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Our Ref: APP/M2460/A/04/1165643

25 May 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY UK COAL MINING LTD
PROPOSED LONG MOOR SURFACE COAL MINE
APPLICATION: REF 2003/1790/07**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mary T O'Rourke, BA (Hons) Dip TP MRTPI, who held a public local inquiry between 13 September and 11 October 2005 into your client's appeal against a decision of Leicestershire County Council to refuse planning permission on 30 July 2004 for the development of the proposed Long Moor Surface Mine Site between the villages of Ravenstone, Heather and Normanton le Heath.

Inspector's recommendation and summary of the decision

2. The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation to grant planning permission. All references to paragraph numbers, unless otherwise stated, are to the Inspector's report (IR).

Procedural Matters

3. 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. The Secretary of State agrees with the Inspector, for the reasons given at IR14.16-IR14.20, that the Environmental Statement is adequate and complies with the above regulations; and that sufficient information has been provided for her to assess the environmental impact of the application. The Environmental Statement and other environmental information, consisting of further information provided by the appellant's witnesses, the comments by consultation bodies and together with the representations from other parties at the inquiry, have been taken into account in reaching this decision.

Policy considerations

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material

considerations indicate otherwise. In this case, the development plan comprises: the Regional Spatial Strategy for the East Midlands (RSS8), published in March 2005; the Leicester, Leicestershire and Rutland Structure Plan (SP), adopted in March 2005; the Leicestershire Minerals Local Plan Review (MLP), adopted in May 1995; and the North West Leicestershire Local Plan (DLP), adopted in August 2002. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR6.3 to 6.24 and in the Statement of Common Ground (document 4).

5. Other material considerations which the Secretary of State has taken into account include: Minerals Planning Guidance 1 *General Considerations* (MPG1); Minerals Planning Statement 2 *Controlling and Mitigating the Environmental Effects of Mineral Extraction in England* (MPS2); Minerals Planning Guidance 3 *Coal Mining and Colliery Spoil Disposal* (MPG3); Minerals Planning Guidance 5 *Stability in Surface Mineral Workings and Tips* (MPG5); Minerals Planning Guidance 7 *Reclamation of Mineral Workings* (MPG7); Planning Policy Statement 1 *Delivering Sustainable Development* (PPS1); Planning Policy Statement 7 *Sustainable Development in Rural Areas* (PPS7); Planning Policy Statement 9 *Biodiversity and Geological Conservation* (PPS9); and Planning Policy Guidance Note 24 *Planning and Noise* (PPG24).
6. The Secretary of State also considers that other documents which are material considerations in this case are set out in IR6.44-IR6.49.

Main issues

7. The Secretary of State considers that the main issues in this case are:
 - a) Whether the proposal is in accordance with the development plan;
 - b) The environmental acceptability of the proposal, in terms of: landscape and visual impact, ecology, soil and agricultural land quality, noise, dust, archaeology, hydrology and hydrogeology, rights of way, traffic and their potential cumulative impact;
 - c) The benefits arising from the proposal;
 - d) Other material considerations including need and impact on regeneration efforts;
 - e) Conditions; and
 - f) Section 106 Obligation.

The relationship of the proposal to the development plan

8. The Secretary of State agrees with the Inspector, for the reasons she gives at IR14.5-14.9, that the principal development plan policy against which the appeal application should be determined is SP policy RMP11. She also agrees with the Inspector that the approach to take in determining this case is to assess the environmental impact of the proposed development as to whether there would be any harm; and if so, whether it can be kept to an acceptable level as a result of any proposed mitigation measures and their ability to offset or limit any environmental harm (IR14.11). This is the first test as set out in SP policy RMP11(a).
9. The Secretary of State agrees with the Inspector's conclusion in IR14.12 that any enhancement of the economy or the environment should be considered under the second test, set out in SP policy RMP 11(b).

10. The Secretary of State agrees with the Inspector's interpretation to be placed on the last part of paragraph 8 of MPG3. She agrees with the Inspector that, whilst the Mineral Planning Authority's (MPA) assessment of environmental acceptability should normally prevail, a proposal may be subject to a fresh look if permission is refused (IR14.14).
11. The Secretary of State has considered below whether the proposal complies with SP policy RMP 11 and the extent to which it complies with other specific policies in the development plan.

The environmental acceptability of the proposal

Landscape and visual impact

12. The Secretary of State agrees with the Inspector that, for the reasons she gives at IR14.24-14.37, there would be short term adverse environmental impacts that would be significant, but that these could be kept to an acceptable level by the mitigation measures proposed when taken together with the short operational life of the workings. She therefore concludes that, subject to appropriate conditions, the proposal is environmentally acceptable in terms of landscape and visual impact. The Secretary of State considers that this proposal therefore complies with SP policy RMP 11(a), and the environmental policies SP policy SP8, DLP policies F2, F3 and S3 and MLP policies 5, 11 and 12.

Ecology

13. The Secretary of State agrees with the Inspector that, for the reasons she gives at IR14.38-14.40, through the careful design of the site, limiting the loss of hedgerows and trees, the proposed mitigation measures and the limited operational life of the site, the impact upon local ecology could be kept to an acceptable level. She therefore concludes that, subject to appropriate conditions, the proposal is environmentally acceptable in terms of ecology and that there is no conflict with the first part of SP policy RMP11 or with paragraph 8(i) of MPG3.

Soil and agricultural land quality

14. The Secretary of State agrees with the Inspector, for the reasons she gives at IR14.42-14.45, that the proposal would meet the aim of MPS2 to safeguard the long term capability of the land and secure the conservation of soil resources. In reaching this conclusion, the Secretary of State has had regard to the fact that DEFRA has confirmed that it is satisfied with the appellant's Soil Handling Strategy. She considers that, as there would be no irreversible loss of Best and Most Versatile (BMV) agricultural land, the objectives of SP policy RMP5 and DLP policy E23 would be met. She also agrees with the Inspector that, in terms of SP policy RMP 11(a), subject to appropriate conditions to ensure proper soil handling techniques and treatment, the environmental impact of open cast working on soil quality and BMV agricultural land would be acceptable (IR14.46).

Noise

15. The Secretary of State agrees with the Inspector that if noise is not adequately controlled, it can be a major cause of disturbance (IR14.48). She has had regard to the differences between the MPA and the appellant in a number of respects (IR14.51),

including in the appellant's methodology as set out in the Environmental Statement (IR14.50, IR14.75).

16. For the reasons she gives at IR14.48-14.74, the Secretary of State agrees with the Inspector that noise from the surface mining operations could be mitigated, through an appropriate planning condition and conditions to secure the implementation and maintenance of the proposed noise mitigation measures, to a level that reflects the high environmental standard required by MPS2 Annex 2 of background plus 10dB (IR14.75). She therefore considers that, whilst there would be an adverse environmental impact, it could be controlled to an acceptable level and thus would comply with SP policy RMP 11(a), DLP policies E3 and E44 and MLP policies 2, 3 and 5. (IR14.78).

Dust

17. The Secretary of State agrees with the Inspector that, for the reasons she gives at IR14.79-14.95, there could be a significant adverse environmental impact from dust; and she considers that the measures proposed to be adopted in the Dust Action Plan would help to minimise dust emissions at source and control them to acceptable levels, in both the terms of nuisance or fugitive dust and with regard to the smaller PM₁₀ particles (IR14.97). The Secretary of State therefore concludes that, given the short operational life of the site and subject to appropriate conditions and the Section 106 Obligation, the proposal is environmentally acceptable in terms of dust. She therefore considers that the proposal does not conflict with the objectives of MLP policy 2 and SP policies RMP1 and RMP 11(a), nor with DLP policy E3.

Archaeology

18. The Secretary of State agrees with the Inspector, for the reasons she gives at IR14.98-14.100, that, subject to appropriate conditions, the proposal is environmentally acceptable in terms of archaeology, and that there is no conflict with the provision of SP policy EP1, DLP policy E3 and MLP policies 2 and 3.

Hydrology and hydrogeology

19. The Secretary of State agrees with the Inspector, for the reasons she gives at IR14.101-14.104, that the proposed development would not adversely affect hydrological or hydrogeological interests and that surface water run-off and drainage can be appropriately controlled through conditions. She therefore concludes that the proposal is environmentally acceptable in terms of hydrology and hydrogeology, that there would be no conflict with MLP policy 3(d) and it would accord with MLP policy 5 (IR14.104).

Rights of Way

20. The Secretary of State agrees with the Inspector that, for the reasons she gives at IR14.105-14.108, though the operational period would somewhat diminish users' enjoyment of certain of the public rights of way, having regard to the relatively short duration of disturbance and the mitigation measures proposed, the adverse environmental impact would be limited and its weight as an individual impact would be slight. The Secretary of State, like the Inspector, considers that there would be no conflict with the objectives of SP policies LP2 and LP4, DLP policy E17 and MLP policy 3(d) (IR14.108).

Traffic

21. The Secretary of State agrees with the Inspector that the site is well positioned in relation to the strategic road network, and that the Section 106 Obligation and suggested conditions provide for controls over the route taken by HGVs, improvements to the highway vertical alignment and repair of any consequential damage to the carriageway. For the reasons given by the Inspector at IR14.109 - 14.117, the Secretary of State considers that, having regard to the proposed duration of the operational and restoration phases, the hours of working, proposed number of vehicle movements and the tarmacking of the haul road, the environmental impact as a result of additional traffic associated with the development would be acceptable. She therefore agrees with the Inspector that there is no conflict with the objectives of SP policies ATP6 and RMP12 or with the provisions of MLP policies 2, 3 and 4 (IR14.118).

Conclusion on individual environmental impacts

22. For the reasons set out above, the Secretary of State agrees with the Inspector's conclusion that there is no individual environmental impact which is sufficiently objectionable and unacceptable in its own right so as to warrant refusal of permission and dismissal of the appeal on that ground alone (IR14.119). In line with MLP policy 3(j) and SP policy RMP 11, the Secretary of State has gone on to consider the potential for cumulative environmental impact.

Cumulative impact

23. The Secretary of State agrees with the Inspector that, for the reasons she gives at IR14.125, a harmful cumulative impact cannot be advanced on the basis of concurrent working. She also considers that, for the reasons set out in IR14.126-IR14.128, the effect of past working in the area does not amount to a cumulative impact weighing against the proposal.

24. The Secretary of State has had regard to the concern of local people that, if permission is granted for Long Moor, it would lay open to future successive working as there are known substitute coal reserves (IR14.129). However, for the reasons set out in IR14.129, she agrees with the Inspector that very little weight should be given to the potential for adverse cumulative impact as a result of fears of successive working.

25. For the reasons set out in IR 14.130-IR14.133, the Secretary of State agrees with the Inspector that, in the absence of any evidence to indicate that a proper assessment has been carried out or how it might be done, the combined effect of multiple environmental impacts is not such as to tip the balance back against the proposal (IR14.133).

26. For the reasons set out in paragraph 23-25 of this letter, the Secretary of State concludes that, subject to the imposition of appropriate conditions and the provisions of the Section 106 Obligation, the proposal meets the requirements of SP policy RMP 11 (a) in that its adverse environmental impact, including the potential for cumulative impact, can be kept to an acceptable level.

Overall conclusion on environmental acceptability

27. The Secretary of State considers that the adverse environmental impacts, both individually and collectively, arising from the development can be kept to an acceptable level. She concludes that overall - subject to appropriate conditions and the provisions of the Section 106 Obligation - the proposal meets the requirements of the development plan, in particular SP policy RMP11(a), and national policy in terms of environmental acceptability.

The benefits arising from the proposal

28. The Secretary of State agrees with the Inspector that, if the proposal is not environmentally acceptable, permission should be refused unless the likely impacts are outweighed by the benefits put forward as arising from the development (IR14.135). As such she considers that the benefits of the second scheme should be considered against SP policy RMP 11(b), and paragraph 8(ii) of MPG3. For the reasons set out in IR14.138-IR14.145, the Secretary of State agrees with the Inspector that, whilst there would be some benefits arising from the proposal, the extent to which these might be considered local or community benefits is limited. She also agrees that, as the proposal is environmentally acceptable, the limited benefits accruing from the proposal add a little to the weight in favour of the grant of permission (IR14.146).

Other material considerations

29. The Secretary of State agrees with the Inspector, for the reasons she gives in IR14.148-IR14.152, that although the proposal would have a modest impact upon coal supply, the positive contribution to domestic coal supplies should be given some weight. She also agrees with the Inspector, for the reasons in IR14.153-IR14.158, that the weight given to the need for coal is offset by the ready availability of imports and the small contribution that the site would make towards UK coal reserves (IR14.159).

Conditions

30. The Secretary of State has considered the proposed conditions and national policy as set out in Circular 11/95. She agrees with the Inspector that, for the reasons she gives at IR13.1-13.2, the conditions, as amended, are necessary, relevant to planning and the development permitted; and are enforceable, precise and reasonable in all other respects.

Planning Obligation

31. The Secretary of State has considered the planning obligation and national policy as set out in Circular 05/2005. For the reasons set out in IR14.160-IR14.163, the Secretary of State agrees with the Inspector that little weight should be given to the commitment in the Section 106 Obligation by the appellant not to apply for extraction on other land. However, she agrees with the Inspector, for the reasons she gives at IR13.3-13.5 and IR14.163, that the rest of the Section 106 Obligation is relevant to the proposal, is of appropriate scale and reasonable in all other respects, and is a substantial material consideration in support of the grant of permission.

Human Rights

32. The Secretary of State does not consider that the effect of the proposal will be to interfere with the rights of local residents under Article 8 of, and Article 1 of the First

Protocol to, the ECHR, given her conclusions above and in particular her conclusions on the proposed mitigation measures in relation to noise and dust which will be controlled through conditions and the Section 106 Obligation. However, even if the effect of the proposal would be to interfere with those rights, the Secretary of State agrees with the Inspector, for the reasons she gives, that the interference would be necessary and proportionate (IR14.165).

Overall Conclusions

33. For the reasons set out above, the Secretary of State agrees with the Inspector that the key issue in this case is whether or not the proposal complies with SP policy RMP 11(a), which reflects paragraph 8(i) of MPG3. The Secretary of State considers that there would be significant adverse impacts in terms of landscape and visual impact and potential dust nuisance that would affect those living and working close by. However, she is of the view that these effects would be for the relatively short period of the active life of the site, and could be limited and controlled during that time by the mitigation and management measures proposed to be put in place.
34. The Secretary of State has also considered the cumulative impact of these multiple environmental effects and of the potential for successive working, and has concluded that these could also be kept to an acceptable level.
35. The Secretary of State considers that the proposal, with appropriate conditions and the provisions of the Section 106 Obligation, satisfies SP policy RMP11(a) and there would be no conflict with the objectives of development plan policies for the countryside, residential amenity, ecology, archaeology, highways, the National Forest and rights of way. She therefore considers that the proposal meets other policies in the development plan, as well as the test in paragraph 8(i) of MGP3.
36. Although the Secretary of State considers that the proposal is environmentally acceptable, and therefore that the presumption against open cast working in MPG3 and SP policy RMP11 is outweighed, she has also had regard to the benefits put forward by the appellants. In her view such benefits should be considered against SP policy RMP 11(b). She agrees with the Inspector that the benefits should be given a little weight in this particular case.
37. Overall, and for the reasons given in this letter, the Secretary of State has concluded that there are no material considerations which suggest that she should determine the proposal other than in accordance with the development plan.

Formal Decision

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby grants planning permission for the proposed Long Moor Surface Mine Site between the villages of Ravenstone, Heather and Normanton le Heath, in accordance with application number 2003/1790/07, dated 5 March 2005, subject to the conditions annexed to this letter.
39. 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.

40. This letter does not convey any approval 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.

41. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

42. 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 six weeks from the date of this letter.

43. A copy of this letter has been sent to Leicestershire County Council and all parties who appeared at the inquiry.

Yours faithfully

Mark Plummer
Authorised by the Secretary of State
to sign in that behalf

Conditions

Definition of the Development

1. This permission shall relate only to the extraction of coal by surface mining methods and reinstatement of the land to agriculture, grassland, woodland, wetland and water features within the land edged red on Plan No. 180/D02D together with off-site woodland planting shown in green on Plan No. 180/D03C. There shall be no removal of other minerals from the site.
2. Unless otherwise required by this permission or approved in writing by the Mineral Planning Authority, the development shall be carried out in accordance with the following details:
 - a) the application and accompanying environmental statement;
 - b) Drawings Nos. 180/D02D and 180/D03C;
 - c) the letters from UK Coal Mining Ltd to the Mineral Planning Authority dated 24 March 2004 and 19 April 2004;

together with such other details as may be submitted to and approved by the Mineral Planning Authority in accordance with these conditions. Where there is a conflict between any of these details, the most recently approved document shall take precedence.

3. A copy of this permission, the plans and documents referred to in condition 2 above, including any other plans and documents subsequently approved in accordance with any condition of this permission, shall be kept available for inspection on site during the prescribed working hours.
4. No mineral extraction shall take place outside the area defined by a dashed orange line on Drawing No. 180/D02D and referred to as the "*LIMIT OF EXCAVATION*".
5. No stripping of soil, excavation, regrading or deposition of material shall be carried out within the area shown stippled green and referred to as "*UNDISTURBED AREA*" on Drawing No. 180/D02D.

Commencement and Duration

6. Unless otherwise agreed in writing by the Mineral Planning Authority beforehand the development hereby permitted shall be commenced within 12 months of the date of this permission.
7. Written notification of the commencement of the development shall be provided to the Mineral Planning Authority within seven days from the date of such commencement.
8. Unless otherwise agreed in writing by the Mineral Planning Authority beforehand the development hereby permitted shall have ceased and the whole of the site shown edged in red on Plan No. 180/D02D together with off-site woodland planting shown in green on Plan No. 180/D03C, shall have been completed within 5 years from the date of commencement as notified in accordance with Condition 7 above.

9. Within one month of the cessation of all extractive and backfilling operations all coal stockpiles shall be removed from the site.

Access, Highways and Public Rights of Way

10. Vehicular entry to and exit from the site shall be only by means of the proposed site access and exit points shown marked as X and X1 respectively on Drawing No. 180/D02D.
11. Unless otherwise agreed in writing by the Mineral Planning Authority beforehand , throughout the period of the development the access and exit points marked X and X1 on Drawing No. 180/D02D shall be maintained to the standards, including the visibility splays, approved under planning conditions Nos. 15, 16 and 17 of this permission.
12. No development shall commence until:
 - a) the vertical alignment of Ashby Road to the east of the site access has been altered to provide appropriate visibility splays as shown generally on drawing number D102334/GD/04P1;
 - b) works have been carried out at the Alton Hill/Ashby Road junction to safely facilitate two-way use by lorry traffic (details to be agreed by the Mineral Planning Authority in conjunction with the Highway Authority before commencement of those works);
 - c) a full visual survey of the condition of the roads between the site access/exit and the A511 has been carried out by the developer, accompanied by the County Highway Authority.
13. Except in an emergency or unless directed to do so by a police officer, no vehicle associated with the mining operations with a permissible laden weight exceeding 7.5 tonnes shall turn left into the site nor turn right out of the site.
14. Except in an emergency or unless directed to do so by a police officer, no vehicle associated with the mining operations shall enter the site via the exit point nor leave the site via the eastern access point.
15. Before commencement of any coal extraction:
 - a) the access and exit for the site shall be constructed as shown on drawing number D102334/GD/04P1, and the haul road shall be surfaced in tarmacadam or other hard bound material and shall be so maintained for the period of extraction; and
 - b) the visibility splays shown on drawing number D102334/GD/04P1 shall be provided at the junctions of the site access and exit with Ashby Road. These shall be in accordance with the standards contained in the current County Council design guide and nothing shall be allowed to grow above a height of 0.9 metres above ground level within the visibility splays throughout the period of the development.
16. The gradient of both the site access and exit shall not exceed 1 in 20 for the first 30 metres from the Highway boundary.
17. Any gates, barriers or other security feature erected across the site exit access shall be set back a distance of 15 metres behind the Highway boundary and shall not open outwards.
18. Any gates, barriers or other security feature erected across the site egress shall not open outwards.

19. Efficient wheel washing facilities shall be provided at the location within the site shown on Drawing No.180/D02D to ensure that deleterious material is not carried onto the public highway.
20. Before commencement of any coal extraction, drainage shall be provided within the site at the access and exit points such that surface water does not drain on to the public highway and thereafter shall be so maintained.
21. Car parking within the site shall only take place within the area identified for that purpose on Drawing No. 180/D02D.
22. All lorries exporting coal from the site shall be properly sheeted before entering on to the haul road north of the haulage yard as shown on Plan No. 180/D02D.
23. Before the commencement of the development details of measures to ensure the safety of users of the public rights of way within the site, including a programme of works, shall be submitted to the Mineral Planning Authority for its approval. The approved measures shall be implemented in full in accordance with the agreed programme.

Fencing, Trees and Hedgerows

24. Unless otherwise agreed in writing by the Mineral Planning Authority no operations authorised or required by this permission shall be carried out until stockproof fencing has been erected where appropriate around the boundary of the site; such fencing shall be maintained in good condition for the duration of this permission.
25. No trees or hedgerows within or bounding the site shall be removed except those shown to be removed on Table 3, Annexure B of the Environmental Statement. No trees shall be removed until surveys have been carried out by suitably qualified persons and at the optimum time of year to confirm the presence or absence of bats in those trees. In the event that the presence of bats is confirmed, a strategy for the protection of the relevant species shall be submitted for the written approval by the Mineral Planning Authority before the removal of any tree, and any operations on the site shall be carried out in accordance with the requirements of such protection strategy as approved.
26. All trees and hedgerows identified within the site as being retained shall be protected and maintained throughout the period of operation and restoration in accordance with a scheme to be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of the development. The scheme shall be generally in accordance with the standards and specifications set out in BS5837 (2005), and shall include details of standoffs, protected fencing and other measures to prevent damage to trees and hedgerows.
27. A scheme of hedgerow management and planting shall be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of extraction. The approved scheme shall be implemented in full during the period of the development.

Soil Handling

28. Unless otherwise agreed in writing by the Mineral Planning Authority beforehand, soil handling and soil storage shall be carried out in accordance with the 'Long Moor Soils

Handling Strategy' dated 5 September 2005. For the avoidance of doubt, in the event of any conflict between conditions 29 to 36 and the Soils Handling Strategy, the Handling Strategy should prevail.

29. Before any part of the site is excavated or traversed by heavy vehicles or machinery (except for the purpose of stripping that part or stacking topsoil on that part), or is built upon, or used for the stacking of subsoil, or overburden, or as a machinery or plant yard, or for the construction of a road, all available topsoil shall be stripped from that part.
30. No movement of soil shall take place except when the full depth of soil to be stripped or otherwise transported is in a suitably dry soil moisture condition i.e. the soil is in a non-plastic state such that damage to its structure shall be avoided. Conditions shall be sufficiently dry for the topsoil to be separated from the subsoil without difficulty.
31. All areas of the site left undisturbed and all topsoil, subsoil, and overburden mounds shall be kept free from weeds. All necessary steps shall be taken to destroy weeds at an early stage of growth.
32. All available subsoils shall be stripped and stored separately, including subsoil in the overburden storage area.
33. All topsoil referred to in Condition No. 29 above shall be stored in the locations indicated on Drawings No. 180/D02D or such other locations as may be agreed in writing by the Mineral Planning Authority beforehand to heights not exceeding 3 metres and shall be seeded with grass in the first available sowing season, and thereafter maintained in accordance with Condition No. 31 above until required for restoration purposes.
34. The subsoil referred to in Condition No. 32 shall be stored in the locations indicated on Drawing No. 180/D02D or such other locations as may be agreed in writing by the Mineral Planning Authority beforehand to heights not exceeding 6 metres and shall all be seeded to grass, and thereafter maintained in accordance with Condition No. 31 above until required for restoration purposes.
35. The topsoil, and subsoil mounds referred to in Conditions 33 and 34 above shall be constructed with the minimum amount of compaction necessary to ensure stability and shall not thereafter be traversed by heavy vehicles or machinery except during construction or removal.
36. Following formation of the storage mounds referred to in Conditions 33 and 34 above, the quantities shall be measured and recorded on a suitable plan and the details submitted to the Mineral Planning Authority.

Restriction of Permitted Development Rights

37. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, as amended, and unless otherwise approved by other conditions attached to this permission, no buildings, plant, structures or machinery, excluding mobile plant and machinery, shall be erected on the site without the prior written approval of the Mineral Planning Authority following submission of relevant details and plans.

Noise and vibration

38. There shall be no blasting at the site.
39. Unless otherwise approved in writing by the Mineral Planning Authority beforehand, and except in the case of emergency, the servicing/maintenance of plant and essential pumping, no operations shall be carried out within the site outside the following hours:

Normal operations:

0700 to 1900 hours – Monday to Friday

0700 to 1200 hours – Saturdays

Temporary operations:

(such as soil stripping, mound formation and soil placement):

0800 to 1800 hours – Monday to Friday

0800 to 1200 hours – Saturdays

and no operations shall be carried out on Sundays and Public Holidays.

40. Measures shall be taken to ensure that the operations carried out on the site do not give rise to noise nuisance/disturbance in the locality. Such measures shall include:
- a) the effective silencing and maintenance of all engines, exhausts, machinery, plant and equipment, whether fixed or mobile;
 - b) the location and organisation of on-site operations so as to minimise any noise impact on nearby properties and to avoid steep gradients and sharp bends on haul roads; and
 - c) the minimisation, so far as is practicably and legally possible, of the level and penetration of noise emissions from reversing warnings fitted to vehicles; and
 - d) no use of pure tone audible reversing beepers.
41. Throughout the life of this permission noise monitoring shall be carried out in accordance with a scheme of monitoring which has been agreed in writing by the Mineral Planning Authority prior to the commencement of any operations in site. The scheme shall include details of:
- i. noise monitoring at agreed locations to assess whether the limits at the locations specified in the table in condition 42 below have been complied with;
 - ii. frequency and duration of monitoring;
 - iii. monitoring equipment to be used;
 - iv. presentation of monitoring results, including details of dates, times, prevailing weather conditions and comments on significant noise sources and details of any ambient noise sources paused out of the measurements;
 - v. maintenance and availability of monitoring results.

42. Except for temporary operations the equivalent Continuous Noise Level ($L_{Aeq,1h}$) attributable to the day to day operations on the site, at the properties listed in the table below, shall not exceed the levels specified:

A	The Altons, Packington	45
B	Home Farm, Normanton le Heath	49
C	Farm House, North of Heather	49
D	Cattows Farm, Heather	47
E	Alton Cottages, Ravenstone	51
F	6 Fosbrooke Close, Ravenstone	48
G	Longmoor Farm	55
H	Beesley's Nursery (lower bungalow)	47

43. For temporary operations such as soil stripping, mound formation and soil placement operations the L_{Aeq} level shall not exceed 55 $dBL_{Aeq}(1 \text{ hr})$ when measured at the noise sensitive properties adjacent to the site boundary and the duration of such operations shall not exceed 8 weeks in any given year. Except in cases of emergency, operations of a temporary nature shall be the subject of at least 3 days prior notification to the Mineral Planning Authority.

Dust

44. Throughout the life of this permission the operator shall implement a set of dust control measures and carry out dust monitoring in accordance with a scheme of measures presented in the form of a "*Dust Action Plan*" which shall have been agreed in writing by the Mineral Planning Authority prior to the commencement of any operations.

For the avoidance of doubt the Dust Action Plan shall be incorporated into an Environmental Management System accredited to ISO 14001 standard, and shall include provision for:

- i. the spraying of all haul roads and stockpiles as necessary to maintain a damp surface and particularly during dry weather;
- ii. the enclosure, where necessary, of plant and machinery, including conveyors, used for the preparation of coal;
- iii. the sheeting of all coal lorries leaving the site;
- iv. the seeding of all topsoil and subsoil mounds in accordance with the requirements of conditions 33 and 34;
- v. the installation of appropriate equipment within the site boundary to monitor dust emissions;
- vi. the constant monitoring of dust emissions within the site boundary, the results of which shall be made available on request to the Mineral Planning Authority;
- vii. the installation of equipment to measure continuously PM_{10} concentrations at a suitable residential location outside the site boundary. The method selected must be calibrated gravimetrically to test its consistency with the European Reference

Sampler. The results shall be made available to the Mineral Planning Authority on request;

- viii. specific measures to control potential dust emissions arising from soil stripping and mound construction, including, when necessary, the suspension of operations when weather conditions are creating conditions where undue harm would be caused to the amenities of local residents (i.e. dry conditions with excessive wind speeds blowing in the direction of residential property);
- ix. the management of on-site traffic;
- x. the reviewing of the Dust Action Plan as necessary in consultation with the Mineral Planning Authority; and
- xi. the establishment of independent dust monitoring stations outside the site boundary at locations to be agreed with the Mineral Planning Authority and a monitoring regime utilising "Adhesive Strip Dust Samplers" with independent analysis of all monitoring results to be carried out throughout the period of this permission.
- xii. the agreement of an acceptability threshold and undertaking a period of baseline monitoring at residential locations prior to the commencement of site operations.

Lighting

45. Prior to the commencement of the development, details of the location, height, design, sensors, hours of operation and luminance of floodlighting (which shall be designed to minimise the potential nuisance of light spillage to the locality) and a programme for its installation shall be submitted to and approved in writing by the Mineral Planning Authority. The approved scheme shall be implemented in full in accordance with the agreed programme unless otherwise agreed in writing beforehand by the Mineral Planning Authority.

Archaeology

46. No development shall take place within the permission area until the applicant has secured the implementation of a programme of archaeological work, including an initial exploratory phase (trial trenching). This shall be undertaken in accordance with a written scheme of investigation that has been submitted to and approved in writing by the Mineral Planning Authority beforehand.

Drainage and Water Protection

48. Any facilities for the storage of oils, fuel or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tanks plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank plus 10%. All filling points, vents and sight glasses must be located within the bund. There must be no drain through the bund floor or walls (BS 799 Part 5: 1987 refers).

49. The foul drainage from the proposed development shall be discharged to a private treatment plant.

50. There shall be no importation of any waste materials into the site.

51. Prior to the commencement of development a scheme for dealing with site surface water run-off shall be submitted to the Minerals Planning Authority for its approval and shall be implemented in accordance with the approved scheme.

Restoration

52. Within 6 months of the commencement of the development the operator shall submit a detailed Restoration Plan based on Drawing No. 180/D03C for the written approval of the Mineral Planning Authority.

53. The Restoration Plan submitted under condition 52 above shall include details of the final routing of new bridleways, and shall be accompanied by details of their construction and surfacing. These routes shall be constructed within 6 months of completion of the restoration works shown on the Restoration Plan,

54. Within one month following the final placement of subsoil and topsoil in any part of the application site the operator shall submit, where appropriate, the following details for the written approval of the Mineral Planning Authority

- i. tree and shrub planting, species mix and planting densities: and
- ii. seed mixtures and sowing specifications for the grassland areas.

55. Backfilling and restoration of the site shall be carried out progressively and shall be completed as soon as reasonably practicable following the extraction of coal from any part of the site; wherever practicable the replacement of overburden and respreading of soil shall be carried out concurrently with the mineral extraction.

56. Unless otherwise agreed in writing by the Mineral Planning Authority beforehand, or as required by conditions of this permission, the replaced overburden shall be levelled and graded to provide, following the replacement of subsoil and topsoil, the contours shown on the Restoration Plan approved under Condition 52.

57. At the conclusion of each stage of overburden replacement on the proposed agricultural areas, the operator shall nominate personnel who, at the request of the Mineral Planning Authority, shall meet on site with representatives of the Mineral Planning Authority for the purpose of agreeing the replaced overburden levels as set out in the Restoration Plan approved under condition 52 above.

58. Following the replacement of the overburden and before the replacement of subsoil, the upper layers of the overburden shall be ripped with a heavy duty subsoiler. Such treatment shall ensure that within a total depth of 1200mm below the surface of the topsoil as replaced, there is:

- a) no shale, bind or other material injurious to plant life;
- b) no rock, stone, boulder or other material capable of preventing or impeding normal agricultural or land drainage operation including mole ploughing or subsoiling;
- c) no wire rope, cable or other foreign objects;
- d) no excessively compacted zone; and

e) a reasonably level, but uncompacted, surface suitable to receive subsoil.

Stones or deleterious materials at the surface of the replaced overburden which will not pass through a 230mm ring in any dimension shall be removed from site or buried on site not less than 2 metres below final surface contours.

59. All available subsoil shall be re-spread evenly over those areas agreed to receive such subsoil. The subsoil shall be so treated to comply with the general requirements of Condition 58 (a) to (d) above. No layer of replaced soil shall exceed 450mm thickness before it is ripped and the ripping operation shall penetrate at least 150mm into the underlying layer to relieve compaction at the interface. Subsoil upon which other soils have been stored shall be rooted.
60. Stones or deleterious materials at the surface of each layer of ripped subsoil which will not pass through a 150mm diameter ring in any dimension shall be removed from site or buried on site not less than 2 metres below final surface contours.
61. After satisfactory replacement and treatment of the subsoil, all available topsoil shall be re-spread evenly over those areas agreed to receive such topsoil. The topsoil shall be ripped, cultivated and so left as to comply with the general requirements of Condition No.58 (a) to (d) above. Stones greater than 100mm in any dimension shall be removed. Topsoil upon which other topsoil has been stored shall be rooted and cultivated as above.
62. All operations involving soil replacement and cultivation treatments shall only be carried out when the full volume of soil involved is in a suitably dry soil moisture condition (i.e. the soil is in a non-plastic state such that damage to its structure shall be avoided), to minimise soil damage and to maximise the effects of the rooting operations.
63. The operator shall take all reasonable precautions to prevent the mixing of topsoil, subsoil, and overburden, and no topsoil, subsoil or other soil making material shall be removed from the site.
64. Following completion of extraction, backfilling and soiling in any part of the site, the restoration works in relation to that area, as shown on the Restoration Plan approved under condition 52 above shall be implemented within 9 months.
65. On completion of the restoration all equipment, plant, machinery, structures and buildings shall have been removed from the site and unless otherwise agreed in writing with the Mineral Planning Authority site access roads shall have been removed.

Aftercare

66. Following the final restoration of any part of the site or the translocation of any hedgerow or tree in accordance with details contained in the planning application and environmental statement and shown on Restoration Plan approved under condition 52 above, the land shall be treated for a 5 year period in accordance with the aftercare scheme or schemes which shall have been submitted to and approved by the Mineral Planning Authority prior to the completion of restoration in the relevant part of the site. For the avoidance of doubt the aftercare requirements will apply to areas of agriculture, grassland, woodland, reedbeds and wetlands, trees and hedgerows. The submitted schemes shall:

- a) be submitted for the written approval of the Mineral Planning Authority not later than 3 months prior to the date on which it is first expected that the replacement of topsoil or the formation of a reedbed or wetland, or the planting of a tree or hedgerow shall take place;
- b) provide an outline strategy, having regard to the guidance contained in Mineral Planning Guidance Note No. 7 (MPG 7), for the 5 year aftercare period. This shall specify the steps to be taken and the period during which they are to be taken to return the land to beneficial use and shall provide for annual meetings between the operator, the Mineral Planning Authority and other agencies as appropriate (e.g. DEFRA, Environment Agency) in respect of the restored arable land, grassland, reedbed and wetland, hedgerow or trees;
- c) provide for the submission, annually, and implementation of a detailed annual programme of aftercare works having regard to MPG 7 and other relevant guidance regarding forestry, ecology and nature conservation.

67. Unless otherwise agreed in writing by the Mineral Planning Authority the aftercare of the site shall only be carried out in accordance with the approved schemes.

Premature Cessation

68. In the event of mineral extraction being prematurely discontinued at the site at a stage which renders the approved Restoration Plan unachievable, an alternative scheme (based on the scheme shown on Drawing No. 180/D03C) for the treatment and restoration of the site as so left and all other operational areas associated with the site shall be submitted to the Mineral Planning Authority for approval within 6 months of the discontinuance of mineral extraction. The scheme shall include the following details:

- a) the recontouring of the site;
- b) the removal of all buildings, plant and structures;
- c) the backfilling of voids and respreading of all available soils;
- d) the treatment of the land;
- e) landscaping and planting; and
- f) aftercare provisions.

69. The scheme as approved by the Mineral Planning Authority under condition 68 shall be commenced within 6 months of notification of determination and shall be fully implemented within a further 18 months or such other period as may be approved by the Mineral Planning Authority.