environment Policy 16 of the Joint Structure Plan states that measures will be taken to protect important individual, groups or areas of trees, including the making of tree preservation orders [5.22, 7.108]. It does not, however, specifically mention, or seek to preserve, veteran trees as such. RSS8 notes that the region has a relatively poor level of tree cover. Appendix 5 to the RSS lists veteran trees as a local habitat of strategic significance, but does not set a management target for it [7.101].

13.63 At Lodge House there is no dispute that if the proposal were to go ahead 26 trees on the site would be lost, including 14 classified as veterans [2.11]. Also, whilst it was agreed that the proposals could be modified to retain Tree 8 [6.79], there is no suggestion that further modifications to retain all or more of the veteran trees would be practical. If the proposal is permitted, their loss is effectively inevitable [7.105]. The issue thus amounts to whether, having regard to the particular circumstances of the trees concerned, that loss would be acceptable.

13.64 In relation to this matter there are several factors worthy of note. In particular:

1. The trees in question are not parkland trees; rather they are hedgerow trees (trees 61, 62 and 63), or in most cases, trees that remain freestanding in improved pastureland where hedgerows once stood [7.105]. As such, their links to other features of biodiversity interest are weak.
2. The land on which the trees stand is not subject to any statutory or other designation as a wildlife site, neither are the trees protected for their biodiversity value.<sup>1</sup> Accordingly, whilst they are not immediately threatened [7.110], their long term retention cannot be assured.
3. Whilst 14 veteran trees on the site would be lost, 28 veteran trees would be retained within the site boundary (CD23A, Figure 1). In the area to

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<sup>1</sup> Whilst the Council put forward the area containing the trees for designation as a County Wildlife Site, Mrs Cooper in cross-examination accepted that the assembly of trees did not meet the criteria for designation [6.6].

the north and east of the site, a further 27 veteran trees would remain undisturbed [7.102]. Also, the two areas of ancient woodland adjacent to the site (Manchester Wood and Abbot's Rough) would not be affected.

- 13.65 Critically, it was accepted by Mrs Cooper that the veteran trees which would be lost do not have the characteristics normally associated with veteran trees. In particular, it was agreed that the associated pasture lacks interest and the trees themselves lack associated bat roosts and other features of ecological interest often associated with veteran trees [6.81].
- 13.66 As to English Nature's position, the Conservation Officer for Lowland Derbyshire wrote to the Council's Landscape Architect in October 2005, setting out his opinion as to which trees on the site should be classified as veterans (DCC3/1, Appendix 16). In that letter he went on to express the view that the site is *"unusual and important in the fact that there are very few sites in Derbyshire [outside the celebrated parklands] known to possess more than 30 veteran trees."* He continued to suggest that, because of this, the site was *"likely to be of county/regional importance biologically, culturally and aesthetically."*
- 13.67 These are strong words and in normal circumstances I would give them significant weight. In this case it seems to me, however, that the weight they should attract is limited having regard to the total lack of evidence to support the prime proposition that there are very few comparable sites in Derbyshire [6.95].<sup>1</sup> Significantly also, no one from English Nature came to the inquiry to explain their position; and when they wrote again in December 2005 it was in essence to advise that bat and bird surveys of the trees should be carried out [12.4].<sup>2</sup> At no time did they write stating that they now wished to formally object to the proposal.<sup>3</sup>
- 13.68 Veteran trees are, by definition, irreplaceable except in the very long term. Notwithstanding this, the trees in question are isolated and do not exhibit the characteristics normally associated with them. There is no evidence to show that they are of significant value ecologically. With the safeguards offered by the agreed conditions and S106 Obligation, the restoration proposals would safeguard the trees remaining on the site, including some 28 veterans, and provide for their succession in the longer term. I therefore conclude that, having regard to the particular

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<sup>1</sup> Indeed the only other survey information available at the inquiry (UK Coal's survey of the area to the immediate north and east of the site) suggested that this was not the case – see para 13.64 above.

<sup>2</sup> Bat surveys were ongoing at the time this letter was written and the report subsequently presented included an assessment of all mature trees to be lost to the development for use by bats. None showed any evidence of such use and all were found to have low potential as bat roosts (APP12, Appendix 4, para 4.27). As to birds, a survey was done in connection with the ES and this was supplemented by studying lists prepared by the Shipley Bird Watchers (APP11, para 2.11).

<sup>3</sup> For original English Nature consultation response, see CD5/1.5. The further letter sent in December 2005 is at CD18/1.

circumstances of the trees in question, their loss would not be unacceptable from an ecological viewpoint.

### *Restoration Proposals*

- 13.69 As to the restoration proposals, the detailed arrangements would be settled by condition (see paragraph 13.33 above). There is no suggestion that, from the ecological viewpoint, the proposals shown on the application plans (as amended) should be amended or improved [6.148]. Insofar as there is a difference between UK Coal and the Council, it relates only to the value that should be ascribed to the restoration proposals as enhancing the ecological value and biodiversity of the site. The case put by UK Coal is, in essence, that the woodland planting and other ecological areas proposed as part of the restoration scheme would significantly enhance the linkages between Manchester Wood, Whiteley's Plantation, Mundy's Plantation, Abbot's Rough and John Wood. The Council argue in effect that the weight given to this should be limited, as adequate linkages are already present [7.7 - 7.13].
- 13.70 For my part, I take a middle view. Currently there are linkages, and these are evident from the aerial photographs [7.11]. Insofar as linkages are present, I accept that the ancient woodlands and other features of ecological interest are not isolated [7.10].<sup>1</sup> Notwithstanding this, it seems to me that the linkages are in places weak, given that the farmland is intensively managed either as pasture or for arable production and that many of the hedgerows lack hedgerow trees. The stream corridor to the north east of the extraction area, between Whiteley's Plantation and Mundy's Plantation, is also narrow in places. In their consultation response on the original proposals, the Derbyshire Wildlife Trust called specifically for a larger block of woodland planting than was then proposed [12.13].
- 13.71 To my mind there is little doubt that the major deciduous woodland planting blocks proposed by UK Coal would significantly enhance the linkages, as would the areas of unimproved grassland, ponds and wetlands proposed on the lower parts of the site. New hedgerows planted as part of the restoration proposal would have hedgerow trees and conservation headlands. Overall, nearly 50ha of the site would be restored to woodland, species rich grassland or other areas with value as habitat [4.3].
- 13.72 In the medium to long term I conclude that the ecological and biodiversity value of the site would be significantly enhanced if UK Coal's restoration proposals are implemented along the lines shown on the restoration plan (Drg 177/D03A) and subsequently managed in accordance with requirements of the condition and S106 Obligation. The principle of this is not disputed by the Council [6.85 et seq, 7.100].

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<sup>1</sup> Except for those veteran and other trees which stand alone in improved pastureland.

*Other Matters*

- 13.73 At the inquiry there were suggestions that some of the ecological enhancement which UK Coal claimed would be provided by their restoration proposal could be achieved by other means [6.9, 11.25]. In theory, I accept that this is so. However, in practice it seems to me that there would be little or no incentive for UK Coal as landowner, or indeed their tenant farmers, to make more than modest changes to their present agricultural practices. As I see it, there is little prospect that significant areas of woodland would be planted on the site, or that areas of wetland and species rich grassland would be created, without some significant financial incentive. Rather, the status quo would pertain and the site would remain, as the Council's ecologist reported, "*limited in its biodiversity value*" [6.63].
- 13.74 Others at the inquiry suggested that the proposal might be refused on account of its potential to impact on a range of other species present on the site or seen there [8.33, 11.8, 11.20, 11.21]. These included the Slender Groundhopper (a Derbyshire Red Data Book species), the Brown Hare, Badgers, Bats which use the site for foraging and use Prospect Farm as a secondary roost site, and the Great Crested Newt. These points were not taken up by the professional ecologists present, however, who took the view that the species were either mobile, such that they would not be materially affected (e.g. the Brown Hare), or that appropriate mitigation could be secured by conditions (e.g. an alternative roost site for the bats). As to the Great Crested Newt, there is no evidence that it is present on the site or would be affected by the proposals. Equally, whilst WHEG/SMAG claimed that Water Vole would be affected [8.34], the professional advice is that the ephemeral streams do not provide a suitable habitat. Indeed, the Derbyshire Wildlife Trust noted in their consultation response that the impact on Water Vole "*is likely to be negligible*" [12.12]. In any event the stream in which WHEG/SMAG claim to have seen the Water Vole is on the boundary of the application area and would not be directly affected by the proposals.
- 13.75 Some also suggested that the proposal would adversely affect the ancient woodlands adjoining the site at Manchester Wood and Abbot's Rough, by drawing down the water table [8.49, 11.19]. The professional advice did not support this concern, however (see para 13.112 below).

*Conclusions on Ecology and Biodiversity*

- 13.76 In conclusion, whilst I accept that there would be some impact on the Hobby and that some 14 veteran trees on site would be lost if the scheme goes ahead, I do not find these impacts unacceptable from an ecological viewpoint, for the reasons given above. Other potential impacts, including impacts on bats, would be controlled by the agreed conditions. Clearly, there would be some short term loss of habitat whilst opencasting is in progress. However, in the medium and longer term, the restoration proposals, which would be secured by the agreed conditions and S106 obligations, would significantly enhance the ecological and biodiversity value of the site.



***Shipley Country Park***

- 13.77 I have dealt in paragraphs 13.44 and 13.45 above with the visual impact of the proposals in relation to Shipley Country Park. Here I consider whether there would be wider implications for the park and in particular whether the proposal would result in a wider loss of amenity, or economic loss, and whether it would prejudice the work of the Green Health Partnership.
- 13.78 On the first of these matters, I found Mr Holmes's evidence unconvincing. Whilst he argued that opencasting would have a serious detrimental effect on the park and its users, the data he relied on to support this conclusion was shown in some cases to be conflicting, and in others to have been misinterpreted or misapplied [6.47 to 6.49]. In particular he produced no convincing evidence to show that the park does not function as an essentially local facility, or that it generates significant income from tourists visiting the area [ibid]. To the contrary, the weight of evidence points to it being a facility that is used in the main by local people who come to the park to walk, ride or take other exercise [6.47]. Their spending in the visitor centre and cafés is very limited and not significant in the wider economy [6.50].
- 13.79 That this is so does not, to my mind, devalue the park. There is no dispute that it is a local facility of considerable quality that is much appreciated by local people [6.42, 7.59] and several of those who came to the inquiry told me of the value it has for them [11.27, 11.31, 11.39]. Visitor numbers are put at up to 450,000 per year [6.43]. But would its worth be materially reduced by the opencasting proposed? Having considered the evidence presented, I conclude that it would not, for the following reasons:
1. The park is a "country park" but its setting is nonetheless, at least in part, urban [6.52]. The approach to the main car park and visitor centre is through the Heanor Industrial Estate [6.46] and the northeast side of the park abuts housing in Marlpool. 40% of the visitors walk to the park and 80% of the visitors travel less than 10 miles to get there [6.47]. It has within its boundary the "American Adventure" theme park.
  2. Whilst the site would be visible from Shipley Hill and, through the trees and hedges from John Wood [6.54] and Bell Lane, the topography is such that from the majority of the park the site would not be visible. Visitors to the northern and eastern parts of the park, including people coming to the visitor centre or attending events in the nearby events area, those walking the Nutbrook Trail, and visitors to the theme park would not be aware of the presence of the opencast site. Visitors to Mapperley Reservoir would equally not be able to see the opencast site.
  3. There is no evidence to suggest that dust from the site would affect the park. Whilst machinery noise is likely to be perceptible in parts of the park when the site is operating, there is no evidence to suggest that its level would be intrusive or unacceptable at any point within the park boundary (see paras 13.83 and 13.84 below).

4. There is no reason to suppose that funding for the park would be changed as a result of the proposals [6.51] or that its bid to achieve a CABESpace Green Flag Award would be prejudiced [6.52].

13.80 As to the effect on the work of the Green Health Partnership, I equally found the evidence of Mr Phillips unconvincing. I do not doubt that the Partnership's work is valuable and that the rural setting of the facilities is appreciated by their clients. But there is no evidence to suggest that the work would be prejudiced by the appeal proposals [6.58 - 6.60]. My conclusions in this regard are reinforced by Mr Phillips's advice that when events are held in the park (which I understand sometimes include concerts and other similar noisy activities), the work of the Partnership is not suspended [ibid].

### *Noise*

- 13.81 Whilst WHEG/SMAG initially sought to challenge the evidence presented by UK Coal's noise witness, Mr Charles, the case in that respect was effectively abandoned and it was agreed that, provided that the agreed noise conditions are enforced, noise levels at nearby residential properties and within Shipley Country Park would not be unacceptable [8.52, 8.64, 6.100]. Notwithstanding this WHEG/SMAG continued, in common with the Council, to voice concerns regarding the noise impact on users of Bell Lane [7.32, 7.57, 8.15, 8.52]. Others who spoke or wrote to the inquiry echoed this concern, but generally feared wider noise impacts, including impacts due to noise from the increased number of HGVs which would use the A608 through Smalley [8.36, 9.1, 9.4, 9.14, 11.11, 11.17, 11.32, 11.51]. One person mentioned specifically the need to control noise from reversing beepers used on plant on the site [12.3].
- 13.82 As to the agreed conditions, these prescribe maximum noise levels at a range of noise sensitive locations around the site for both normal operations and temporary operations [Appendix E, Condition 13], they further provide for noise levels to be monitored [Appendix E, Condition 14] and for a range of "good housekeeping" measures to be put in place to ensure best practice is observed [Appendix E, Conditions 15 to 18]. These include a requirement for reversing alarms to be non-audible, ambient related, broadband or low-tone devices. Condition 19 requires Two Elms and Prospect Farm to not be occupied for the duration of the development. More general conditions limit operating hours on the site to 0700 to 1900 on weekdays and 0700 to 1300 on Saturdays [Appendix E, Conditions 22 and 23]. UK Coal do not anticipate that blasting would be required on the site, but, in the event that it is, Condition 12 would regulate the peak particle velocity at sensitive locations and provide for monitoring.
- 13.83 The levels prescribed by Condition 13 for normal operations are set at  $3\text{dB}_{\text{LAeq}}$  above the maximum noise levels calculated by Mr Charles using the methodology prescribed in BS5228, Part 1, subject to a maximum of 10dB above the measured background

level.<sup>1</sup> The resultant limits, which I understand were agreed with the relevant officer at Amber Valley Borough Council [12.10], range between 46dB at Radford Road and Mapperley Park to 51dB at the Lodge, Flatmeadow Farm, Shipley Country Park and Mapperley Reservoir. The maximum level is thus 4dB lower than the 55dB daytime limit recommended in MPS2, Annex 2 for noise-sensitive properties. At no point would the levels breach any established criteria [6.100].

13.84 For temporary operations, such as the formation and removal of soil mounds, the condition prescribes a maximum noise level of 60dB<sub>L<sub>Aeq</sub></sub> for the noise sensitive properties, which is 10dB lower than the 70dB temporary daytime limit suggested by MPS2, Annex 2.

13.85 As to Bell Lane, there is no dispute that operations on the site would be clearly audible [6.102]. Indeed, based on my experience at Maiden's Hall site [1.1], I would expect them to be intrusive at those times when heavy plant is being used to form and remove the soil bunds adjoining the lane, and when dump trucks are crossing the lane.<sup>2</sup> The significance of this needs to be considered, however, and I have already noted that the survey information shows that the number of users of Bell Lane is relatively modest at those times when the site would be working (see para 13.50 above). When the site is not working, which includes Saturday afternoons and Sundays, noise levels would not be materially different to those currently pertaining. Furthermore, the length of the lane affected would be limited, as would the periods over which noise impacts would arise. UK Coal's agreement to man the crossing point and stop dump trucks passing as pedestrians and others approach along Bell Lane would also reduce the potential impact significantly [Appendix E, Condition 41]. Given that the use of the lane is recreational and discretionary, insofar that those who seek particularly quiet locations in which to walk or ride could go elsewhere, it seems to me that the noise impacts on Bell Lane would not amount to an unacceptable environmental impact.

13.86 With regard to traffic noise, the increase in traffic on the A608 would be very modest (see paras 13.116 below). Whilst fears of increased noise are widespread, there is no evidence that the actual increase would be noticeable.

#### *Conclusion on Noise*

13.87 I conclude on noise that, with the protection that would be afforded by the agreed conditions, the levels of noise generated by the operations would not be unacceptable

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<sup>1</sup> Whilst the noise levels in the condition were set having regard to the levels calculated using the BS5228 methodology, Mr Charles evidence is that these levels can be bettered in practice, having regard to recent advances in sound attenuation for dump trucks and excavators. Actual noise levels for normal operations are predicted to range between 38dB at Home Farm and Mapperley Park to 47dB at The Lodge and 48dB at Mapperley Reservoir - see APP5, tables 5.5 and 5.6.

<sup>2</sup> I reach this conclusion based on my observations at Maiden's Hall site and my experience of earthmoving plant and operations generally. In reaching it I recognise that the County and other objectors failed to produce evidence to show that noise levels on Bell Lane would be intrusive [6.101 and 6.102]. Equally, however, UK Coal failed to produce evidence to show the converse.

and well within the limits set by MPS2, Annex 2. In this regard I find no conflict with the development plan.

### ***Dust and Air Quality***

- 13.88 It is common ground between UK Coal and the Council that, provided that appropriate measures are taken to control dust whilst the workings are in progress, then it is highly unlikely that the operations on site would result in the EU limit values for PM<sub>10</sub> being exceeded [4.4]. As I understand it, the procedures for controlling dust emissions from opencast sites are well understood and UK Coal's Dust Management and Action Plan (CD23, Appendix 2) sets down the various measures that would be employed to minimise and control dust emissions from the site. The plan also provides for dust levels and meteorological conditions to be monitored and recorded when opencasting is in progress and for additional dust control measures to be implemented when wind conditions are critical.
- 13.89 The plan is agreed to be an appropriate basis for a scheme of dust control [4.4] and an agreed condition requires a scheme for suppression and control of dust and monitoring and recording of dust levels to be submitted and approved by the Council before development commences [Appendix E, Condition 20]. This would be based on the agreed Dust Management and Action Plan.
- 13.90 Notwithstanding this there was widespread concern on the part of local residents and their representatives that air quality in the area around the site would be compromised by the proposals [9.4, 9.7, 9.14, 11.11, 11.18, 11.32, 11.34, 11.37, 11.39, 11.47, 11.50 and 12.5]. Mrs Charlton's evidence contained photographs showing dust clouds being raised by earthmoving plant on the Carrington Farm opencast site [11.14] and Mrs Paget wrote suggesting that dust from that site contributed to respiratory and other problems suffered by local children [12.6]. On the evidence available, the situation at Carrington Farm appears to have been unsatisfactory. However, the Carrington Farm extraction area was significantly closer to houses in Smalley than would be the case at Lodge House,<sup>1</sup> and there were problems with water supply [11.14]. With the agreed condition in place there is no reason to suppose that residents would be similarly affected by dust from the proposed Lodge House site.
- 13.91 As to the WHEG/SMAG evidence on the health effects of particulates, the author was unfortunately not available to be cross-examined on the written submissions. The spokesperson who appeared on his behalf was unconvincing. In places the evidence from previous studies was shown to have been misunderstood or misreported [6.115]. Whilst they cited studies that show that raised levels of particulates in the air can cause or exacerbate health problems (which was not disputed) they conspicuously failed to show that opencasting at Lodge House would be likely to cause the concentrations of

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<sup>1</sup> For location of Carrington Farm opencast site see CD23, Appendix 1. At this site the closest part of the extraction area was less than 100m from the nearest houses in Smalley. At Lodge House the main extraction area would be some 800m from the edge of Smalley. The nearest occupied property to the extraction area, Flatmeadow Farm, would be around 200m from the edge of the extraction area [2.12].

fine particulates in the atmosphere surrounding the site, or indeed nuisance dust, to rise to unacceptable levels [6.114].

- 13.92 To my mind the evidence of Mr King, who appeared for UK Coal, was thorough and professional. He concluded that, with the proposed mitigation measures in place, PM<sub>10</sub> levels would be well below current Air Quality Objectives at all neighbouring receptors. Similarly, if the proposed scheme were to be assessed against likely future air quality targets for PM<sub>2.5</sub>, these would not be breached.<sup>1</sup>
- 13.93 As to Bell Lane, the Council and WHEG/SMAG suggested in cross-examination of Mr King that dust impacts would result [7.57]. This was not disputed insofar as Mr King accepted that the leaves of trees and hedgerows near to the working area might be soiled by dust in certain weather conditions. Two Elms would not be occupied when the site is operational [2.10], however, and walkers and others using the right of way would each be there for only a short time. Consequently, he was confident that their health would not be affected.

#### *Conclusion on Dust and Air Quality*

- 13.94 I conclude on dust and air quality that, with the protection that would be afforded by the agreed planning condition, levels of nuisance dust would not be such as to materially harm the living conditions of residents living around the Lodge House site. I further conclude that the health of those living near the site, and people using Bell Lane, would not be adversely affected. In this regard I find no conflict with the development plan.

#### *Rights of Way*

- 13.95 Four rights of way would be affected by the proposals. Of these, only Footpath No 6 (Parish of Shipley) would need to be diverted for the duration of the works. At two other footpaths, crossing points would be introduced over the main access road connecting the coal processing area to the A608 (Footpaths Nos 1 and 2 - see Drgs 177/D01 and 177/D02A). A further crossing point would be introduced over Bell Lane (Bridleway No 5).
- 13.96 When the proposed diversion of Footpath No 6 was advertised, three responses were received. However, none objected to the diversion as such; rather they drew attention to the wider potential for the works to impact on horse riders using Bell Lane [12.8]. Similarly, at the inquiry no one appeared and spoke in opposition to the proposed diversion of Footpath No 6. If the proposal is permitted, the diversion is essential. I therefore conclude that the decision on the footpath diversion order should follow that on the main application.
- 13.97 As to the other footpaths, Footpath No 2 is indistinct on the ground and appears to be very lightly used. Footpath No 1 is more distinct and leads from the A608 at Smalley

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<sup>1</sup> See APP7, particularly Section 5.4.

through to the Heanor Industrial Estate. Both would be kept open and available for use throughout the extraction period. Crossing points would be provided, with warning signs and measures to restrict the speed of vehicles on the access road, [Appendix E, Condition 40]. No-one at the inquiry objected to these arrangements which should serve to ensure that anyone using the paths could continue to do so safely.

- 13.98 Bell Lane, whilst officially designated as a bridleway, also serves as a private road providing vehicular access to properties along the lane. Given the limited number of properties involved, traffic is very light, however, and it would be further reduced when the works are in progress as Prospect Farm would be demolished and Two Elms would be unoccupied [Appendix E, Condition 19]. Site traffic would also not be permitted to use Bell Lane for access [Appendix E, Condition 32]. Accordingly, the use would be primarily recreational.
- 13.99 As with the footpaths, the proposals provide for Bell Lane to be kept open throughout the 4½ year working period. They further provide for a crossing to be set up at the point where dump trucks carrying coal and spoil would cross the lane. The final details of the crossing would be settled by the agreed condition [Appendix E, Condition 41], but UK Coal accept that the crossing would be manned continuously during those periods when heavy vehicles would be crossing, and that their site traffic would be stopped as necessary to give priority to users of Bell Lane. To my mind, the users of Bell Lane would thus not be inconvenienced to any significant degree by the proposals. No evidence was brought to the inquiry to support Mapperley Parish Council's view that horse riders would be endangered [9.9].
- 13.100 As to the restoration proposals, the S106 Agreement provides for Bell Lane to be resurfaced,<sup>1</sup> although it seems to me that the benefits of this would be limited given its present condition and level of use. More significantly, however, UK Coal's restoration proposals provide for several new bridleways and footpaths to be opened up through the restored site (Drg 177/D03A). These would provide a range of circular recreational routes from Bell Lane and a new link through to Footpath No 1 at the northern end of Smalley which the proposals envisage would be upgraded to a bridleway.
- 13.101 Whilst the Council was of the view that the benefits that these routes would bring would be limited [7.75], this view appears not to have been shared by the Country Park Manager, Mr Holmes, when initially consulted on the proposals [6.42]. To my mind, there is no doubt that the various paths proposed would add significantly to the range of recreational routes available in the area - a route would be opened up to Whiteley's Plantation (which is currently not accessible to the public) and other routes would be provided through to the new woodlands and areas of species rich grassland and wetlands. Along these routes, new views would be opened up from vantage points on the higher ground (Drg 177/D03A). New possibilities for circular walking routes

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<sup>1</sup> See S106 Agreement (INQ/6, Schedule, para 4).

from Smalley would be created and, with additional links through to the Country Park,<sup>1</sup> it would be possible to extend some of the routes currently available to visitors to the park.

- 13.102 To my mind, the overall benefit of the new paths and bridleways would be worthwhile in the short term. In the medium and long term, as the woodlands and ecological areas mature and become features of interest in their own right, the benefits would increase. Their provision would accord with the encouragement which the Minerals Local Plan gives to the provision of new opportunities for recreational access to new woodlands [6.110] and with the Structure Plan, Leisure and Tourism Policy 3 [5.18].

### *Archaeology*

- 13.103 Medieval and post-medieval bell pits are the principal features of archaeological interest on the site, although the ES acknowledges that there is also some potential for prehistoric and possibly Roman remains to be found. The agreed conditions provide for a programme of archaeological investigation to be undertaken to survey and record these prior to opencasting [Appendix E, Condition 35]. The approach is agreed as appropriate by the County Archaeologist [6.112] and whilst WHEG/SMAG argue that UK Coal might seek to destroy any finds that were made to avoid delays to opencasting [8.11], there is no evidence to suggest that they would behave in such an irresponsible manner. In any event, a further condition provides for an archaeologist appointed by the County to be present on site during the critical stages of the works and to conduct investigations and excavations where appropriate [ibid, Condition 36].
- 13.104 The approach agreed by the County Archaeologist concurs with the approach envisaged by the Minerals Local Plan, Policy MP7 and PPG16. If bell pits are found and investigated in the way proposed, it would add to the understanding of the area's mining history [6.112]. In my opinion, the agreed conditions are an entirely appropriate response to the level of archaeological interest that the studies and surveys have shown is likely to be present on the site.

### *Hydrology and Hydrogeology*

- 13.105 The NCB No 5 Fishing Club leases the fishing rights to Mapperley Reservoir which was seriously damaged in the 1970's by discharges of high levels of suspended solids from a coal washing plant associated with the Whitehouse opencast site. The harm to the fishery was extensive and lasted for many years [6.128, 10.1]. With the Lodge House proposals, water pumped from the workings would discharge into the two small streams which feed the reservoir which, because of its size, would allow the particles to drop out of suspension [10.2]. Understandably, the club was very concerned to

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<sup>1</sup> These are not shown on the plan and would require the co-operation of the Park Authority (and UK Coal as landowner). Possibilities include a link from Footpath No 6 through to John Wood and Mapperley Reservoir at the south-east corner of the site, and a link from the north-east corner of the site through to Footpath No 2 in the vicinity of Flatmeadow Farm.

ensure that the Lodge House proposals would not cause similar damage to that which occurred in the past.

- 13.106 Whether siltation damage would occur would depend on the volume of water discharged and the levels of suspended solids it contains. This would be regulated by the Environment Agency through the discharge consent which UK Coal would have to obtain before works could commence [6.127]. The terms of the consent would be set by the Agency and, whilst they were not present at the inquiry, I have no doubt that they would be fully alive to the need to safeguard the fishery and would set consent levels appropriate to that end. It was accepted at the inquiry that they could, if they thought it necessary, specify that control mechanisms be put in place to automatically prevent discharges in breach of the consent [6.129]. They could also regulate the use of flocculants and, if they consider it expedient, provide for water quality to be automatically recorded and independently monitored [10.7].
- 13.107 UK Coal's responsibility would be to design their works, settling lagoons, storage ponds and other water treatment facilities to ensure that the requirements of the discharge consent would be met [6.129]. If for any reason this could not be done (and there was no evidence to suggest that this would be the case), then the project would not be able to proceed.
- 13.108 Secondary concerns raised by the fishing club included the potential for the fishery to be affected either by poor chemical water quality [10.3] or because the quantity of water flowing in the streams that feed the reservoir might be reduced [10.5].
- 13.109 As to the first of these, the available evidence suggests that the chemical composition of the groundwater that would be encountered during excavation is similar to that of drinking water, with no elements harmful to fish [6.130, 6.131]. There was no evidence to support the club's suggestion that flow paths would be opened up between the former Whitehouse opencast workings and the appeal site which would allow contaminated water to enter the reservoir. The chemical composition of water discharged from the site would, in any event, be subject to regulation by the Environment Agency [10.7].
- 13.110 With regard to the quantity of water flowing into the streams, the evidence is that the underlying groundwater levels are many metres below the base of the excavation. These levels are maintained by pumping from Woodside. The perched groundwater which would be encountered during opencasting is there in small quantities and not hydraulically connected to the two watercourses. These watercourses lose water to the ground and run dry in the summer months [6.130]. Accordingly, the flow in the watercourses would not be affected by any local drawdown of perched water levels caused by opencasting.
- 13.111 WHEG/SMAG also presented submissions on hydrology and hydrogeology [8.47 to 8.51], but unfortunately the author did not attend the inquiry to answer questions on it [6.133]. Having studied the evidence presented by both the parties, I find nothing to support WHEG/SMAG's assertion that the evidence of Dr Blythe was incorrect. On the contrary, it seems to me that his written evidence is sound and I found his answers



to questions put by myself and others at the inquiry convincing. There is, in my opinion, nothing to support the WHEG/SMAG view that backfilling the excavations would block the established flow patterns and potentially cause groundwater and/or gases to emerge to the west of the backfilled area. Equally, the suggestion that the quality of water encountered in the excavations would be similar to that observed in two local springs is wholly at odds with the groundwater quality analyses carried out for UK Coal [6.130]. The springs in question are also associated with deeper mine workings which would not be affected by the Lodge House proposals [6.133].

- 13.112 Whilst concerns were also expressed that localised depression of the (perched) water table as a result of pumping might cause ecological damage, particularly to the ancient woodlands adjoining the site, Dr Blythe was confident that this would not be the case. The matter was not pursued either by the Derbyshire Wildlife Trust or the County Ecologist.

#### *Conclusions on Hydrology and Hydrogeology*

- 13.113 I conclude that, having regard to the controls on water quality discharged from the site that would be exercised by the Environment Agency, the proposal would not have an adverse effect on the hydrology of Mapperley Reservoir. Neither would it have other unacceptable impacts on the hydrological or hydrogeological regime about the site. My conclusions in this regard are reinforced by the lack of objections to the proposals from either the Environment Agency (CD5/1.10) or the Coal Authority (CD5/1.1).

#### *Traffic*

- 13.114 Whilst WHEG/SMAG, Bob Laxton MP, Judy Mallaber MP, Shipley and Smalley Parish Councils, Councillor Eric Lancashire and other individuals objected on the grounds of the impact the proposal would have on traffic conditions and safety on the A608 [8.36 et seq, 9.1, 9.14, 11.1 and 11.2, 11.7, 11.11], the Council in their capacity as highway authority for the road took no such issue. Indeed, the Statement of Common Ground records that, provided that HGVs from the site are routed via the A608 through Smalley to the A38 and A52, then traffic generated by the development would not have an unacceptable impact on the operation of the road network [4.5].
- 13.115 As to the impact of the proposal, the S106 Agreement (INQ/6) provides for all traffic from the site to be routed south along the A608 to the A61 on the outskirts of Derby. From that point it would be routed either southwards on the A61 to the A52 and hence east to the M1, or, if travelling northwards, north along the A61 to the A38. Agreed conditions would limit the number of HGV movements to a maximum of 118 each day and ensure that vehicles enter and leave the site only via the new vehicular access to be provided on the A608 [Appendix E, Conditions 32 and 33].
- 13.116 On the A608 the number of HGVs using the route would, as WHEG/SMAG point out, increase significantly. Indeed they would be approximately doubled [8.36]. The ratio of HGVs to other traffic on the route is currently very small, however, and the net increase in the total number of vehicles would be of the order of 2% only [6.124]. Such an increase would be within the normal daily variations of traffic flow and there

is no evidence to suggest that congestion on the route would materially increase, or that the present level of rat-running through the outskirts of Derby would worsen, as a result of the additional coal lorries on the route. Neither is there any evidence to support the view that the increase in HGV traffic would increase accidents on the route or materially increase noise levels or pollutants.

- 13.117 Whilst the routing agreement only applies to HGVs transporting coal, the number of other vehicles likely to visit the site is very small and I see no reason why, as Councillor Lancashire suggested [11.11], service vehicles travelling to the mine should cause any difficulties in Lower Kilburn, Kilburn and Horsley Woodhouse.
- 13.118 I conclude on traffic that, with the agreed conditions and S106 Agreement in place to control the number and routing of coal lorries, no unacceptable environmental or other impacts would result.

### ***Land Quality***

- 13.119 The Statement of Common Ground records that UK Coal's draft soil handling strategy (CD23, Appendix 3), is a suitable strategy for restoration [4.8]. The strategy notes, amongst other matters, that the soil stripping and reinstatement offers the opportunity to improve the structure of the subsoils, particularly in those areas of the site that were previously disturbed by opencasting and poorly restored. Soil forming materials from the overburden would be set aside for this purpose. On completion all land within the site would remain within Subgrade 3b and Grade 4. However, there would be a small increase in the area of Subgrade 3b land (1.9ha) on restoration and, in the long term, a further 23.3ha of Grade 4 land would have the potential, with good aftercare and management, to achieve a Subgrade 3b classification. Other land, whilst remaining within Grade 4, would be better quality than the original (ibid, Section 11).
- 13.120 WHEG/SMAG questioned this [8.42 et seq]. However, they did not produce any convincing evidence to support their arguments that land quality would not be improved or, alternatively, that the improvements that might be achieved could, in any event, be achieved more quickly by modest changes to the land management regime. The Council, for their part, did not seek to challenge the claimed soil improvements. Rather they questioned the weight that these improvements should be afforded in the overall planning balance [7.86].
- 13.121 For my part, it seems to me that the Council's line is broadly correct. Improvements in land quality should be achieved; accordingly the impact on the soil resource would be positive and, in that respect, the proposal would accord with national policy [6.136, sub-para 4]. However, the improvements would be modest and all land on the site would remain within Subgrade 3b and Grade 4 [7.86]. As such I am of the view that the potential improvements should be afforded only limited weight.

### ***Cumulative Effects***

- 13.122 Policy MP4 in the Minerals Local Plan recognises the potential for the environmental effects of minerals developments to result in a cumulative impact on the environment

of an area either because of the collective effects of an individual proposal, or because of the effects of a number of mineral developments occurring either concurrently or successively [5.6].

- 13.123 In the case of Lodge House, the most recent nearby opencast site ceased production some time ago [8.61] and the site has now been fully restored. As I understand it, there are no other sites with planning permission for minerals extraction in the area. Accordingly, there is no immediate risk that cumulative impacts would arise as a result of a number of mineral developments occurring concurrently or successively. Of course, if Lodge House were to go ahead, other proposals could come forward and conceivably commence production while the Lodge House scheme is still working, and in this connection WHEG/SMAG and several local people drew my attention to the potential for Lodge House to be expanded into the larger Mead site [8.4, 8.41, 8.58, 11.3].
- 13.124 I understand their concerns and UK Coal's unwillingness to enter into a commitment not to exploit these reserves in the future plainly heightened their anxiety [8.4, 8.60, 9.10]. There is no dispute that there are further shallow coal reserves beyond the present site boundary which could at some time in the future be the subject of an application for their extraction (JM2). Given the constraints imposed by the streams and woodlands surrounding the site, it seems to me, however, that any application to simply extend the workings to the north or west would be likely to meet with significant environmental objections. In any event any such application, or indeed an application for a separate opencast site in the area, would need to be considered on its merits against the policies in place at the time. If the present policies remain in place, cumulative impact with the Lodge House proposals would be a matter that would need to be taken into account by the decision maker in reaching a conclusion on the application then under consideration. To refuse planning permission now for Lodge House on the grounds of what might possibly occur at some time in the future would, to my mind, lack logic.
- 13.125 As to the collective effects of the Lodge House proposal, again local concern was widespread [8.61, 9.4]. Much of this was, however, centred on a perception that noise and air quality impacts would be significant for local residents, which I have found would not be the case (see paras 13.81 to 13.94 above). Given this, there is, to my mind, no case to answer on cumulative impacts with respect to the effect on local residents. Similarly, with regard to Shipley Country Park [8.13], I have found that there would be a moderate adverse visual impact from Shipley Hill, but elsewhere impacts would be negligible (see paras 13.44 and 13.79 above). I have also found that noise impacts within the park would not be significant and that there is no evidence to suggest that air quality would be unacceptable (see paras 13.83, 13.84, and paras 13.88 to 13.92 above). Overall it seems to me that there is nothing to suggest that people's enjoyment of the park would be materially altered by the proposals [ibid]. I therefore conclude that, with respect to impacts on the park, there is no cumulative case to answer.
- 13.126 As I see it, the one area where cumulative impacts would occur would be Bell Lane. In paragraph 13.40 above I conclude that the visual impact of the proposal would be

such that the essential character of the section of lane between Manchester Wood and John Wood would be radically changed for the duration of the works. There would also be some impacts due to dust and, from time to time, I would expect plant noise to be intrusive (see paras 13.85 and 13.93 above). Overall, the character of the lane would be transformed for the duration of the opencasting operations from an essentially tranquil rural byway into a much less attractive route through a major opencast site. Mitigation by way of bunding and the measures to control earthmoving vehicles at the crossing would assist in limiting the impacts, but no more, and there is no doubt in my mind that the cumulative impact of the proposals on the character of the lane would be significant and adverse. I return in paragraph 13.139 below to the significance that should be placed on this finding in deciding whether planning permission should be granted.

#### ***Effects on Efforts to Attract and Retain Investment in the Area***

- 13.127 Whilst WHEG/SMAG questioned whether the positive economic impacts of the proposal would be as great as UK Coal estimated [8.53 et seq], no one at the inquiry suggested that the proposal would result in harm to the local economy, other than Mr Holmes. His concerns were limited to the impact on Shipley Country Park and, for the reasons I have already given, I found his arguments wholly unconvincing (see para 13.78 above). Overall, there is no evidence to suggest that the proposal would adversely impact on efforts to attract and retain investment in the area.

#### ***Conclusion on Effects on the Environment***

- 13.128 Bringing together my above conclusions, I find that the proposal would result in the loss of 26 trees on the site, including 14 veterans. The woodlands surrounding the site would be preserved, however, as would the hedgerows alongside Bell Lane which are the main elements in the landscape. Accordingly, landscape impacts would be local and limited. In the medium and longer term the restoration proposals would benefit the landscape [13.48].
- 13.129 Visual impacts would generally be slight during the working phase and insignificant on restoration. However, the impact on the view from Shipley Hill would be significant and adverse whilst opencasting is in progress and similar impacts would be experienced by users of footpaths to the south and east of the site [13.49]. The essential character of Bell Lane would be radically changed for the duration of the works [13.126].
- 13.130 As to the impact on the site's ecology and biodiversity, I conclude that the loss of 14 veteran trees, whilst regrettable, would not be unacceptable having regard to their relative isolation in biodiversity terms and their lack of characteristics normally associated with veteran trees [13.68]. I further conclude that, with the mitigation proposed, the scheme would not result in material harm to the Hobby [13.60]. Other potential impacts would be controlled by conditions. Whilst there would be some short term loss of habitat whilst opencasting is in progress, the present value of the site in biodiversity terms is limited, and in the medium and longer term the restoration

- proposals would significantly enhance its ecological and biodiversity value [13.73, 13.76].
- 13.131 On Shipley Country Park, I find no evidence to support the view that the proposal would materially reduce the number of visitors to the park or prejudice the work of the Green Health Partnership [13.79, 13.80].
- 13.132 With the protection afforded by the agreed conditions, the levels of noise generated by the operations would be well within the limits set by MPS2, Annex 2 and not unacceptable [13.87]. Similarly, the levels of nuisance dust generated would not be such as to materially harm the living conditions of those living around the Lodge House site; neither would the health of those living near the site, or people using Bell Lane, be adversely affected [13.94].
- 13.133 One footpath would be diverted to accommodate the extraction area, but no objections were received to the proposed diversion [13.95, 13.96]. The proposed access road would also cross two footpaths, but these would remain open and safety would not be prejudiced [13.97]. On Bell Lane, which is designated as a bridleway, a manned crossing would be provided to allow dump trucks carrying coal and spoil to cross the lane. Priority would be given to walkers and riders and UK Coal's traffic stopped as it approaches. Site traffic would not be permitted to use Bell Lane. Accordingly, the users of the route would not be inconvenienced to any significant degree by the proposals [13.99].
- 13.134 Given the agreed conditions, there is no reason to refuse planning permission on account of the effect on archaeological resources [13.104]. Equally, having regard to the ability of the Environment Agency to regulate the quality of water discharged from the site, there is no reason to suppose that the fishery at Mapperley Reservoir would be harmed, or that other unacceptable hydrological or hydrogeological impacts would result [13.113]. In the longer term there would be modest improvements in land quality [13.121]. The proposal would not adversely impact on efforts to attract and retain investment in the area [13.127].
- 13.135 Lorries would be used to transport the coal from the site, probably to Ratcliffe on Soar Power Station. Through the S106 Agreement they would be required to travel south from the site via the A608 to Derby. Other routes would be prohibited. Whilst many local residents voiced concern at the impact the additional HGVs would have in Smalley and elsewhere, there is no evidence that unacceptable environmental impacts would result, or that traffic conditions or safety would be prejudiced [13.114 to 13.118].
- 13.136 As to cumulative impacts, the most recent nearby opencast site ceased production some time ago and the site has since been fully restored. There are no other sites with planning permission for minerals extraction in the area. Therefore there is no immediate risk that cumulative impacts would arise as a result of a number of minerals developments occurring either concurrently or successively [13.123]. If other proposals were to come forward in the future, these would need to be judged on their merits against the policies then in place [13.124]. As to the cumulative impacts that

would result from the collective effects of the proposal, I find that these would only be significant in the case of Bell Lane where visual, noise and dust impacts would combine to transform what is at present an essentially tranquil rural byway into a much less attractive route through an opencast site [13.126].

- 13.137 As to whether the proposal would be acceptable in the terms of policy MP27 of the Minerals Local Plan, and the equivalent test set by MPG3, it is pertinent perhaps to pause briefly to consider what is meant by “acceptable”. Plainly, it is not a test that requires a nil or zero impact, since such a test could not be met even by the best designed scheme. Where there are recognised standards or policies against which to judge the impact, as for example with noise or air quality, it seems to me that if the proposal meets the standard or policy criteria, then, by definition, it must be acceptable [6.163]. Other impacts are, to my mind, a matter of balance and judgement.
- 13.138 It further seems to me that the judgement must necessarily have regard to the severity of the impact, the number of people affected, the length of time over which they would be affected and their ability or otherwise to avoid the impact. Thus, for instance, a permanent visual impact on a view from a large concentration of housing or a public place used by many people would be less acceptable than a similar impact that is temporary and experienced only by a relatively few people on a footpath who choose to use it for recreational purposes and have other alternatives available. In all cases, as the policy makes clear, the impact should be assessed having regard to the mitigation that would be achieved by planning conditions or obligations. If the proposal is found unacceptable then the presumption against opencasting should apply.
- 13.139 Developing this in relation to the Lodge House scheme, I take the view that, on balance, the impacts of the proposal would be collectively acceptable. I reach this conclusion having regard in particular to:
1. The absence of significant impacts on the residential settlements surrounding the site. In particular, no occupied dwelling would be affected by noise or air quality impacts that would breach any recognised standard; neither would there be a significant visual impact from any nearby settlement.
  2. The ability of conditions and other measures to ensure that there would be no material impact on the fishery at Mapperley Reservoir, the hydrology and hydrogeology of the area, or land quality.
  3. The Council’s acknowledgement that the present value of the site in biodiversity terms is limited, coupled with the ability of conditions to avoid material harm to the Hobby and other protected species and the potential for the restoration proposals to significantly enhance the site’s biodiversity value in the longer term.
  4. The lack of significant long term impacts on the wider landscape. Whilst 27 trees would be lost to the development, including 14 classified as veterans and some hedgerows, the most important landscape features

would be retained and the effects of the losses would be localised. In the longer term, the restoration proposal would improve the landscape resource.

5. The lack of significant adverse impacts associated with the transport of coal from the site.
6. The absence of any material impact on Shipley Country Park save with respect to the visual impact on views from Shipley Hill. Shipley Hill is on a popular recreational route for walkers and riders and the visual impact would be significant and adverse for the duration of the working period. For some people the changes would, in my opinion, be likely to materially diminish their enjoyment of the route. For them, however, the park offers a range of alternative paths where the works would not be visible. The extraction period would, moreover, be limited in its duration and restoration would be progressive. When complete the visual impact would be insignificant. I accordingly take the view that, on balance, the impact on the park would be acceptable.
7. Similar considerations apply with respect to the impact on the section of Bell Lane between Manchester Wood and John Wood, where I conclude that the visual, noise and dust impacts would combine to make the route much less attractive than at present. When works are in progress nearby, its tranquillity would be lost and its essential character changed. However, a significant part of the route between Smalley and Shipley Country Park would not be affected and Bell Lane would remain open throughout the working period. The evidence also shows that the number of walkers, horse riders and cyclists using the route is modest, particularly at times when the site would be working. On restoration there would be no material change in the route. Accordingly, I take the view that, on balance, the impact would be acceptable.
8. As to the other footpaths that would be affected, here the changes would not be as great as occurring on Bell Lane. They appear to be more lightly used and there was little in the way of objection to the changes that would result. Given the short term nature of the adverse impacts, I do not find them unacceptable.

### **The Green Belt Test**

- 13.140 The site is within the South-east Derbyshire Green Belt [6.13] where Policy MP27 of the Minerals Local Plan states that, in considering whether a proposal is environmentally acceptable, regard should be had as to whether it “*can be developed, operated and restored to the highest standards*” [5.4, 13.20]. PPG2 further requires that large scale development in the Green Belt, including that for minerals “*should, so far as possible contribute to the achievements of the objectives for the use of land in Green Belts*” [5.15].

- 13.141 In relation to the first of these tests, there is no suggestion that the (revised) proposals could be materially improved by adopting an alternative sequence of working or other measures to reduce the environmental impact. Neither is it argued that the proposals for restoration could be enhanced.<sup>1</sup> No one at the inquiry was able to point to any aspect of the proposal as not representing high environmental standards [6.145]. Nor did anyone suggest improvements to the scheme that would in some way reduce its impact, other than the small modification of the extraction area to retain Tree 8, which UK Coal accepted [6.79]. No alternative conditions or obligations were suggested by the Council that would have worked to reduce the scheme's impact [6.135]. Indeed, the Council accepted that the conditions would ensure "best working practices" [7.55]. It therefore seems to me that, with the agreed conditions and obligations in place, the Secretary of State can be assured that the site would be developed, operated and restored to the highest standards. The Council's argument that "highest environmental standards" implies a standard equivalent in effect to a nil or minimal impact (as opposed to an "acceptable" impact) [7.56, 7.58] is not, to my mind, a sensible interpretation of the policy.
- 13.142 Turning to the second test, here there is general agreement that the proposal would contribute to four of the five objectives for the use of land in Green Belts set down in PPG2, paragraph 1.6 [6.139]. In particular the footpaths and bridleways proposed as part of the restoration scheme would facilitate access to the open countryside and provide opportunities for outdoor recreation. In the longer term the landscape would be enhanced and the quality of the land damaged by previous opencasting would be improved. The only objective that would not be met is that of retaining land in agricultural, forestry or related uses. Here the conflict would be minor, however, and only arises because small areas of site would be restored as wetland and open water habitat. Notwithstanding this, agricultural and forestry after uses dominate the restoration proposals. To my mind there is no doubt that "*so far as possible*" the proposal would contribute to the objectives for the use of land in the Green Belts.
- 13.143 As to the purposes of the South-east Derbyshire Green Belt [5.14], it is agreed that this development would not harm the identified purpose of keeping the towns of the area separate from one another [6.153].
- 13.144 It follows from these conclusions, and my previous conclusions on the matter of openness and Green Belt policy as applied to minerals development (see paras 13.3 to 13.16 above), that, in PPG2 terms, the proposal would not constitute inappropriate development.
- 13.145 It further follows from my conclusions in paragraphs 13.139 and 13.141 above that I find the proposals capable of being made acceptable by the agreed planning conditions

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<sup>1</sup> Except with respect to the amount of woodland proposed, which the Council argue is excessive with the revised restoration proposals. I disagree for the reasons I have given in paragraph 13.38 of this report. In any event the matter is essentially academic as the restoration proposals would be subject to a condition requiring that details of the restoration scheme be submitted and approved before development commences [13.33]. It would therefore be open to the Council to refuse any proposal which did not meet the highest standards.



and obligations. I therefore conclude that the presumption against opencasting set down in policy MP27 of the Minerals Local Plan and MPG3, paragraph 8 would be overcome.

### **Community Benefits**

13.146 Should the Secretary of State disagree with my above conclusion then, in accordance with Policy MP27 of the Minerals Local Plan and the guidance in MPG3, it is necessary to consider whether the local or community benefits that the development would provide would clearly outweigh the impacts. In this regard the benefits as I see them would be as follows:

1. ***Improvements to the Landscape.*** The new woodlands, hedgerows and hedgerow trees and other landscape features which would be secured by the restoration proposals would, in the longer term, enhance the landscape value of the site [13.38, 13.39]. The enhanced woodland cover in particular would accord with the development plan [ibid]. Translocation of the more valuable existing hedgerows on the site to a new site east of Smalley would also result in further positive, albeit modest, benefit to the local landscape [13.30].
2. ***Improvements to Biodiversity.*** The proposals provide for a range of new habitat to be provided as part of the restoration proposals, the effective management of which would be secured by the agreed conditions and S106 Obligation. In the longer term the biodiversity of the site would be significantly enhanced [13.72].
3. ***Improvements in Access to the Countryside.*** The restoration proposals would secure a range of bridleways and footpaths through the restoration area, together with a new connection to an existing track at the north end of Smalley. These would provide circular walking and riding routes in the area, linked to Bell Lane and Smalley and open up a route to Whiteley's Plantation [13.101]. The benefits would be worthwhile in the short term and, in the medium and longer term, as the woodlands and ecological areas become features of interest in their own right, the benefits would increase [13.102]. Bell Lane would also be resurfaced [13.100]. If UK Coal and the Park Authority co-operate, additional links could also be provided to Shipley Country Park [13.101].
4. ***Improvements in Land Quality.*** Whilst the site is plainly not derelict or despoiled [7.44], a modest improvement in land quality would be secured by using soil forming materials recovered from the extraction area, to enhance the structure of the subsoil in the parts of the site previously disturbed by opencasting [13.119]. A small increase in the area of Subgrade 3b land should be achieved on restoration and, with good aftercare and management, a further 23ha of land should subsequently be improved from Grade 4 to Subgrade 3b [ibid]. Notwithstanding this, all

land within the site would remain within Subgrade 3b and Grade 4 [13.121].

5. ***The Creation of Jobs and Associated Economic Benefits.*** Whilst WHEG/SMAG questioned the number of local jobs that would be created by the proposal and the level of expenditure in the local economy [8.53 et seq], the benefits were not disputed by the Council, only their significance [7.78 et seq]. For my part I broadly follow the Council's line: 20 to 25 jobs should be created for residents of Amber Valley and there would be additional expenditure on supplies and service which would further benefit the local economy. The jobs and expenditure would be short term, however, and there is no evidence to suggest that the benefits would be sustained beyond the end of the restoration period.
6. ***The Community Fund.*** A £100,000 community fund would be established through the S106 Agreement to be used to fund new local facilities or their repair and extension [1.4, 6.136]. Whilst no specific projects that would benefit from the fund have thus far been identified [7.73], and the sum is not particularly large having regard to the area over which the expenditure could be spread [9.15], it seems to me that it would nonetheless represent a worthwhile addition to the local parish resources.

13.147 As to the weight which these benefits should be afforded, it was plain to me from what was said at the inquiry that the Council, local residents and their representatives tend to view the benefits as of limited value, both individually and collectively [7.115, 8.65, 9.16, 11.9, 11.41, 11.49, 11.51]. In accordance with MPG3, paragraph 8, their views should be accorded weight [7.49, 11.3, 11.6], although in this instance the Secretary of State may consider that the weight local people's views attract should be reduced on account of the exaggerated and misleading information circulating in the local area which would have unfairly influenced their judgment [6.8].

13.148 Overall there is no doubt that benefits would arise from the proposals. However, some would take several years to fully develop (e.g. the improvements in the landscape). Also, none of the benefits which Policy MP27, Section C records will be given "*particular importance*" would be involved [5.5, 7.5, 7.44, 8.46, 11.4, 11.22]. Since I have concluded that the proposal would be environmentally acceptable [13.145], the weight that should be afforded to the benefits is academic. However, should the Secretary of State not agree with that conclusion, then whether or not the local and community benefits the proposal would bring would clearly outweigh the impact on the environment will be a matter for her to determine.

#### **Other Matters**

13.149 In reaching a final conclusion on the planning merits of the proposals there are other matters that need to be taken into consideration. These include matters relating to the need for the coal, the need to maintain an effective opencast coal industry in the UK, and human rights considerations.

### ***The Need for the Lodge House Coal***

- 13.150 If permitted the Lodge House scheme would deliver around 1 million tonnes of coal which it is expected would be used to generate electricity at Ratcliffe on Soar Power Station. Given the current balance between coal use in the UK and coal production, it can be fairly concluded that, directly or indirectly, this would lead to a corresponding reduction in coal imports.
- 13.151 UK Coal suggest that this would accord with the Government's drive for sustainable development, insofar as the coal that would be imported would necessarily travel considerable distances [6.136]. In principle, I accept that the argument might have some merit. No energy balance or other figures were provided to support the claim, however, and in their absence it seems to me that only limited weight should be afforded to this consideration. Similarly, no evidence was brought to support the claim that the ports or railways were having difficulty coping with the amount of coal imported [7.82].
- 13.152 As to the suggestion that mining indigenous coal would result in a modest improvement in the security and diversity of the UK's energy supplies [6.136], this may be so. However, it is not a consideration to which planning policy attaches significant weight, as far as I am aware. Indeed MPG3, paragraph 4, states that it is not for the planning system to set limits or targets for any particular source of energy supply and that it is for individual operators to determine the level of output they wish to aim for in the light of market conditions. Minerals planning authorities are urged to determine the acceptability of individual proposals in accordance with the principles of the land use planning system [7.85].

### ***Opencast Industry***

- 13.153 Plainly, any grant of planning permission for opencast coal extraction is likely to assist in maintaining an effective opencast industry in the UK and assist UK Coal's viability. The Lodge House proposal is modest in comparison to UK Coal's Maiden's Hall site, but I accept that there is no case for refusing planning permission on the grounds that it would supply "only" one million tonnes of coal [6.136]. Equally, as far as I am aware, there is no suggestion in the planning guidance that otherwise unacceptable, or even marginal, proposals should be approved to ensure continuity of work for the opencast industry. Therefore, whilst I recognise that a grant of planning permission would be a welcome boost for UK Coal and the wider opencast industry, this is not a matter which I view as meriting significant weight in the overall planning balance.

### ***Human Rights***

- 13.154 Whilst no one at the inquiry suggested that their Human Rights would be infringed by the development, Mr Breen wrote to Margaret Beckett MP arguing that any decision in favour of the proposal would constitute a breach of his "*fundamental human rights*" [12.2]. It is clear from the letter that the claim was based on his expectation that the proposal would result in dust that would be damaging to his family's health and would affect the value of his property. For the reasons I give above, I conclude that there is

no evidence that anyone's health would be damaged by the opencasting or that significant dust nuisance would result, given the controls that would be imposed by the agreed conditions. Neither is there any evidence to show that properties in the settlements surrounding the site would be devalued. Accordingly, I do not consider the claimed violation well founded. In any event any interference with Mr Breen's home and family life would need to be balanced against the rights and freedoms of others and, in the light of my conclusions above, I am satisfied that, if the development goes ahead, the effect on Mr Breen and his family would not be disproportionate.

### **Conditions**

- 13.155 Conditions were discussed at the inquiry (without prejudice) and agreed by the Council and the Appellant (INQ5). They can be found in Appendix E. The S106 Agreement (INQ5) and Unilateral Obligation (INQ6) complement the conditions [1.4, 1.5]. In reaching my above conclusions I have taken account of the conditions and obligations insofar as they would serve to regulate and control the development and mitigate the potential environmental effects. In my opinion the conditions as drafted meet the requirements of Circular 11/95 insofar as they are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects. Should the Secretary of State determine that the appeal should succeed, then I recommend that they are attached to the planning permission granted.

### **Summary and Conclusions**

- 13.156 Policy MP27 in the Minerals Local Plan is the key policy against which the proposal is to be assessed. It follows very closely the guidance in MPG3, paragraph 8 and sets down a presumption against coal extraction unless the impact on the environment is acceptable or capable of being made so by conditions and agreements; or, alternatively, unless the environmental harm is clearly outweighed by the local or community benefits the development would provide.
- 13.157 In my assessment of the environmental effects, I conclude that noise and dust levels would be controlled to acceptable levels by the agreed conditions as would air quality. Given the controls that would be placed on water discharges by the Environment Agency, I conclude that there would be no harm to the fishery at Mapperley Reservoir or other harmful hydrological or hydrogeological impacts. The agricultural quality of the land within the site would be marginally improved following restoration. With the agreed conditions and S106 Obligation in place, traffic would not cause unacceptable environmental or other impacts.
- 13.158 On landscape and visual impact, 26 trees would be lost, including 14 veterans, but the woodlands surrounding the site would be preserved, as would the hedgerows alongside Bell Lane, which are the main features in the landscape. Accordingly, landscape impacts would be local and limited. In the medium and longer term the restoration proposals would benefit the landscape. Visual impacts would generally be slight during opencasting and insignificant on restoration. However, the impact on the view from Shipley Hill would be significant and adverse whilst opencasting is in progress and the essential character of Bell Lane where it passes through the site would be

changed for the duration of the works. Notwithstanding this, I do not find these impacts unacceptable having regard to the limited duration of the works, the limited number of people using Bell Lane, the nature of that use, and the availability of alternative walking and riding routes in Shipley Country Park and elsewhere, which would not be affected by the proposals.

- 13.159 On ecology and biodiversity I conclude that, with the mitigation proposed, the scheme would not result in material harm to the Hobby. I further conclude that the loss of 14 veteran trees, whilst regrettable, would be acceptable having regard to their relative isolation in biodiversity terms. Other potential impacts, including those on protected species, would be controlled by conditions. The restoration proposals would significantly enhance the ecological and biodiversity value of the site in the medium and longer term.
- 13.160 On rights of way, one footpath would be diverted and crossing points would be introduced on two others where they cross the access road. A crossing point for heavy plant would also be formed on Bell Lane, but this would be manned and UK Coal's vehicles stopped whenever pedestrians or riders approach. Accordingly, the public would not be inconvenienced. On restoration, a network of new footpaths and bridleways would be provided on the site, which would significantly enhance public access and provide new opportunities for circular walks in the area, linked to Bell Lane and Smalley.
- 13.161 On balance, I conclude that the impacts of the development, including cumulative impacts, would be collectively acceptable for the reasons set out in detail in paragraph 13.139 of my report. In reaching this conclusion I have had regard to the extent to which impacts which might otherwise occur would be controlled by the agreed conditions and S106 Agreement. I further conclude that the proposal would not amount to inappropriate development in the Green Belt, by virtue of its effect on openness; that the conditions and obligations would ensure that the site would be developed, operated and restored to the highest standards; that it would not harm the defined purpose of the South-east Derbyshire Green Belt and would contribute to the purposes of including land in it. In PPG2 terms, it would not constitute inappropriate development.
- 13.162 Overall, I conclude that the proposal would be capable of being made acceptable by the agreed planning conditions and obligations and that the presumption against opencasting set down in policy MP27 of the Minerals Local Plan would be overcome. I find no conflict with the aims and objectives of the other development plan policies brought to my attention.
- 13.163 Should the Secretary of State disagree with my judgement in these matters and conclude that the proposal would result in unacceptable environmental impacts then it will be necessary for her to consider whether the local and community benefits that the scheme would bring would clearly outweigh the environmental harm. These benefits include those flowing from the restoration proposals which would significantly enhance the site's landscape and biodiversity value, although the full benefits would take many years to achieve. There would also be a £100,000 community fund and

other benefits to the local economy from the jobs created and local expenditure. Overall, land quality would also be improved. Other material considerations that would need to be taken into account in arriving at a final conclusion include matters relating to the need for coal and the desirability of maintaining an effective opencast industry in the UK. The representations made on Human Rights will also need to be addressed.

**14. RECOMMENDATIONS**

- 14.1 For the reasons given above, I recommend that the appeal be allowed and planning permission for surface mine coal extraction on land to the north and south of Bell Lane, Smalley be granted subject to the conditions set down in Appendix E.
- 14.2 I further recommend that the Temporary Diversion of Footpath No 6 (Parish of Shipley, Borough of Amber Valley, County of Derbyshire) (No ) Order 200 be made as drafted.

*Andrew M Phillipson*

**Inspector**

**APPENDIX A - APPEARANCES****FOR UK COAL MINING LTD:**

Mr Martin Kingston QC and  
Mr Richard Kimblin, of Counsel

Instructed by Derek Hayes, Nabarro Nathason

They called

Mr Nigel Yaxley MA MIMgt	Consultant
Mr Phil Rech BA BPhil MLI	Faulks, Perry, Culley and Rech
Dr Suzanne Mansfield BSc PhD MIEEM MLI	Faulks, Perry, Culley and Rech
Mr David Bolton FIQ	UK Coal
Mr Christopher Stapleton BSc DipTP MRTPI MISoilSci	BCP Environmental Consultants Ltd
Mr Andrew King BSc	Consultant
Mr Bill Gallear BSc DipTE FICE FIHT MCMI	Scott Wilson
Mr Antony Charles MPhil MIOA MIHT	RPS Planning, Transport and Environment
Dr David Blythe MA PhD MIMMM FGS CEng CGeol	Scott Doherty Associates
Mr Stephen Lucas BEcon MEcon	DTZ Piedad Consulting
Ms Mary Cambell BA BTP MRTPI	Entec UK Ltd

**FOR DERBYSHIRE COUNTY COUNCIL:**

Mr David Park, of Counsel

Instructed by the County Secretary

He called

Mr Gary Ellis BSc DipLA MLI	Conservation and Design Group, DCC
Mr John Holmes	South East Area Countryside Manager, DCC
Mr Dennis Phillips BA	Manager, Green Health Partnership



Ms Anne Cooper BA MSc MIEEM      County Ecologist, DCC  
Mr John Hollister BA MA MRTPI      Scott Wilson  
CEnv MCIWEM

**FOR THE WEST HALLAM ENVIRONMENTAL GROUP AND SMALLEY ACTION GROUP**

Mr Peter Steiner and Mr Richard Thorne

They called

Mr Richard Thorne      Chairman Smalley Action Group  
Mr Peter Steiner MSc MBA CEng      Chairman West Hallam Environmental Group  
MIET  
Mrs Diane Charlton

**FOR SMALLEY PARISH COUNCIL**

Ms Jan Walker      Chairman

**FOR MAPPERLEY PARISH COUNCIL**

Mr Richard Mullard      Spokesman for the Council

**FOR SHIPLEY PARISH COUNCIL**

Mr Brian Harwood      Vice Chairman

**FOR THE NCB No 5 AREA FISHING CLUB**

Mr Michael Webster      Secretary

**OTHER INTERESTED PERSONS**

Bob Laxton MP      Member of Parliament for Derby North  
Judy Mallaber MP      Member of Parliament for Amber Valley  
Cllr Eric Lancashire      County Councillor for Horsley Division  
Cllr Kevin Parkinson      Borough Councillor for Shipley Park, Horsley and  
Horsley Woodhouse Ward

Mrs Diane Charlton	22 Wentworth Street, Ilkeston DE7 5TF
Miss Amy Booth	5 Howitt Street, Heanor DE75 7AU
Ms Gittan Cedervall	2 Park Hall, Mapperley, Ilkeston DE7 6DA
Mr Terry Elliott	3 Holme Croft, West Hallam, Ilkeston DE7 6JQ
Mr Clive Haley	15 Audley Close, Ilkeston. DE7 9JH
Mr Joe Henshaw	17 Main St, Mapperley, Ilkeston DE7 6BY
Mr Richard Mullard	2 Park Hall, Mapperley Ilkeston DE7 6DA
Ms Billie Riley	25 Main St., Mapperley, Ilkeston DE7 6BY
Mrs Jackie Sawyer	17 Main St, Mapperley, Ilkeston DE7 6BY
Mrs Valerie Trevan	Rose Cottage, Shipley Wood, Ilkeston. DE7 8TP
Mrs Lesley Williams	Castle Lodge, Castle Lane, Ironville, Nottingham NG16 5PQ
Mr Jeremy Bloor	Chrissam House, Main Street, Mapperley, Ilkeston DE7 6BY
Mr Stephen Pilkington	Baldock Mill, Cat and Fiddle Lane, West Hallam, DE7 6HD
Ms Lesley Flint	96 Heanor Road, Smalley, Ilkeston DE7 6DX
Mr Tony Maclean	10 Elizabeth Close, West Hallam, Ilkeston DE7 6LW
Mrs Jan Whitaker	159 High Lane West, West Hallam, Ilkeston DE7 6HP
Mr Michael Weston	19 Main Street, Horsley Woodhouse, Ilkeston DE7 6AU
Mr Jeremy Crawford	187 High Lane West, West Hallam, Ilkeston DE7 6HP
Mrs Lorna Taylor	17 Laurel Crescent, Smalley, Ilkeston DE7 6EJ
Mr Terry Foster	118 Heanor Road, Smalley, Ilkeston DE7 6DX
Mr Martin Miller	54 Heanor Road, Smalley, Ilkeston DE7 6DW

**APPENDIX B - DOCUMENTS**

Inspector's Note. For completeness and understanding, all proofs of evidence are included as inquiry documents. However, it should be noted that they have not generally been updated to reflect changes made to the evidence during the course of the inquiry.

**General Documents**

Document	INQ/0	Note of pre-inquiry meeting
Document	INQ/1	Inspector's issues
Document	INQ/2	DCC's letters of notification of receipt of supplementary environmental information and notification of the inquiry
Document	INQ/3	Lists of persons present at the inquiry
	<b>INQ/4:</b>	<b>Letters submitted at the inquiry</b>
Document	INQ/4/1	Not used – incorporated in MW1
Document	INQ/4/2	Letter & petition from the Nutbrook Walking for Health Group
Document	INQ/4/3	Statement by Mr Paget
Document	INQ/4/4	Letter from Mrs Harman
Document	INQ/4/5	Letter from Mr Harwood
Document	INQ/4/6	Letter from Mrs Hobson
Document	INQ/4/7	Letter & petition from Michael House Rudolph Steiner School
Document	INQ/5	Agreed conditions
Document	INQ/6	S106 Agreement
Document	INQ/7	S106 Unilateral Obligation

**Core Documents**

	<b>CD1:</b>	<b>UKC Proposal, Environmental Statement and Amendments:</b>
Document	CD1/1	"Lodge House Proposed Surface Mining of Coal", Volume 1
Document	CD1/2	"Lodge House Proposed Surface Mining of Coal", Volume 2
Document	CD1/3	"Lodge House Supplementary Environmental Information"
Document	CD1/1.1	Covering letter (9 September 2003) & Executive Summary
Document	CD1/1.2	Environmental Statement & Supporting Information
Document	CD1/1.3	Figures
Document	CD1/1.4	Non-Technical Summary
Document	CD1/1.5	Planning Application Form and Certificates
Document	CD1/1.6	Large Scale Planning Application Drawings
Document	CD1/2.1	Annexure A – FPCR Landscape and Visual Assessment
Document	CD1/2.2	Annexure B – BCP Environmental Consultants Ltd, Report on Soil Resources and Land Quality
Document	CD1/2.3	Annexure C – Scott Doherty Associates, Hydrological and Hydrogeological Assessment
Document	CD1/2.4	Annexure D – FPCR – Ecological Survey

Document	CD1/2.5	Annexure E – Kirby Charles Associates Noise Impact Assessment
Document	CD1/2.6	Annexure F – ARCUS Archaeological Desk-Based Assessment
Document	CD1/2.7	Annexure G – Scott Wilson Traffic Impact Assessment
Document	CD1/2.8	Annexure H – Dust Action Plan
Document	CD1/3.1	Covering letter to Planning Inspectorate 29 November 2005
Document	CD1/3.2	Annexure A – Supplementary Environmental Information
Document	CD1/3.3	Annexure B – Revised Site Plan (Dwg 177/D02A)
Document	CD1/3.4	Annexure B – Revised Restoration Plan (Dwg 177/D03A)
Document	CD1/3.5	Annexure C – Revised Bar Chart (Timing of Operations), Figure 4/a
Document	CD1/3.6	Annexure D – Revised Phasing Plans:
Document	CD1/3.6.1	Figure 5(a)(i) Indicative Phasing Plan 6 Months
Document	CD1/3.6.2	Figure 5(a)(ii) Indicative Phasing Plan Year 1
Document	CD1/3.6.3	Figure 6(a) Indicative Phasing Plan Year 2
Document	CD1/3.6.4	Figure 7(a) Indicative Phasing Plan Year 3
Document	CD1/3.6.5	Figure 8(a) Indicative Phasing Plan Year 4
Document	CD1/3.6.6	Figure 9(a) Staged Construction of Overburden Mound: Plan
Document	CD1/3.6.7	Figure 10(a) Staged Construction of Overburden Mound: Sections
Document	CD1/3.7	Annexure F – Supplementary Noise Report
Document	CD1/3.8	Annexure G – Supplementary Landscape Report
Document	CD1/3.9	Annexure H – Non-Technical Summary
	<b>CD2:</b>	<b>Pre-Application Documents &amp; Correspondence Between UKC and DCC:</b>
Document	CD2/1	UKC to DCC (enc: Scoping Exercise Document) 16 September 2002
Document	CD2/2	FPCR to DCC (enc: Plan showing key viewpoints) 15 October 2002
Document	CD2/3	DCC to FPCR 31 October 2002
Document	CD2/4	UKC to DCC (enc: Scoping document correspondence) 15 November 2002
Document	CD2/5	DCC to UKC (enc: Report giving formal scoping opinion) 11 April 2003
	<b>CD3:</b>	<b>Post-Application Correspondence Between UKC &amp; DCC:</b>
Document	CD3/1	DCC to UKC 19 June 2003
Document	CD3/2	DCC to UKC (enc: SMAG objection) 30 January 2004
Document	CD3/3	UKC to DCC (enc: Noise monitoring location plan) 12 February 2004
Document	CD3/4	DCC to UKC 18 February 2004
Document	CD3/5	UKC to DCC 19 February 2004
Document	CD3/6	UKC to DCC 18 June 2004
Document	CD3/7	DCC to UKC 28 June 2004
Document	CD3/8	UKC to DCC 1 July 2004

	<b>CD4:</b>	<b>Post Appeal Date Correspondence Between UKC &amp; DCC:</b>
Document	CD4/1	UKC to DCC 20 May 2005
Document	CD4/2	DCC to UKC 3 November 2005
Document	CD4/3	UKC to DCC 8 November 2005
Document	CD4/4	UKC to DCC 29 November 2005
Document	CD4/5	UKC to DCC and objectors (enc: CD21/13) 31 January 2006
Document	CD4/6	DCC to UKC (enc: CD7/3) 14 February 2006
	<b>CD5:</b>	<b>Responses on Planning Application:</b>
Document	CD5/1	Consultee responses:
Document	CD5/1.1	Coal Authority to DCC with plan to show disused shafts 24 June 2003
Document	CD5/1.2	AVBC to DCC 26 June 2003
Document	CD5/1.3	DEFRA to DCC 27 June 2003
Document	CD5/1.4	Countryside Agency to DCC 10 July 2003
Document	CD5/1.5	English Nature to DCC 16 July 2003
Document	CD5/1.6	AVBC to DCC 28 July 2003
Document	CD5/1.7	Smalley Parish Council to DCC 29 July 2003
Document	CD5/1.8	Erewash Borough Council to DCC 7 August 2003
	<b>CD5/1.9:</b>	<b>Mapperley Parish Council to DCC:</b>
Document	CD5/1.9.1	Letter 25 July 2003
Document	CD5/1.9.1.1	Commentary on Environmental Statement & Supporting Material
Document	CD5/1.9.1.2	Petition
Document	CD5/1.9.2	Letter from J Henshaw, advisor to Mapperley Parish Council, 24 July 2003
Document	CD5/1.9.3	Email with copy letter (dated 24 July 2003) from J Henshaw, advisor to Mapperley Parish Council 25 October 2003
Document	CD5/1.9.4	Presentation "Lodge House Opencast Application and Mapperley Parish"
Document	CD5/1.10	Environment Agency 2 September 2003
Document	CD5/1.11	AVBC (Pollution) 10 September 2003
Document	CD5/1.12	Smalley Parish Council 19 September 2003
Document	CD5/1.13	AVBC with Planning Board Report 16 October 2003
Document	CD5/1.14	Shipley Parish Council with Comments 29 November 2003
Document	CD5/1.15	Central Networks with plan 17 August 2004
Document	CD5/1.16	Derbyshire Wildlife Trust with Assessment 20 August 2004
Document	CD5/1.17	Transco with plan 2 September 2004
	<b>CD 5/2:</b>	<b>DCC Internal Memoranda:</b>
Document	CD5/2.1	30 May 2003
Document	CD5/2.2	25 June 2003
Document	CD5/2.3	14 July 2003
Document	CD5/2.4	15 July 2003
Document	CD5/2.5	21 July 2003
Document	CD5/2.6	11 August 2003

	<b>CD6:</b>	<b>Third Party Representations Pre-Planning Committee</b>
	<b>CD6/1:</b>	<b>SMAG:</b>
Document	CD6/1.1	Dr & Mrs Holland on behalf of SMAG - 18 September 2003, & DCC response
Document	CD6/1.2	SMAG Chairman with Objection Report (dated 9 December 2003) 11 December 2003
Document	CD6/1.3	Presentation to DCC 15 March 2004
Document	CD6/1.4	Objection Presentation 15 March 2004
	<b>CD6/2:</b>	<b>WHEG:</b>
Document	CD6/2.1	WHEG Secretary 14 October 2003
Document	CD6/2.2	WHEG Secretary 21 October 2003
Document	CD6/3	Chair, Shilo North Forum with submission "UK Coal Land Management at Shilo North Erewash Valley" 10 March 2004
Document	CD6/4	Walkers at Shipley Park (WASP), 23 signatures 5 October 2003
Document	CD6/5	Bob Laxton MP (Derby North) & DCC responses 6 October 2003
Document	CD6/6	Judy Mallaber MP (Amber Valley) 15 March 2004
Document	CD6/7	I Robinson, with petition & DCC response 18 November 2003
Document	CD6/8	24 letters in support (common text) 6 September 2004
Document	CD6/9	20 letters in support (common text) 7 September 2004
Document	CD6/10	Pro forma letter 1: 293 signatures received between 1 September 2003 and 19 January 2004
Document	CD6/11	Pro-forma letter 2: 180 signatures received between 5 August and 20 September 2003
Document	CD6/12	Pro-forma letter 3: 25 signatures on 19 letters with handwritten comments
Document	CD6/13	Other representations from local residents and other individuals
	<b>CD7:</b>	<b>DCC Regulatory- Planning Control Committee:</b>
Document	CD7/1	Report to meeting of 11 October 2004
Document	CD7/2	Minutes of meeting of 11 October 2004
Document	CD7/3	Report to meeting of 20 February 2006
Document	CD7/4	Minutes of meeting of 20 February 2006
Document	<b>CD8</b>	<b>Refusal Notice 15 October 2004</b>
Document	<b>CD9</b>	<b>UKC Planning Appeal 7 March 2005</b>
	<b>CD10:</b>	<b>DCC Appeal Questionnaire:</b>
Document	CD10/1	DCC completed questionnaire form 24 March 2005
Document	CD10/2	List of Enclosures under Question 19 (f) of form
Document	CD10/3	Copy Notice of Planning Application
Document	CD10/4	List of Statutory Consultee responses (for copies of responses see CD5)
Document	CD10/5	Copy of form of letter about appeal and list of people notified

Document	<b>CD11</b>	<b>UKC Statement of Case 21 April 2005</b>
Document	<b>CD12</b>	<b>DCC Statement of Case 21 April 2005</b>
	<b>CD13:</b>	<b>DCC Correspondence with Planning Inspectorate:</b>
Document	CD13/1	DCC Provisional schedule of planning conditions 22 April 2005
Document	CD13/2	DCC Letter with Statement of Case (CD12) 12 May 2005
	<b>CD14:</b>	<b>UKC Correspondence with Planning Inspectorate and other parties post appeal date:</b>
Document	CD14/1	Planning Inspectorate letter 11 March 2005
Document	CD14/2	Planning Inspectorate letter 22 March 2005
Document	CD14/3	Planning Inspectorate letter 22 March 2005
Document	CD14/4	Planning Inspectorate letter 4 April 2005
Document	CD14/5	GO-EM letter 7 April 2005
Document	CD14/6	Planning Inspectorate letter 18 April 2005
Document	CD14/7	UKC letter to GO-EM 19 April 2005
Document	CD14/8	Planning Inspectorate letter 25 April 2005
Document	CD14/9	Planning Inspectorate letter (and enclosures) 13 May 2005
Document	CD14/10	UKC letter to GO-EM (Footpath Diversion Application) 19 May 2005
Document	CD14/11	UKC letter to Planning Inspectorate (Supplementary Statement) 29 November 2005
Document	CD14/12	UKC to Smalley Parish Council 29 November 2005
Document	CD14/13	UKC to SMAG 29 November 2005
Document	CD14/14	UKC to NCB No. 5 29 November 2005
Document	CD14/15	UKC to Mapperley Parish Council 29 November 2005
Document	CD14/16	UKC to WHEG 29 November 2005
Document	CD14/17	UKC Shipley Parish Council 29 November 2005
Document	CD14/18	UKC to SMAG 16 December 2005
Document	CD14/19	Planning Inspectorate letter (and enclosures) 10 January 2006
Document	CD14/20	UKC letter to Planning Inspectorate 20 January 2006
Document	CD14/21	DEFRA to UKC (and attachments) 23 January 2006
Document	CD14/22	UKC to Action Groups (and Planning Inspectorate) 26 January 2006
Document	CD14/23	UKC to Fishing Club (and Planning Inspectorate) 26 January 2006
Document	CD14/24	DEFRA to UKC (and Environment Agency attachment) 2 February 2006
Document	<b>CD15</b>	<b>Protected Species Briefing Note to the Inspector</b>
	<b>CD16:</b>	<b>Representations to the Planning Inspectorate on Appeal:</b>
Document	CD16/1	Smalley Parish Council 18 April 2005
Document	CD16/2	Shipley Parish Council Undated
Document	CD16/3	Mapperley Parish Council (reply from Planning Inspectorate) 25 April 2005

Document	CD16/4	Erewash Borough Council Report and Minutes of Committee Meeting. 6 August 2003
Document	CD16/5	SMAG Undated
Document	CD16/6	WHEG: including "Supplementary Objection Material in Support of Refusal" dated 18 April 2004 (received 19 April 2005), & reply from Planning Inspectorate
Document	CD16/7	No. 5 Area National Coal Board Fishing Club - 14 April 2005
Document	CD16/7.1	Attached letters to DCC dated 6 December 2003 and 11 April 2005
Document	CD16/7.2	Ecological Survey of Mapperley Reservoir produced by the Division of Biology Derby Lonsdale College of Higher Education (undated)
Document	CD16/8	Letters from individuals
	<b>CD17:</b>	<b>Representations to the Planning Inspectorate Following Appeal Amendments:</b>
Document	CD17/1	Mr & Mrs P Howarth 7 December 2005
Document	CD17/2	Central Networks 8 December 2005 and 10 Feb 2006
Document	CD17/3	J Horton 9 December 2005
Document	CD17/4	JS Faulkner 23 December 2005
Document	CD17/5	C Duncan & J Ross 29 December 2005
Document	CD17/6	J Mallaber MP 30 December 2005
Document	CD17/7	AVBC 10 January 2006
Document	CD17/8	Smalley PC 10 January 2006
	<b>CD18:</b>	<b>Representations to DCC Following Appeal Amendments:</b>
Document	CD18/1	English Nature 15 December 2005
Document	CD18/2	J Mallaber MP 4 January 2006
	<b>CD19:</b>	<b>Representations to GO-NE:</b>
Document	CD19/1	Derwent Valley Bridleways Association 9 February 2006
Document	CD19/2	Erewash Riders Association 11 February 2006
Document	CD19/3	British Horse Society - Derbyshire 12 February 2006
	<b>CD20:</b>	<b>The Development Plan:</b>
Document	CD20/1	Regional Spatial Strategy for the East Midlands RSS8 2005
Document	CD20/2	Review of the East Midlands Regional Plan to 2026 Options for Change October 2005
Document	CD20/3	Derby and Derbyshire Joint Structure Plan (January 2001)
Document	CD20/4	Derby and Derbyshire Minerals Local Plan (adopted, incorporating First Alteration: Chapter 13- Coal) — November 2002
Document	CD20/5	Derby and Derbyshire Waste Local Plan, Proposed Adopted Version 2005
Document	CD20/6	Derbyshire Minerals and Waste Development Scheme 2004 – 2007
Document	CD20/7	Amber Valley Borough Local Plan (1994)



Document	CD20/8	Amber Valley Borough Revised Deposit Plan (2002)
Document	CD20/8A	Amber Valley Local Plan Review – Response to Inspector’s Report, Proposed Modifications and Further Proposed Modifications
	<b>CD21:</b>	<b>Technical Publications and Opinions:</b>
Document	CD21/1	Guidelines for Landscape and Visual Impact Assessment, 2nd edition
Document	CD21/2	Local Air Quality Management, Technical Guidance
Document	CD21/3	Agricultural Land Classification of England and Wales: Revised Guidelines for Grading the Quality of Agricultural Land, MAFF 1988
Document	CD21/4	The Reclamation of Mineral Workings to Agriculture, DoE 1996
Document	CD21/5	Guidance on Good Practice for the Reclamation of Mineral Workings to Agriculture, DoE 1996
Document	CD21/6	Good Practice Guide for Handling Soils, MAFF 2000
Document	CD21/7	The Draft Soil Strategy for England, DEFRA March 2001
Document	CD21/8	First Soil Action Plan for England: 2004 to 2006, DEFRA 2004
Document	CD21/9	The State of Soils in England and Wales, Environment Agency 2004
Document	CD21/10	DEFRA Guidance for successful reclamation mineral & waste sites.
Document	CD21/11	The Coal Authority Report - Woodside Pumping Station June 2000
Document	CD21/12	The Coal Authority Report -Woodside Pumping Station Water Management June 2001
Document	CD21/13	2006 Traffic Impact Assessment, Scott Wilson on behalf of UKC
	<b>CD22:</b>	<b>Regional &amp; Local Documents:</b>
Document	CD22/1	Destination 2010: Regional Economic Strategy for the East Midlands 2003-2012, East Midlands Development Agency
Document	CD22/2	Space4trees: The Regional Forestry Framework for the East Midlands, Forestry Commission, 2005
Document	CD22/3	The Landscape Character Assessment of Derbyshire, DCC, December 2003, ISBN 0903463741
Document	CD22/4	East Derbyshire Woodland Project
Document	<b>CD23</b>	<b>Statement of Common Ground</b>
Document	CD23A	Agreed amendments to trees on site. Dated 12 <sup>th</sup> April 2006

#### Documents Submitted by the Council

Document	DCC Plan 1	Plan showing Derbyshire opencast sites
Document	DCC0/1	Opening statement and attachments
Document	DCC0/2	Supplementary information on the Hobby (confidential)

Document	DCC0/3	Tree Preservation Order 338/2006 – Lodge House, Shipley
Document	DCC0/4	Stopping Up Order re. Bell Lane, ref. no: EMRT 505035/1/012
Document	DCC0/5	Extract from definitive footpath map, Belper Former Rural District
Document	DCC0/6	Cycle Derbyshire Map
Document	DCC0/7	Closing submissions
Document	DCC1	Mr Hollister's proof of evidence
Document	DCC1/1	Mr Hollister's appendices
Document	DCC1/2	Windsor Opencast Site: Secretary of State's decision & Inspector's report
Document	DCC2	Mr Ellis's proof of evidence
Document	DCC2/1	Mr Ellis's appendices
Document	DCC2/2	Mr Ellis's figures
Document	DCC3	Ms Cooper's proof of evidence
Document	DCC3/1	Ms Cooper's appendices
Document	DCC3/2	Ms Cooper's figures
Document	DCC3/3	Letter from DCC to Derbyshire Wildlife Trust: 'Potential Candidate Wildlife Site at Lodge House, Shipley'
Document	DCC4	Mr Holmes's proof of evidence
Document	DCC4/1	Mr Holmes's appendices
Document	DCC4/2	Tables from Country Park Review 2003 (additional to DCC4/1)
Document	DCC5	Mr Phillips's proof of evidence
Document	DCC5/1	Mr Phillips's appendices

#### **Documents Submitted by UK Coal Mining Ltd**

Document	APP0/1	Opening statement
Document	APP0/2	UK Coal letter of 7 October 2002 to Annie Cooper (DCC) enclosing draft site plans
Document	APP0/3	Wildlife Conservation Partnership letter of 25 April 2006 to Rebecca Miller (FPCR), re installation of nest baskets
Document	APP0/4	Bundle of 13 letters between UKC & Objectors
Document	APP0/5	Letter from UKC to DCC: "Smotherfly site – request to defer restoration works"
Document	APP0/6	Letter from DCC to UKC: "Smotherfly site – request to defer restoration works"
Document	APP0/7	Map showing pylon heights near Lodge House site
Document	APP0/8	Notice of adoption of Amber Valley Borough Local Plan
Document	APP0/9	Letter to Amber Valley Borough Council objecting to TPO 338/2006 from Mr Rech on behalf of UK Coal
Document	APP0/10	Note on the Coal Authority
Document	APP0/11	Note on Road Traffic Act 1988
Document	APP0/12	Closing submissions
Document	APP0/13	Comments on DCC closing submissions
Document	APP1	Mr Yaxley's proof of evidence
Document	APP1A	Mr Yaxley's summary
Document	APP2	Mr Yaxley's appendices

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Document	APP3	Mr Bolton's proof of evidence
Document	APP3A	Mr Bolton's summary
Document	APP4	Mr Bolton's appendices
Document	APP4A	Bundle of photographs of overburden mounds at Maiden's Hall site
Document	APP4B	Leaflet and note re. public exhibition at Smalley & Mapperley, November 2002
Document	APP4C	Photographs of the Kirk site
Document	APP5	Mr Charles's proof of evidence
Document	APP5A	Mr Charles's summary
Document	APP5B	Mr Charles's supplementary proof of evidence
Document	APP5C	Mr Charles's addendum to proof of evidence
Document	APP6	Mr Charles's appendices
Document	APP6A	Extract from Calculation of Road Traffic Noise
Document	APP6B	Map showing noise monitoring locations
Document	APP7	Mr King's proof of evidence
Document	APP7A	Mr King's summary
Document	APP8	Mr King's appendices
Document	APP8A	Paper on 'Parents perception of the health & environmental impact of opencast coal mining'. S. Moffat & T. Pless-Mullooli. Social Science & Medicine 57 2003 p437-451
Document	APP9	Mr Stapleton's proof of evidence
Document	APP9A	Mr Stapleton's summary
Document	APP10	Mr Stapleton's appendices
Document	APP11	Dr Mansfield's proof of evidence
Document	APP11A	Dr Mansfield's summary
Document	APP12	Dr Mansfield's appendices
Document	APP12A	Revised appendix 3
Document	APP12B	Supplementary tree information - off-site veteran tree survey
Document	APP12C	Supplementary information in relation to bat mitigation.
Document	APP12D	Map showing the survey boundary for off-site veteran tree survey
Document	APP13	Mr Rech's proof of evidence
Document	APP13A	Mr Rech's summary
Document	APP13B	Answers to questions raised during Mr Rech's evidence
Document	APP14	Mr Rech's appendices
Document	APP14A	Aerial photographs of site showing distances to features of interest
Document	APP14B	Additional photographs of site
Document	APP15	Mr Gallear's proof of evidence
Document	APP15A	Mr Gallear's summary
Document	APP15B	A608 Smalley to Derby Road accident study
Document	APP16	Mr Gallear's appendices
Document	APP17	Mr Lucas's proof of evidence
Document	APP17A	Mr Lucas's summary
Document	APP18	Mrs Campbell's proof of evidence
Document	APP18A	Mrs Campbell's summary
Document	APP19	Mrs Campbell's appendices
Document	APP19A	Carrington Farm Committee Report
Document	APP19B	Captain's Barn Farm – SoS's decision and Inspector's report

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Document	APP19C	Note on Amber Valley Borough Local Plan review & Policy EN13
Document	APP19D	Extracts from Modifications Report, Amber Valley Borough Local Plan Review
Document	APP19E	Letter from Amber Valley Borough Council re TPO 338/2006
Document	APP20	Dr Blythe's proof of evidence
Document	APP20A	Dr Blythe's summary
Document	APP20B	Dr Blythe's supplementary proof of evidence
Document	APP20C	Note on magnesium
Document	APP21	Dr Blythe's proof appendices

#### **Documents Submitted by the Parish Councils**

Document	MPC1	Mapperley Parish Council's statement
Document	MPC2	Summary of Mapperley Parish Council's statement
Document	MPC3	Appendix to Mapperley Parish Council's statement
Document	MPC4	Mapperley Parish Council's Closing submissions
Document	SmPC1	Smalley Parish Council's statement
Document	ShPC1	Shipley Parish Council's statement

#### **Documents Submitted by the West Hallam Environmental Group and the Smalley Action Group**

Document	WHEG/SMAG/1	Proof of evidence and appendices.
Document	WHEG/SMAG/2	Map showing previous opencast coal extraction in the vicinity of the site
Document	WHEG/SMAG/3	Map showing positions and directions of photographs submitted in evidence. (Updated 16/5/06)
Document	WHEG/SMAG/4	Health impact assessment of the proposed extension to Margam opencast mine
Document	WHEG/SMAG/5	Mr Henshaw's rebuttal statement on hydrology and hydrogeology, with appendices
Document	WHEG/SMAG/6	Summary of WHEG/SMAG/5
Document	WHEG/SMAG/7	Article from Telegraph dated 5/9/06 re. threatened pit closures
Document	WHEG/SMAG/8	Mrs Charlton's summary
Document	WHEG/SMAG/9	E-mail on Water Voles from Mr Henshaw
Document	WHEG/SMAG/10	Note on employment statistics
Document	WHEG/SMAG/11	Evidence of Dr. David Holland
Document	WHEG/SMAG/12	Evidence given to the Long Moor Inquiry by FOIL
Document	WHEG/SMAG/13	SMAG: closing submission
Document	WHEG/SMAG/14	WHEG: closing submission

**Documents Submitted by the NCB No 5 Fishing Club**

Document	NCBFC1	NCB No.5 Area Fishing Club submissions
Document	NCBFC2	Response to Dr Blythe's proofs of evidence
Document	NCBFC3	Closing submissions

**Documents Submitted by Other Objectors to the Proposal**

Document	BL1	Plan submitted by Bob Laxton MP showing routes referred to in his statement
Document	JM1	Statement by Judy Mallaber MP
Document	JM2	Map showing "Mead" excavation and mounds
Document	JM3	Submission & comments
Document	EL1	Cllr Lancashire's statement
Document	EL2	Cllr Lancashire's further statement
Document	EL3	Map dated 1966 showing collieries
Document	KP1	Cllr Parkinson's statement
Document	AB1	Miss Booth's statement and petition
Document	JB1	Mr Bloor's statement
Document	GC1	Ms Cederevall's statement
Document	DC1	Mrs Charlton's statement
Document	JC1	Mr Crawford's statement
Document	JC2	Page of photographs submitted by Mr Crawford
Document	TE1	Mr Elliott's statement
Document	LF1	Ms Flint's statement
Document	TF1	Mr Foster's statement
Document	CH1	Mr Haley's statement
Document	JH1	Mr Henshaw's statement
Document	RM1	Mr Mullard's statement
Document	SP1	Mr Pilkington's statement
Document	BR1	Ms Riley's statement
Document	JS1	Mrs Sawyer's statement
Document	JS2	Picture Telegraph 15th April 2006 containing photographs of a group walk organised by WHEG/SMAG
Document	LT1	Mrs Taylor's statement
Document	VT1	Mrs Trevan's statement
Document	MW1	Mr Weston's statement and attachments
Document	JW1	Mrs Whittaker's statement
Document	LW1	Mrs William's statement

**APPENDIX C - PLANS**

<b>Plans</b>	<b>A1 to A3</b>	<b>Application plans</b>
	<b>A1</b>	<b>Existing Features (Drg. D177/01).</b>
	<b>A2</b>	<b>Site Plan (Drg. D177/02).</b>
	<b>A3</b>	<b>Restoration Plan (D177/03).</b>
<b>Plans</b>	<b>B1 &amp; B2</b>	<b>Revised Application Plans*</b>
	<b>B1</b>	<b>Site Plan (Drg 177/02A)</b>
	<b>B2</b>	<b>Restoration Plan (D177/03A).</b>
<b>Plan</b>	<b>C</b>	<b>Extract of Site Plan (Drg. 177/02A) showing changes to overburden mound M1 required to retain Tree 8**</b>

\* Submitted on 29<sup>th</sup> November 2005 with Supplementary Environmental Information

\*\* Submitted at the inquiry, following UK Coal's agreement to retain Tree 8.

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**APPENDIX D - ABBREVIATIONS**

AOD	above ordnance datum
COMEAP	Committee on the Medical Effects of Air Pollutants
DCC	Derbyshire County Council
Drg	Drawing
EDWP	East Derbyshire Woodland Project
EN	English Nature
et seq	and the following (pages etc)
GHP	Green Health Partnership
GONE	Government Office for the North East
ha	hectares
HGV	heavy goods vehicle
ibid	in the same document
IR	Inspector's report
km	kilometres
LBAP	Local Biodiversity Action Plan
m	metres
m <sup>2</sup>	square metres
MLP	Minerals Local Plan
OCA	Opencast Constraint Area
p	page
para	paragraph
PINS	The Planning Inspectorate
pp	pages
RPA	root protection area
S106	Section 106
SLA	Special Landscape Area
SMAG	Smalley Action Group
UK Coal	UK Coal Mining Ltd
TPO	tree preservation order
WHEG	West Hallam Environmental Group

**APPENDIX E – CONDITIONS**

Inspector's Note. Conditions were discussed at the inquiry (without prejudice) and agreed by the Council and the Appellant (INQ5). In the event that the Secretary of State is minded to grant planning permission for the proposed development, I recommend that the following conditions should be attached to the permission granted. The reasons for the conditions are set down in INQ5.

1. No development including the uses, operations and activities associated with the proposals hereby approved shall be carried out other than in accordance with the details set out in the Application for Planning Permission and the Environmental Statement submitted by UK Coal Mining Limited dated 9 May 2003 and its further letter and submissions dated 12 February 2004 subject to the changes and further information set out in the Supplementary Environmental Information submitted to the Planning Inspectorate by UK Coal Mining Limited with a letter dated 29 November 2005 and the further documents cited in the following conditions except:
  - (i) as required by conditions of this permission; or
  - (ii) for such minor amendments thereto as shall have received the approval in writing from the Mineral Planning Authority.
2. From the commencement of the development until its completion, a copy of this permission, including all documents hereby approved or cited in the following conditions and any other document subsequently approved in accordance with any condition of this permission shall be kept available for inspection at the developer's Lodge House site offices during the prescribed working hours.
3. Notwithstanding the provisions of Article 3 and Parts 19 and 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 no plant or machinery, buildings or structures shall be placed or erected on the site except as expressly authorised or required by this permission, or otherwise approved in writing beforehand by the Mineral Planning Authority.
4. No materials for infilling, including minerals, shall be imported to the site and no coal or other mineral shall be imported to the site for blending or re-sale or any purpose not directly related to the surface mining and restoration works hereby permitted.
5. No soils or any other material suitable for the restoration of the site shall be exported from the site.
6. No excavation below soil level shall take place outside the areas bounded by the dashed line showing the limit of excavation on the approved revised Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) or below the base of the Third Waterloo (AQ) Coal Seam within the Duckmanton Stage (Westphalian 'B') of the Upper Carboniferous Coal Measures.

*Commencement and Duration*

7. The Preparation Works under this development (as defined in Condition number 9) shall be begun not later than two years from the date of this planning permission.



8. All development authorised or required by this permission (with the exception of aftercare requirements) shall cease and the site shall be restored in accordance with the approved details and conditions of this permission not later than 54 months from the date of commencement of the Preparation Works (as defined and notified in accordance with Condition number 9).

*Preparation Works*

9. At least 14 days notice shall be given, in writing, to the Mineral Planning Authority of the commencement of Preparation Works at the site (where Preparation Works are defined as the provision of fencing; a new vehicular access and coal haul road; drainage and water treatment facilities; site offices; plant yard and coal processing area; necessary service diversions and wheelwash facility - all as described and shown in the documents approved under the terms of Condition number 1 above).
10. No development (other than Preparation Works as defined in Condition number 9, soil stripping and excavation and backfilling in Area 1A) shall commence until such time as the Preparation Works have been completed.
11. No hedgerows shall be removed until a scheme for the translocation of the hedgerows and their associated litter and brashings has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall specify:
- (i) the locations of the existing hedgerows which are to be translocated and the locations to which the hedgerows and litter strip are to be moved (on a plan at a scale of 1:1250);
  - (ii) the method of lifting, site preparation and replacing the hedgerows to include:
    - (a) the lifting of a 1 metre wide strip of soil from either side of the hedgerows to be translocated,
    - (b) the replacement of this strip of soil to the approved locations;
  - (iii) the measures to be taken to protect, maintain and manage the hedgerow and strip; and
  - (iv) a programme of implementation.

The scheme shall be implemented as approved in writing.

*Noise and Vibration*

12. No blasting shall take place except such as will result in a peak particle velocity (p.p.v.) in any plane not exceeding 12mm per second, with 99% of blasts not exceeding 6mm per second in any 6 month period at the nearest occupied property. Where the p.p.v. exceeds 6mm per second, the Mineral Planning Authority shall be informed on the same working day.

Blasting shall be carried out only between 10.00 and 12.00 or between 14.00 and 16.00 on weekdays or at such other specified times as may be agreed in writing by the Mineral Planning Authority. Such blasting shall be carried out only after visual and audible warning signs have been given.

The Mineral Planning Authority shall be notified in writing and a publicity exercise shall be carried out to advise local residents one week prior to the commencement of blasting operations.

The p.p.v. generated by each blast shall be monitored at locations which have been previously agreed in writing by the Mineral Planning Authority and the results of all such monitoring shall be available for inspection by the Mineral Planning Authority at the site office during normal site operating hours.

13. Noise levels generated by the development shall not exceed those specified in the table below when measured at the locations shown on Figure 17A of inquiry document APP6B.

Location	Noise Level due to Normal Operations dBL <sub>Aeq</sub> (1 hour) (free field)	Noise Level due to Temporary Operations dBL <sub>Aeq</sub> (1 hour) (free field)	Noise Level due to site operations between 2300 and 0700 hours dBL <sub>Aeq</sub> (1 hour) (free field)
The Lodge	51	60	5dB above background (L <sub>A90</sub> (1 hour)) levels recorded during the period specified above (as defined and measured in accordance with BS4142)
Radford Road	46	60	As above
Home Farm	48	60	As above
Flatmeadow Farm	51	60	As above
Mapperley Park	46	60	As above
Rose Cottage	50	60	As above
Shipley Country Park	51	60	Not applicable
Mapperley Reservoir	51	60	Not applicable

Where:

“temporary operations” comprise soil stripping, the formation and removal of associated soils mounds, and the construction and removal of the outer faces of the overburden mounds;

“background levels” are those to be recorded before development commences (in a survey carried out in accordance with a scheme to be submitted to and approved in writing by the Mineral Planning Authority) and as confirmed in writing to the Mineral Planning Authority; and

“normal operations” comprise surface mining, coal screening, construction and removal of overburden mounds (save for those elements included as temporary operations), dispatch and all other operations/activities.

The noise level due to normal operations at any specified location in the table shall not:

- (i) be exceeded at any time except when temporary operations are taking place;

- (ii) be exceeded at any such location for more than 8 weeks in any 12 month period; and
  - (iii) at any time exceed the noise level for temporary operations at that location set out in the table.
- 14. No development shall take place until a scheme for the monitoring and recording of noise levels has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall specify:
  - (i) the qualifications and experience of the personnel to be engaged in undertaking the monitoring and recording;
  - (ii) the measures to be taken to prevent the recording of data in unsuitable weather conditions;
  - (iii) the equipment to be used and arrangements for calibration;
  - (iv) the frequency of monitoring and reporting to the Mineral Planning Authority; and
  - (v) the steps to be taken in the event that complaints due to noise (including complaints unrelated to exceedances of the noise levels specified in Condition number 13 above) are received by the developer.

The results of the monitoring and records of any complaints received by the developer due to noise shall be maintained and made available for inspection by the Mineral Planning Authority between reporting intervals at the site office during normal site operating hours.

The scheme shall be implemented as approved in writing.

- 15. Efficient silencers shall be fitted to, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the site. Machinery shall not normally be operated with covers open or removed.
- 16. All pumps used in connection with the development shall be powered by electricity or acoustically insulated diesel powered units.
- 17. Reversing alarms used on vehicles on the site shall be either non-audible, ambient related, broadband or low-tone devices.
- 18. Processing of coal shall not take place until noise baffles are constructed around the perimeter of the "Plant Yard and Coal Processing Area" shown on Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) in accordance with details submitted to and approved in writing by the Mineral Planning Authority. The noise baffles shall be retained as approved until coal processing ceases.
- 19. The dwellings within the site (Two Elms and Prospect Farm) shall not be occupied for the duration of the development as specified in Condition number 8 above.

*Air Quality*

20. No development shall take place until a scheme for the suppression and control of dust (including PM<sub>10</sub> particles) and the monitoring and recording of dust levels has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be based on the Dust Management and Action Plan of February 2006 and shall include:

- (i) the measures to be taken to suppress and control dust;
- (ii) the qualifications and experience of the personnel to be engaged in undertaking the monitoring and recording;
- (iii) the equipment to be used to monitor dust levels and the arrangements for calibration;
- (iv) the number and location of monitoring points;
- (v) the frequency of monitoring and reporting to the Mineral Planning Authority; and
- (vi) the steps to be taken in the event that complaints due to dust are received by the developer including the triggers for action up to and including the temporary suspension of operations.

The results of the monitoring and records of any complaints received by the developer due to dust shall be maintained and made available for inspection by the Mineral Planning Authority between reporting intervals at the site office during normal site operating hours.

The scheme shall be implemented as approved in writing.

21. There shall be no burning of waste on the site.

*Other Environmental Protection*

22. No development or other activities associated with the development (other than pumping operations for the removal of water from the excavations) authorised or required by this permission shall be carried out on the site except between the following times:

0700 - 1900 hours	Mondays to Fridays;
0700 - 1300 hours	Saturdays.

In addition, no soils shall be stripped or replaced and no topsoil or subsoil mounds shall be formed or removed within 200 metres of occupied properties except between the following times:

0800 - 1900 hours	Mondays to Fridays;
0800 - 1300 hours	Saturdays.

There shall be no development or other activities associated with the development on Sundays, Bank Holidays or national holidays.

23. No servicing, maintenance or testing of plant shall take place on the site except between the following times:
- |                   |                     |
|-------------------|---------------------|
| 0700 - 1900 hours | Mondays to Fridays; |
| 0700 - 1300 hours | Saturdays.          |
24. All rubbish and scrap materials generated on the site shall be collected and stored, in a screened position within the site area until such time as they are removed to a suitably licensed waste management facility.
25. The development shall be carried out in accordance with the phased programme and timetable as specified in Figures 4/A, 5ai, 5aii, 6a, 7a, and 8a in the Supplementary Environmental Information referred to in Condition number 1 above.
26. The overburden mounds M1 and M2 as shown on approved revised Site Plan Drawing No. 177/D02A (as amended in accordance with Condition number 27) shall be formed and grassed in accordance with the relevant particulars contained in sections 2.19 to 2.24 and Figure 9A of the Supplementary Environmental Information referred to in Condition number 1 and at no time shall material be placed to a level greater than 122m AOD or 17 metres above original ground level (as shown on Drawing No. 177/D01), whichever is the lower.
27. No development shall take place until a scheme for the protection of:
- (i) the trees within Whiteley's Plantation, Manchester Wood, John Wood and Abbot's Rough, and
  - (ii) tree number 8 and the other trees and hedges within or adjacent to the boundaries of the site which are to be retained as shown on Figure 1 in inquiry document CD23A

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall specify:

- (a) a 20 metre wide root protection area ('RPA') within those parts of the site which abut the woodlands referred to in (i) above;
- (b) RPAs for each area or trees and sections of hedgerow referred to in (ii) above;
- (c) the fencing to be provided to delineate each RPA; and
- (d) a programme for the provision of fencing and the periods during which the fencing is to be maintained.

Within each RPA there shall be no soil stripping; storage of soils, overburden or other materials; mineral or other excavation; and trafficking of vehicles or plant.

The scheme shall also include a replacement for Site Plan Drawing No. 177/D02A - amended to show the consequential changes (including those to the location of soil storage mounds and the boundary of the extraction area) necessitated by the above requirements.

The scheme shall be implemented as approved in writing.

28. No development shall take place until details of any fixed external lighting or moveable external lighting sets to be erected or used on the site have been submitted to and approved in writing by the Mineral Planning Authority. No external lights other than those approved shall be used on the site (other than lights on mobile plant).

*Surface and Ground Water Protection*

29. No development shall take place until a scheme for the collection, management and treatment of surface and ground water on the site has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

30. Prior to being discharged to any watercourse, surface water sewer or soakaway system, all surface water from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the area being drained.
31. 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 is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses shall be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and overflow pipe outlets shall be detailed to discharge downwards into the bund.

*Highways and Access*

32. No vehicle shall enter or leave the site except via the new vehicular access shown on Drawing number D100758/TP/01B in inquiry document APP16.
33. The total number of heavy goods vehicle ('HGV') movements (where one HGV entering and then leaving the site would generate two movements) using the new vehicular access shall not exceed 118 during any full working day or 60 on a Saturday.

Daily records shall be kept at the site office of the number of HGV movements. Such records shall be made available to the Mineral Planning Authority during normal operating hours.

34. The wheelwash facility shall not be installed as part of the Preparation Works until such time as details of the facility have been submitted to and approved in writing by the Mineral Planning Authority. Following its installation the approved wheelwash

facility shall be used and maintained (in conjunction with such other measures as may prove necessary) to prevent the deposition of mud and/or other extraneous material on the public highway throughout the life of the development.

#### *Archaeology*

35. No development shall take place until a programme of archaeological work in accordance with a scheme of investigation has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

36. The developer shall afford access at all reasonable times to any archaeologist nominated by the Mineral Planning Authority and shall allow that person to observe the soil stripping operations, conduct archaeological investigations and where appropriate excavations, and record and recover items of interest.

#### *Ecology*

37. No development shall take place until a pre-development ecological survey to establish the presence or otherwise of Great Crested Newts within the site has been carried out in accordance with the search methodology set out in the *Great Crested Newt Mitigation Guidelines (English Nature: August 2001)* and the results have been provided in writing to the Mineral Planning Authority.<sup>1</sup>

38. No development shall take place until a scheme for the safeguarding of existing habitats or provision of alternative habitats for:

- (i) Hobby;
- (ii) Badger;
- (iii) Brown Long Eared Bat;
- (iv) Pipistrelle Bat;
- (v) any other bats species identified as using features on the site for shelter;
- (vi) Barn Owl;
- (vii) Kestrel; and
- (viii) Great Crested Newt (if confirmed as present following the survey required under Condition number 37 above)

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

39. No trees, hedgerows or shrubs shall be removed during the bird nesting season (i.e. 1<sup>st</sup> March to 31<sup>st</sup> July) unless the trees, hedgerows or shrubs that are to be removed have been surveyed to confirm the absence of active bird nesting and a report setting out the

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<sup>1</sup> WHEG/SMAG argue that this condition should be extended to include a requirement to survey for Water Vole (8.34). For the reasons given in para 13.74 of my report, I consider this unnecessary.

methodology employed and the results of the survey has been submitted to and approved in writing by the Mineral Planning Authority.

*Rights of Way*

40. No works in connection with the construction of the coal haul road shall be commenced until such time as a scheme designed to ensure the safety of users of Public Footpaths 1 and 2 has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:

- (i) warning signs on the footpaths and the haul road; and
- (ii) measures to restrict the speed of vehicles.

All measures included in the approved scheme shall be implemented before use of the haul road commences and maintained until the haul road is no longer in use and is finally restored.

41. No works in connection with the construction of the crossing point at Bell Lane shall be commenced until such time as a scheme designed to ensure the safety of users of the bridleway and the minimisation of hedgerow removal has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:

- (i) warning signs on Bell Lane and the haul road;
- (ii) measures to restrict the speed of vehicles;
- (iii) manned supervision;
- (iv) details of the crossing construction and the sections of hedgerow to be removed; and
- (v) arrangements to ensure that bridleway users have priority over site traffic.

All measures and details included in the approved scheme shall be implemented before the use of the crossing point at Bell Lane commences and shall be maintained during periods of use by heavy plant.

*Contaminated Land*

42. No excavation shall take place within the previously opencasted areas (shown in Figure 2 in the Environmental Statement) until a scheme for:

- (i) the identification of any contaminated land encountered during site operations; and
- (ii) the control and mitigation of any associated potential adverse effects on the environment and human health

has been submitted to and approved in writing by the Mineral Planning Authority.

The scheme shall be implemented as approved in writing.

*Soil Stripping, Storage and Replacement and Replacement of Overburden*

43. No development shall take place until a scheme for the stripping, storage and replacement of topsoil, subsoil and soil forming material to be used in the restoration



has been submitted to and approved in writing by the Mineral Planning Authority. (The scheme shall be based on the Soil Handling Strategy in Appendix 2 of inquiry document CD23).

The scheme shall be implemented as approved in writing.

*Restoration*

44. No development shall take place until a detailed restoration scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of

- (i) the areas to be restored to pasture/arable, woodland and woodland edge, species rich grassland, conservation headlands, scrubland, marshland and ponds;
- (ii) new fencing, footpaths, bridleways and the deadwood receptor site;
- (iii) final restoration contours; and
- (iv) a detailed programme of implementation.

The scheme shall be implemented as approved in writing.

45. No topsoils or subsoils shall be replaced until:

- (i) a topographic survey plan of the surface of the replaced overburden has been submitted to the Mineral Planning Authority to enable it to verify that the replaced overburden conforms to levels consistent with those set out in the restoration scheme approved in accordance with Condition number 44;
- (ii) a meeting has taken place between the developer and the representatives of the Mineral Planning Authority on site to assess the information provided in the topographic survey plan; and
- (iii) the Mineral Planning Authority has confirmed in writing, to the developer, that it considers the contours shown on the topographic survey plan to be satisfactory.

The sub and topsoils placed on the overburden shall be placed to levels consistent with those set out in the restoration scheme approved pursuant to Condition number 44 or such other levels as the Mineral Planning Authority may approve in writing.

*Landscaping, Habitat Creation, Maintenance and Aftercare Schemes*

46. No coaling other than that within Area 1A shall take place until landscaping, habitat creation, maintenance and aftercare schemes have been submitted to and approved in writing by the Mineral Planning Authority.

The schemes shall include details of:

- (i) ground preparation;
- (ii) plant species, size of plants, means of protection and density of planting;
- (iii) seed mixes and rates of application; and
- (iv) the arrangements for maintenance and aftercare for a period of 5 years following restoration of:

- (a) the land to be restored to agriculture; and
- (b) the land to be restored to woodland and woodland edge, species rich grassland, conservation headlands, scrubland, marshland and ponds ('habitat areas').

The schemes shall be implemented as approved in writing.